

19 CFR 10.131 ACTUAL USE CIRCUMSTANCES IN WHICH APPLICABLE

The provisions of 10.131 through 10.139 are applicable in those circumstances in which the rate of duty applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part, which governs the treatment of the merchandise.

10.133 CONDITIONS REQUIRED TO BE MET.

When the tariff classification of any article is controlled by its actual use in the USA, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the HTSUS applicable to the merchandise specifies other conditions. The conditions are that:

- (a) Such use is intended at the time of importation.
- (b) The article is so used.
- (c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

10.134 DECLARATION OF INTENT.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper subheading of an actual use provision of the HTSUS and the rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the port director is satisfied the merchandise will be so used. However, the port director *shall* require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the HS.

10.135 DEPOSIT OF DUTIES.

When the requirement of 10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty.

10.136 SUSPENSION OF LIQUIDATION.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to 10.134 and any required deposit of duties made, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

10.137 RECORDS OF USE.

(a) Maintenance by importer. The importer *shall* maintain accurate and detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established. (b) Retention of records. The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry. (c) Examination of records. The records required to be kept by paragraph (a) of this section shall be available at all times for examination and inspection by an authorized Customs officer.

10.138 PROOF OF USE.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer *shall* submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.