

The proposal set forth representations to Customs that the greater metropolitan areas of Sioux Falls has a population of 139,236 based on 1990 census figures and that a population of well over 300,000 exists within a 70-mile radius of Sioux Falls. It was projected that existing businesses would file between 2,709 and 3,253 import entries within the proposed port of entry in the years 1996 through 1998, with no single company accounting for more than half of the projected entries. It was further stated in the request for a port of entry that the Sioux Falls Regional Airport Authority is committed to making optimal use of electronic data transfer capability to permit integration with the Customs Automated Commercial System for processing entries. Regarding the Joe Foss Field airport, it was stated the airport has exceptional cargo and passenger facilities, that passenger areas can be secured to accommodate international arrival passenger clearance, and that there are several warehouse facilities in close proximity to the airport that are suitable for the secure storage of cargo pending inspection and release by Customs. Further, the Sioux Falls Regional Airport Authority committed to providing certain space and equipment to Customs.

Based on the information provided to Customs, the proposal set forth Customs belief that Sioux Falls meets the current minimum criteria for port of entry designation set forth in T.D. 82-37 (47 FR 10137), as revised by T.D. 86-14 (51 FR 4559) and by T.D. 87-65 (52 FR 16328).

**Determination**

No comments were received in response to the proposal. After further review and consideration by Customs, it has been determined to establish Sioux Falls as a port of entry with port limits as described below. Section 101.3 is amended accordingly. It is noted, however, that because the representations set forth in the proposal rely on potential, rather than actual, workload figures, Customs will in 3 years review the actual workload generated within the port of Sioux Falls to evaluate whether Sioux Falls may retain port of entry status. If that review indicates that the actual workload is below the standard set forth in T.D. 82-37, as revised, procedures will be instituted to revoke port of entry status. Of course, if port of entry status is revoked, the City of Sioux Falls will have the opportunity to apply for user fee airport status under 19 U.S.C. 58b.

**Limits of Port of Entry**

The geographical limits of the port of entry of Sioux Falls are as follows: All of Minnehaha and Lincoln Counties in the State of South Dakota.

**Regulatory Flexibility Act and Executive Order 12866**

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document was issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this are exempt from consideration under Executive Order 12866.

**List of Subjects in 19 CFR Part 101**

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

**Amendments to the Regulations**

For the reason set forth in the preamble, part 101 of the Customs Regulations is amended as set forth below:

**PART 101—GENERAL PROVISIONS**

1. The general authority citation for part 101 and specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

\* \* \* \* \*

2. Section 101.3(b)(1) is amended by adding the following entry in appropriate alphabetical order:

**§ 101.3 Customs service ports and ports of entry.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

| Ports of entry      | Limits of port |
|---------------------|----------------|
| * * * * *           | *              |
| <b>South Dakota</b> |                |
| Sioux Falls .....   | T. D. 96-3     |
| * * * * *           | *              |

Approved: December 1, 1995.

George J. Weise,  
*Commissioner of Customs.*

Dennis M. O'Connell,  
*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 95-31324 Filed 12-27-95; 8:45 am]

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**19 CFR Part 162**

[T.D. 96-2]

RIN 1515-AB62

**Seizure of Merchandise**

**AGENCY:** Customs Service, Treasury.  
**ACTION:** Final rule.

**SUMMARY:** In this document, Customs is amending its regulations in response to enactment of the Customs Modernization Act ("The Mod Act"). Among its other provisions, the Mod Act amended Section 596(c) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)) to clarify and codify Customs authority to seize and forfeit merchandise introduced or attempted to be introduced into the United States contrary to law. The Mod Act distinguishes between circumstances under which seizure of such merchandise is mandatory and those in which it is permissive. The amendment follows the legislation and specifies the circumstances under which the mandatory and permissive seizures may take place. The amendment also contains provisions for the detention of merchandise and the remission of articles subject to seizure and forfeiture.

**EFFECTIVE DATE:** January 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Todd Schneider, Penalties Branch (202) 482-6950.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103-182). The Customs Modernization portion of this Act (Title VI), popularly known as the Customs Modernization Act, or "the Mod Act" became effective when it was signed. Section 624 of Title VI amended section 596(c) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)) to codify and clarify the circumstances under which merchandise may be seized and forfeited by Customs.

On May 3, 1995, Customs published a Notice of Proposed Rulemaking in the Federal Register (60 FR 21788), which proposed amending the Customs Regulations to reflect these statutory

changes. Because no comments were received in response to the Notice of Proposed Rulemaking, Customs is now amending its regulations as proposed.

The Mod Act amendments to § 1595a(c) provide that merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated in two different manners depending upon the circumstances of the introduction or attempted introduction. In instances where the merchandise is stolen, smuggled, or clandestinely imported or introduced or is a controlled substance or contraband article, seizure is mandatory.

Paragraph (a) of the amendment addresses conditions where seizure is mandatory.

Paragraph (b) of the amendment covers those situations in which seizure is permissive. Seizure is permissive in instances where the merchandise is subject to health, safety or conservation restrictions which have not been complied with; when licenses, permits or other authorizations of a U.S. Government agency are required but do not accompany the merchandise; when copyright, trademark, or trade name violations are involved; when trade dress merchandise involved is in violation of a court order citing section 43 of the Act of July 5, 1946 (15 U.S.C. 1125); and when the merchandise is marked intentionally in violation of section 304, Tariff Act of 1930 (19 U.S.C. 1304). The legislation also provides that merchandise may be seized if it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 304, Tariff Act of 1930 (19 U.S.C. 1304).

Paragraph (c) of the amendment provides instructions on procedures which Customs will follow in resolving questions which result from seizures which have been made under section 1595a(c).

Paragraph (d) of the amendment contains language specifying that merchandise which is misclassified or incorrectly valued, where there is no issue of admissibility, will be subject to seizure only under section 1592.

The Mod Act also provides that merchandise which is subject to quantitative restrictions requiring a visa, permit, license or other similar document from the United States Government or a foreign government or issuing authority pursuant to a bilateral or multilateral agreement shall be subject to detention until the appropriate visa, license, permit or

similar document or stamp is presented to Customs. However, if the visa, license, permit, or similar document or stamp is counterfeit as presented, the merchandise may be seized. This provision is contained in paragraph (e) of the amendment.

**Regulatory Flexibility Act**

Insofar as the regulations closely follow legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12866**

This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

**Drafting Information**

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 162**

Customs duties and inspection, Law enforcement, Seizures and forfeitures.

**Amendment**

Section 162, Customs Regulations (19 CFR Part 162) is amended as set forth below:

**PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE**

1. The general authority citation for Part 162 is revised and a new specific cite for § 162.23 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

\* \* \* \* \*

Section 162.23 also issued under 19 U.S.C. 1595a(c).

\* \* \* \* \*

2. In part 162, a new section 162.23 is added to read as follows:

**§ 162.23 Seizure under section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)).**

(a) *Mandatory seizures.* The following, if introduced or attempted to be introduced into the United States contrary to law, shall be seized pursuant to section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)):

(1) Merchandise that is stolen, smuggled, or clandestinely imported or introduced;

(2) A controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 801 *et seq.*), not imported in accordance with law; or

(3) A contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. 80302).

(b) *Permissive seizures.* The following, if introduced or attempted to be introduced into the United States contrary to law, may be seized pursuant to section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)):

(1) Merchandise the importation or entry of which is subject to any restriction or prohibition imposed by law relating to health, safety, or conservation, and which is not in compliance with the applicable rule, regulation or statute;

(2) Merchandise the importation or entry of which requires a license, permit or other authorization of a United States Government agency, and which is not accompanied by such license, permit or authorization;

(3) Merchandise or packaging in which copyright, trademark or trade name protection violations are involved (including, but not limited to, a violation of sections 42, 43 or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125 or 1127), sections 506 or 509 of title 17, United States Code, or sections 2318 or 2320 of title 18, United States Code);

(4) Trade dress merchandise involved in the violation of a court order citing section 43 of the Act of July 5, 1946 (15 U.S.C. 1125);

(5) Merchandise marked intentionally in violation of 19 U.S.C. 1304;

(6) Merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been in violation of 19 U.S.C. 1304; or

(7) Merchandise subject to quantitative restrictions, found to bear a counterfeit visa, permit, license, or similar document, or stamp from the United States or from a foreign government or issuing authority pursuant to a multilateral or bilateral agreement (but see paragraph (e), of this section).

(c) *Resolution of seizure under § 1595a(c).* When merchandise is either required or authorized to be seized under this section, the forfeiture incurred may be remitted in accord with 19 U.S.C. 1618, to include as a possible option the exportation of the merchandise under such conditions as Customs shall impose, unless its release would adversely affect health, safety, or conservation, or be in contravention of a bilateral or multilateral agreement or treaty.

(d) *Seizure under 19 U.S.C. 1592.* If merchandise is imported, introduced or attempted to be introduced contrary to a provision of law governing its classification or value, and there is no issue of admissibility, such merchandise shall not be seized pursuant to 19 U.S.C. 1595a(c). Any seizure of such merchandise shall be in accordance with section 1592 (see § 162.75 of this chapter).

(e) *Detention only.* Merchandise subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, shall be subject to detention in accordance with 19 U.S.C. 1499, unless the appropriate visa, permit, license, or similar document, or stamp is presented to Customs (but see paragraph (b)(7), of this section for instances when seizure may occur).  
George J. Weise,  
*Commissioner of Customs.*

Approved: November 29, 1995.  
Dennis M. O'Connell,  
*Acting Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 95-31325 Filed 12-27-95; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final Rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS LABOON (DDG 58) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** December 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400; Telephone number: (703) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS LABOON (DDG 58) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal

distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for "USS LABOON" to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

\* \* \* \* \*

TABLE FIVE

| Vessel           | No.     | Masthead lights not over all other lights and obstructions. annex I, sec. 2(f) | Forward masthead light not in forward quarter of ship. annex I, sec. 3(a) | After masthead light less than 1/2 ship's length aft of forward masthead light. annex I, sec. 3(a) | Percentage horizontal separation attained. |
|------------------|---------|--|---|--|--|
| USS LABOON ..... | DDG 58  | X  | X   | X  | 20.4                                       |
| * .....          | * ..... | * .....  | * .....   | * .....  | * .....                                    |