

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Part 259**

[Docket No. OST-95-223]

RIN 2105-AC14

Aircraft Disinsection**AGENCY:** Office of the Secretary (DOT).**ACTION:** Termination of rulemaking.

SUMMARY: Effective immediately, the Department of Transportation is terminating a rulemaking that would have required U.S. airlines, foreign airlines and their agents, at time of booking transportation, to notify individuals purchasing tickets on flight segments originating in the United States if the aircraft would be sprayed with insecticide while passengers are on board and to provide, immediately upon request, the name of the insecticide used. The Department is terminating the rulemaking because almost all countries with direct air service from the United States have eliminated this practice.

FOR FURTHER INFORMATION CONTACT: Arnold G. Konheim, U.S. Department of Transportation (P-13), 400 7th Street, SW., Washington, DC 20590 (202) 366-4849.

SUPPLEMENTARY INFORMATION: In 60 FR 3596, January 18, 1995, the Department proposed a rule to require airlines and travel agencies to notify prospective customers, when booking transportation on flights outbound from the United States, if the aircraft would be sprayed with an insecticide while passengers are on board. In addition, the rule proposed to require carriers and agents to disclose the name of the insecticide used immediately upon request.

Forty-seven commenters responded to the Notice of Proposed Rulemaking. The commenters included a U.S. Senator, airlines, aviation-related associations, a flight attendant's union, foreign governments, health and environmental groups and private citizens. In general, the airlines and travel agents opposed the rule, while the general public, health organizations, flight attendants and pilots favored the promulgation of a rule.

Among the comments submitted by those opposing the rule were that it would be a burden on industry, would not be cost beneficial, that it would be difficult to keep up with changing disinsection requirements and that using diplomatic efforts would be a preferable solution. Those favoring the rule believed that the rule would provide important information to potential passengers in a timely manner.

In addition to pursuing a rulemaking, the United States turned to two United Nations agencies for assistance. In response to concerns of the U.S. and other countries, both the International Civil Aviation Organization and the World Health Organization recommended against the routine disinsection of flights with an aerosol while passengers are on board. Further, they recommended that the practice should be limited to flights originating in, or passing through, those places that pose a threat to a country's public health, agriculture or environment.

The United States also worked closely with countries that had a disinsection requirement. At the time of the notice of proposed rulemaking, 19 countries required the routine spraying of all inbound flights while passengers are on board. Today, that number has been reduced to four, of which only two—(1) Trinidad and Tobago, and (2) Grenada—would be covered by the rule. These two countries represent only 0.3 percent of the U.S.-international scheduled passenger market. The other two countries—Kiribati and Madagascar—are not served by non-stop flights from the U.S. and would, therefore, not have fallen under the purview of the rule.

The reduction in countries requiring spraying is even more dramatic when compared to the condition that existed when the issue was first brought to the attention of the Department in January 1994. At that time, 25 countries required the routine disinsection of all inbound flights while passengers are on board.

In light of the reduction in the number of countries requiring disinsection, the issuance of a final rule cannot be justified. However, terminating the rulemaking does not mean that the Department will abandon its efforts to eliminate unnecessary spraying. The Department intends to continue to keep the public informed of those countries that require disinsection. In addition to providing information to the media, the Department has established a site on the World Wide Web listing countries that require disinsection.

Regulatory Analysis and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department placed a regulatory evaluation that examined the estimated costs and impacts of the proposal in the docket. It has not quantified the costs of this termination but expects any economic impact to be minimal. Adopting a regulatory regime for the few

flights involved would have been unnecessarily costly and burdensome, particularly for travel agents, many of which are small entities. Persons that wish to find out what countries still require spraying will be able to find out via the internet or by calling DOT or the airline.

Issued in Washington, DC on December 22, 1997.

Rodney Slater,
Secretary.

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DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172**

RIN 1515-AC01

Petitions for Relief; Seizures, Penalties, and Liquidated Damages**AGENCY:** Customs Service, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document proposes significant amendments to parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. The proposed regulations are briefer and are designed to allow more flexibility and useful contact with Government officials in an effort to administer cases in the most efficient way possible. These proposed regulations promote a more customer-friendly atmosphere and eliminate needless or redundant provisions. The affected parts are recrafted to include petition processing in seizure and unsecured penalty cases under part 171 and liquidated damages and secured penalty petition processing under part 172.

DATES: Comments must be received on or before April 3, 1998.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the Office of Regulations and Rulings, Regulations Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229, and inspected at the Regulations Branch, Ronald Reagan Building, Suite 3000, 1300 Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202-927-2344.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of sections 618 and 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 and 1623), and sections 320 of title 46, United States Code App. (46 U.S.C.App. 320), and section 5321 of title 31, United States Code (31 U.S.C. 5321), the Secretary of the Treasury is empowered to remit forfeitures, mitigate penalties, or cancel claims arising from violation of Customs bonds upon terms and conditions that he deems appropriate. Under general rulemaking authority as provided by sections 66 and 624 of the Tariff Act of 1930, as amended (19 U.S.C. 66 and 1624), the Secretary is authorized to make such regulations necessary to carry out the provisions of the Tariff Act. Consistent with that authority, Parts 171 (relating to seizures and penalties) and 172 (relating to liquidated damages) of the Customs Regulations (19 CFR parts 171 and 172) were promulgated to provide for the petitioning process in order to allow for the orderly remission of forfeitures, mitigation of penalties, and cancellation of claims for liquidated damages.

Customs is proposing significant amendments to Parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. The new regulations will be briefer and will allow more flexibility and useful contact with Government officials in an effort to administer cases in the most efficient way possible. These regulations will promote a more customer-friendly atmosphere and will eliminate needless or redundant provisions.

The scope of Parts 171 and 172 has been changed. Inasmuch as certain penalties are guaranteed by the conditions of the International Carrier Bond, and, therefore involve surety participation, the provisions of Part 172 will relate to all claims for liquidated damages and penalties secured by a bond. This will mean that all claims against surety will be handled in a consistent manner. Part 171 will relate to unsecured fines and penalties and all seizure and forfeiture cases.

The proposed regulations anticipate that electronic filing of petitions is an inevitability even though Customs does not currently have, on a nationwide basis, the capabilities to accept petitions electronically. Accordingly, the regulations reflect the acceptance of electronic signatures and eliminate the requirement of duplicate copies if an electronic petition is filed.

The proposed regulations require that petitions for relief must be signed by the petitioner, his attorney-at-law or a

Customs broker, but will allow others, in certain non-commercial violations (such as passenger/baggage violations), to file petitions on behalf of non-English speaking claimants to property or other petitioners who have some disability that may impede the ability to file a petition. Instances have occurred where these petitions have been rejected because they did not meet the signature requirements of the old regulations. A strict reading of the current regulations would bar Customs from considering those petitions. This position causes needless delay in administrative processing of cases. The new proposed provision will open the process in these situations and promote efficiency by allowing, in non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition to enlist a family member or other representative to file a petition on his behalf.

Under current regulation, Customs may limit the petitioning period to 7 days in cases involving violations of 19 U.S.C. 1592 when the running of the statute of limitations is imminent. Customs finds no reason to limit the 7-day petitioning period option to just 1592 cases. The proposed regulations extend the 7-day rule to all cases and clarify that it is 7 working days, rather than calendar days.

The current regulatory section entitled "Additional evidence required with certain petitions" is proposed to be eliminated as unnecessary. The provisions of proposed new § 171.2 indicate that the claimant or petitioner must establish a petitionable interest in seized property. How that proof is presented is not a subject that need be controlled by regulation.

Oral presentations will continue to be afforded as a matter of right in 1592 cases and only as a matter of discretion in other cases. The proposed regulations simply remove the reference to cases commenced subsequent to December 31, 1978. This provision has become obsolete with the passage of time.

Title VI of the North American Free Trade Agreement Implementation Act (known commonly as the Customs Modernization Act) (Pub.L. 103-182, 107 Stat. 2057) amended the provisions of 19 U.S.C. 1595a(c) to provide for the seizure and forfeiture of stolen property. Implementing regulations for this amendment were promulgated by Treasury Decision 96-2 (T.D. 96-2). This amendment has rendered § 171.22(c) obsolete, as those provisions of the new statute are applicable to any stolen property, not only that stolen in Canada and brought into the United States. Accordingly, it is proposed to no

longer include that provision in the regulations.

Mitigation guidelines for monetary penalties assessed pursuant to 19 U.S.C. 1592 are currently published as Appendix B to Part 171 of the Regulations. Accordingly, the provisions of § 171.23 of the current regulations, making these guidelines available upon request, are obsolete and it is proposed that this section be eliminated.

The offices of Regional Commissioner and District Director were eliminated under Customs reorganization; therefore, all references to those offices and delegations of authority to those individuals to decide petitions and supplemental petitions for relief are obsolete. Through Treasury Decision 95-78 (T.D. 95-78), Customs published an Interim Rule which amended the regulations and authorized Fines, Penalties, and Forfeitures Officers to decide petitions for relief and certain designated Headquarters officials assigned to field locations to decide supplemental and second supplemental petitions for relief in certain cases (although this document proposes to eliminate second supplemental petitions, as discussed later herein). Those changes are reflected in this document.

Consistent with the reorganization and Customs policy of empowering employees, the proposed regulations remove specific delegations of mitigation authority from the body of regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions to the field through delegation orders, without the necessity of amending the regulations. A separate document will be published in the **Federal Register** detailing the new delegations.

The document proposes that the provisions of Part 111 be amended to eliminate the requirement of Headquarters approval of broker penalty cases assessed in excess of \$10,000.

Novel or complex issues often arise concerning Customs policy with regard to Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or case assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. In those instances, Headquarters advice may need to be sought. Accordingly, the

proposed regulations include a section in both Parts 171 and 172 to allow any Customs officer or an alleged violator to initiate a request for advice to be submitted to the Fines, Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. The Fines, Penalties, and Forfeitures Officer will retain the authority to refuse to forward any request that fails to raise a qualifying issue.

Under current policy, Customs officers are empowered to accept petitions filed untimely in response to claims for liquidated damages. Those petitions can be accepted at any time prior to determination that a claim is eligible to be placed on a surety sanction list. The proposed regulations will permit Customs to accept late petitions in penalty cases as well, but, as articulated in guidelines published for cancellation of bond charges (see T.D. 94-38), lateness in filing a petition may be considered when considering remission or mitigation of a claim and less generous relief, if otherwise merited, may be afforded to the petitioner who files in an untimely manner.

The courts have consistently held that a claim for liquidated damages is not a "charge or exaction" which is properly the subject of a protest filed pursuant to the authority of 19 U.S.C. 1514. See *United States v. Toshoku America, Inc.*, 879 F.2d 815 (Fed.Cir. 1989); *Halperin Shipping Co., Inc. v. United States*, 14 CIT 438, 742 F.Supp. 1163 (1990). In light of these decisions, the proposed regulations indicate that claims for liquidated damages and decisions on petitions are not properly the subject of a protest filed pursuant to 19 U.S.C. 1514.

In *Trayco, Inc. v. United States*, — Fed.Cir.(T) —, 994 F.2d 832 (1993), the Court permitted a company that had petitioned for relief, received a decision on the petition and, although unhappy with the mitigation offered, paid that mitigated amount "under protest", to file suit to recover the amount paid. The Court noted that as " * * * nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty and filing a second supplemental petition, we decline to hold that Trayco is estopped where it accompanied its payment with a statement expressly reserving its rights to judicial review." See *Id.* at 839. Customs proposes to amend the regulations to provide that any payment made in compliance with a mitigation decision will act as an accord and satisfaction whereby the paying party

has elected to resolve the case through the administrative process and has waived the right to sue for a refund. This express statement will also be included in all mitigation decisions offered to petitioners in order to provide full disclosure as to their administrative or judicial rights. Customs will not accept payments "under protest."

Additionally, in the proposed regulations, second supplemental petitions are eliminated. Therefore, payment of a mitigated amount will never be necessary to receive original or appellate administrative review and a petitioner will not be required to later sue for a refund of monies paid if he believes the underlying penalty was incorrectly assessed or the claim improperly mitigated.

The proposed regulations include a provision whereby the deciding Customs official reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief. Upon receipt of such a waiver, any reduced time period for acceptance of a petition would not be necessary. The proposed regulations remove a restriction on the filing of supplemental petitions in broker penalty cases. Under current § 111.95, Customs Regulations, a final determination of \$1,000 or less in response to a petition for relief in a case involving assessment of a penalty for violation of the provisions of 19 U.S.C. 1641 may not be the subject of a supplemental petition. There is no basis to single out this particular violation as not being worthy of a supplemental petition for relief. All parties should have the same administrative rights.

It is noted that no changes are proposed to Subpart F, Part 171, of the current regulations relating to expedited procedures promulgated as a result of passage of the Anti-Drug Abuse Act of 1988 and applicable to certain administrative forfeiture proceedings.

Sections 10.39(e) and (f) of the current regulations, relating to the filing of petitions in cases involving breaches of the terms and conditions of temporary importation bonds (TIBs), provide for different standards of review if there has been a default with respect to all of the articles entered under bond or if there has been a default with respect to part, but not all, of the articles entered under bond. This bifurcation is unnecessary. The proposed regulations combine the provisions of §§ 10.39(e) and (f) to

provide a single standard for review of TIB petitions without regard to whether all or part of the merchandise entered under the TIB are in breach.

Current § 162.48, Customs Regulations, relating to the disposition of perishable and low-value property, permits Customs, by the authority granted in section 612 of the Tariff Act of 1930, as amended (19 U.S.C. 1612), to destroy summarily low-value seized property (less than \$1,000) when the costs of storing and maintaining such property are disproportionate to its value. Customs would then reimburse any successful petitioning claimant from the Forfeiture Fund. The provisions of section 667 of the Customs Modernization Act remove this \$1,000 cap and permit the summary destruction of any seized property, without regard to value, if the costs of maintaining such property are disproportionate to its value. The proposed amendment is consistent with this legislative change.

Finally, the provisions of Part 162 are proposed to be amended to specifically empower Fines, Penalties, and Forfeitures Officers to accept waivers of the statute of limitations with regard to actual or potential violations arising in ports over which they have jurisdiction. The Office of Regulations and Rulings would retain authority to accept waivers in established actual cases over which it has monetary jurisdiction and a petition for relief has been filed.

Proposed conforming amendments to Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, and 162 are also set forth in this document.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business hours of 9:00 a.m. to 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, D.C.

Regulatory Flexibility and Executive Order 12866

Inasmuch as small business entities are rarely repeat violators of Customs laws, and, therefore, will seldom need to avail themselves of these regulatory provisions and file petitions for relief on a regular basis, it is certified, pursuant to the provisions of the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. The document does not meet the criteria for a "significant regulatory action" under E.O. 12866.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Bonds, Customs duties and inspection, Labeling, Marking, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture, Trade agreements.

19 CFR Part 18

Bonds, Customs duties and inspection, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 111

Administrative practice and procedure, Bonds, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 114

Carnets, Customs duties and inspection.

19 CFR Part 125

Bonds, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Reporting and recordkeeping requirements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, seizures, and forfeitures.

19 CFR Part 172

Administrative practice and procedure, Customs duties and inspection, Penalties.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172, Customs Regulations (19 CFR parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

2. It is proposed to revise the introductory paragraph of § 10.39(e) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in part 172 of this chapter, it shall be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages as follows:

* * * * *

3. It is proposed to amend § 10.39 by removing paragraph (f) and redesignating current paragraphs (g) and (h) respectively as paragraphs (f) and (g).

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation and relevant specific authority citations for part 12 continue to read as follows:

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

* * * * *

Sections 12.95 through 12.103 also issued under 15 U.S.C. 1241–1245;

* * * * *

2. It is proposed to amend § 12.102 by removing the number "60" and adding in its place the number "30".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation and relevant specific authority citations for part 18 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624.

* * * * *

Section 18.8 also issued under 19 U.S.C. 1623;

* * * * *

2. It is proposed to revise § 18.8(d) to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * *

(d) In any case in which liquidated damages are imposed in accordance with this section and the Fines, Penalties, and Forfeitures Officer is satisfied by evidence submitted to him with a petition for relief filed in accordance with the provisions of part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, the Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

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PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation and relevant specific authority citations for part 24 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701;

* * * * *

Section 24.24 also issued under 26 U.S.C. 4461, 4462;

* * * * *

2. It is proposed to amend the first sentence of § 24.24(h)(3) by removing the phrase “published pursuant to the provisions of § 172.22(d)(1) of this chapter”.

PART 111—CUSTOMS BROKERS

1. The general authority citation for part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

2. It is proposed to amend § 111.92 by removing the last sentence.

3. It is proposed to revise § 111.95 to read as follows:

§ 111.95 Supplemental petition for relief.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

PART 113—CUSTOMS BONDS

1. The general authority citation and relevant specific authority citation for part 113 continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. It is proposed to revise § 113.46 to read as follows:

§ 113.46 Cancellation of bond charges resulting from failure to produce documents.

Guidelines published by the Commissioner of Customs set forth provisions relating to cancellation of bond charges resulting from failure to produce documents.

3. It is proposed to amend § 113.52 by removing the words “and 172.22(c)” from the parenthetical phrase contained therein.

4. It is proposed to amend § 113.54(a) by removing “172.31” and adding in its place “172.11(b)”.

PART 114—CARNETS

1. The general authority citation for part 114 continues to read as follows:

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

2. It is proposed to amend § 114.34(c) by removing the final non-parenthetical sentence and the final parenthetical sentence.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. The general authority citation and relevant specific authority citation for part 125 continue to read as follows:

Authority: 19 U.S.C. 66, 1565, 1624.

* * * * *

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

2. It is proposed to revise § 125.42 to read as follows:

§ 125.42 Cancellation of liability.

The Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel liquidated damages incurred under the bond of the foreign trade zone operator, containing the bond conditions set forth in § 113.73 of this chapter, or under the bond of the cartman, lighterman, bonded carrier, bonded warehouse operator, container station operator or centralized examination station operator on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of part 172 of this chapter.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. It is proposed to amend § 134.54(a) by removing the phrase “plus any estimated duty thereon as determined at the time of entry.”

3. It is proposed to amend § 134.54(b) by removing the second sentence.

PART 145—MAIL IMPORTATIONS

1. The general authority citation and relevant specific authority citation for part 145 continue to read as follows:

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

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618.

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2. It is proposed to revise § 145.4(b) to read as follows:

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

* * * * *

(b) *Mitigation of forfeiture.* Any claimant incurring a forfeiture of merchandise for violation of this section may file a petition for relief pursuant to part 171 of this chapter. Mitigation of that forfeiture may occur consistent with mitigation guidelines.

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PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation and relevant specific authority citation for part 162 continue to read as follows:

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

* * * * *

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

* * * * *

2. It is proposed to amend § 162.48 by revising the heading to read as follows:

§ 162.48 Disposition of perishable and other seized property.

3. It is proposed to amend paragraph (b) of § 162.48 by removing from the first sentence the phrase “and such value is less than \$1,000,”.

4. It is proposed to amend § 162.79b by removing the last sentence.

5. It is proposed to amend subpart G, part 162 by adding a new § 162.81 to read as follows:

§ 162.81 Statute of limitation waivers.

Waivers of the statute of limitations in any matter relating to any actual or potential penalty, seizure or claim for liquidated damages may be accepted by any Fines, Penalties, and Forfeitures Officer except that waivers of the statute of limitations submitted with regard to any penalty, seizure or liquidated damages case in which a petition has been filed and is under review by the Chief, Penalties Branch, Office of Regulations and Rulings, or the Secretary of the Treasury or his designee, shall be accepted by the Chief, Penalties Branch, Office of Regulations and Rulings.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1624; 21 U.S.C. 881 note.

2. It is proposed to revise § 171.0 to read as follows:

§ 171.0 Scope.

This part contains provisions relating to petitions for relief from fines, forfeitures, and certain penalties incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property. This part does not relate to petitions on claims for liquidated damages or penalties which are guaranteed by the conditions of the International Carrier Bond (see § 113.64 of this chapter).

3. It is proposed to revise subparts A through E of part 171 to read as follows:

Subpart A—Application for Relief

§ 171.1 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs shall be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a representative of the corporation. Electronic signatures are acceptable. In non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition may enlist a family member or other representative to file a petition on his behalf. The deciding officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. It shall set forth the following:

(1) A description of the property involved (if a seizure);

(2) The date and place of the violation or seizure;

(3) The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and

(4) If a seizure case, proof of a petitionable interest in the seized property.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 171.2 Filing a petition.

(a) *Where filed.* A petition for relief shall be filed with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* (1) *Seizures.* Petitions for relief from seizures shall be filed within 30 days from the date of mailing of the notice of seizure.

(2) *Penalties.* Petitions for relief from penalties shall be filed within 60 days of the mailing of the notice of penalty incurred.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition shall be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty is assessed or a seizure is made and fewer than 180 days remain from the date of penalty notice or seizure before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter shall be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 171.3 Oral presentations seeking relief.

(a) *For violation of section 592.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), the person named in the notice, in addition to filing a petition, may make an oral presentation seeking relief in accordance with this paragraph. For purposes of this paragraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of claim or a monetary penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition.

Subpart B—Actions on Petitions

§ 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Remission or mitigation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer is empowered to remit or mitigate on such terms and conditions as, under law and in view of

the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any claim when he or she definitely determines that the act or omission forming the basis of any claim of penalty or forfeiture did not occur.

(c) *When violation is result of vessel in distress.* The Fines, Penalties, and Forfeitures Officer may remit without payment any penalty which arises for violation of the coastwise laws if he or she is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

§ 171.12 Petitions referred to Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and forfeitures which are outside of his or her delegated authority, the Fines, Penalties, and Forfeitures Officer shall refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate, unless there has been no delegation of authority to act by the Secretary of the Treasury or his designee. In those cases where there has been no delegation to act by the Secretary or his designee, the Chief, Penalties Branch, shall forward the matter to the Department with a recommendation.

§ 171.13 Limitations on consideration of petitions.

(a) *Late petitions.* Petitions filed after the expiration of the 30- or 60-day petitioning period may be considered by the deciding official if, in his or her discretion, the efficient administration of justice would be met.

(b) *Cases referred for institution of legal proceedings.* No action shall be taken on any petition after the case has been referred to the Department of Justice for institution of legal proceedings. The petition shall be forwarded to the Department of Justice.

(c) *Conveyance awarded for official use.* No petition for remission of forfeiture of a seized conveyance which has been forfeited and retained for

official use shall be considered unless it is filed before final disposition of the property is made. This does not affect petitions for restoration of proceeds of sale filed pursuant to the provisions of section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613).

§ 171.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case, without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to seizures and forfeitures, penalties (including penalty-based demands for duty), or mitigating or remitting any claim. The request for advice may be initiated by the alleged violator or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Subpart C—Disposition of Petitions

§ 171.21 Written decisions.

If a petition for relief relates to a violation of sections 592 or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592 or 19 U.S.C. 1641), the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

§ 171.22 Limitation on time decision effective.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount or arrangements for such payment are not made, or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for forfeiture shall be deemed applicable and shall be enforced by promptly referring the matter, after required collection action, if appropriate, to the appropriate Office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs.

§ 171.23 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit a forfeiture or mitigate a penalty is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit a forfeiture or mitigate a penalty is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated amount as accord and satisfaction.* Payment of a mitigated amount in compliance with an administrative decision on a petition or supplemental petition for relief shall be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 171.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 171.32 Authority to accept offers.

The authority to accept offers in compromise, when recommended by the General Counsel of the Treasury or his designee, resides with the official having authority to decide a petition for relief.

§ 171.33 Acceptance of offers in compromise.

An offer in compromise shall be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Restoration of Proceeds of Sale

§ 171.41 Application of provisions for petitions for relief.

The general provisions of subpart B of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

§ 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) shall be filed within 3 months after the date of the sale.

§ 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of subpart B of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall show the interest of the petitioner in the property. The petition shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

§ 171.44 Forfeited property authorized for official use.

If forfeited property which is the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) has been authorized for official use, retention or delivery shall be regarded as the sale thereof for the purposes of section 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contributions in general average that may have been filed.

4. It is proposed to amend part 171 by adding a new subpart G to read as follows:

Subpart G—Supplemental Petitions for Relief

§ 171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition shall be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated penalty or forfeiture remission amount designated in the decision on the original petition is paid.

§ 171.62 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officer.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer shall be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating same to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition shall be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds \$10,000 shall be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, shall be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision.

(c) *Decisions of Treasury Department.* Supplemental petitions filed on cases where the original decision was made in the Treasury Department, shall be referred to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who shall forward the supplemental petitions to the Department with a recommendation.

(d) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.

A petitioner filing a supplemental petition pursuant to this subpart from a decision of the Chief, Penalties Branch, Office of Regulations and Rulings, with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary or his designee will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary or his designee declines to

accept an appeal for decision, the petitioner will be so informed. In such a case, a decision will be issued thereon by the Director, International Trade Compliance Division.

§ 171.64 Waiver of statute of limitations.

The deciding official always reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a petition for relief or a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief.

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

1. The authority citation for Part 172 is revised to read as follows:

Authority: 19 U.S.C. 66, 1618, 1623, 1624.

PART 172—[REVISED]

2. It is proposed to revise part 172 to read as follows:

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS**§ 172.0 Scope.**

This part contains provisions relating to petitions for relief from claims for liquidated damages arising under any Customs bond and penalties incurred which are secured by the conditions of the International Carrier Bond (See § 113.64 of this chapter). This part does not relate to petitions on unsecured fines or penalties or seizures and forfeitures, nor does it relate to petitions for the restoration of proceeds of sale pursuant to 19 U.S.C. 1613.

Subpart A—Notice of Claim and Application for Relief**§ 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.**

(a) *Notice of liquidated damages or penalty incurred.* When there is a failure to meet the conditions of any bond posted with Customs or when a violation occurs which results in assessment of a penalty which is secured by a Customs bond, the principal shall be notified in writing of any liability for liquidated damages or penalty incurred and a demand shall be made for payment. The sureties on such bond shall also be notified in writing of any such liability at the same time.

(b) *Notice of right to petition for relief.* The notice shall inform the principal

that application may be made for relief from payment of liquidated damages or penalty.

§ 172.2 Petition for relief.

(a) *To whom addressed.* Petitions for the cancellation of any claim for liquidated damages or remission or mitigation of a fine or penalty secured by a Customs bond incurred under any law or regulation administered by Customs shall be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a representative of the corporation. Electronic signatures are acceptable. The deciding officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for cancellation, remission or mitigation need not be in any particular form. It shall set forth the following:

(1) The date and place of the violation; and

(2) The facts and circumstances relied upon by the petitioner to justify cancellation, remission or mitigation.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 172.3 Filing a petition.

(a) *Where filed.* A petition for relief shall be filed by the bond principal with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* Petitions for relief shall be filed within 60 days from the date of mailing to the bond principal the notice of claim for liquidated damages or penalty secured by a bond.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition shall be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty or claim for liquidated damages is assessed and fewer than 180 days remain from the date of penalty or liquidated damages notice before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the

filing of a petition for relief. If a petition is not filed within the time specified, the matter shall be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

172.4 Demand on surety.

If the principal fails to file a petition for relief or fails to comply in the prescribed time with a decision to mitigate a penalty or cancel a claim for liquidated damages issued with regard to a petition for relief, Customs shall make a demand for payment on surety. Surety will then have 60 days from the date of the demand to file a petition for relief.

Subpart B—Actions on Petitions

§ 172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Mitigation or cancellation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer, notwithstanding any other regulation, is empowered to mitigate any penalty or cancel any claim for liquidated damages on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any case without payment of a mitigated or cancellation amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur.

§ 172.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and claims for liquidated damages which are outside of his or her jurisdiction, the Fines, Penalties, and Forfeitures Officer shall refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered, notwithstanding any other regulation, to mitigate penalties or cancel bond claims on such terms and

conditions as, under law and in view of the circumstances, he or she shall deem appropriate.

§ 172.13 Limitations on consideration of petitions.

(a) *Late petitions.* Petitions filed after the expiration of the 60-day petitioning period may be considered by the deciding official if, in his or her discretion, the efficient administration of justice would be met.

(b) *Cases referred for institution of legal proceedings.* No action shall be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition shall be forwarded to the Department of Justice.

(c) *Delinquent sureties.* No action shall be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to the provisions of § 113.38(c)(3) of this chapter.

§ 172.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case, without regard to jurisdictional amount, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to penalties secured by bonds (including penalty-based demands for duty), claims for liquidated damages or mitigating any claim. The request for advice may be initiated by the bond principal, surety or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Subpart C—Disposition of Petitions

§ 172.21 Limitation on time decision effective.

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages shall be deemed applicable and shall be enforced by promptly transmitting the

matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this Chapter.

§ 172.22 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated or cancellation amount as accord and satisfaction.* Payment of a mitigated or cancellation amount in compliance with an administrative decision on a petition or supplemental petition for relief shall be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated or cancellation amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated or cancellation amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 172.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 172.32 Authority to accept offers.

The authority to accept offers in compromise, when recommended by the General Counsel of the Treasury or his designee, resides with the official having authority to decide a petition for relief, except that offers in compromise submitted with regard to penalties secured by a bond or claims for liquidated damages which are the subject of a letter to show cause issued to a surety in anticipation of possible sanction action authorized under the provisions of part 113 of this chapter

shall be accepted by the designated Headquarters official who issued the show cause letter.

§ 172.33 Acceptance of offers in compromise.

An offer in compromise shall be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Supplemental Petitions for Relief

§ 172.41 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition shall be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated amount designated in the decision on the original petition is paid.

§ 172.42 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officer.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, shall be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating same to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officers decides to grant no further relief, the supplemental petition shall be forwarded to a designated Headquarters official assigned to a field location for review and decision.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, shall be forwarded to the Director, International Trade Compliance Division, for review and decision.

(c) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part

may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 172.43 Waiver of statute of limitations.

The deciding official always reserves the right to require a waiver of the statute of limitations executed by the charged party or parties as a condition precedent before accepting a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: January 13, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98-2250 Filed 1-30-98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. 98N-0040]

Developing Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Developing Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring." The purpose of the public meeting is to provide a forum for FDA to gather information for the development of new regulations for the review of radiopharmaceutical applications as required by the Food and Drug Administration Modernization Act of 1997 (the FDAMA).

DATES: Submit written comments by March 4, 1998. The meeting will be held on February 27, 1998, 8 a.m. to 4 p.m.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. The meeting will be held at the Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics

Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210, FAX 301-443-3874, e-mail

"Murphyd@CBER.FDA.GOV".

SUPPLEMENTARY INFORMATION: Section 122 of the FDAMA (Pub. L. 105-115) requires the Secretary of Health and Human Services to issue proposed rules governing the evaluation and approval of radiopharmaceuticals within 180 days after the date of enactment of the FDAMA after soliciting input from patient advocacy groups, physicians licensed to use radiopharmaceuticals, regulated industry, and interested members of the public. Accordingly, FDA is holding a public meeting to solicit public input.

Comments: If attendance at the meeting is not possible, interested parties may submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider all comments received at the meeting and submitted to the docket in drafting proposed rules for the regulation of radiopharmaceuticals. FDA invites interested parties to comment on any aspect of the regulation of radiopharmaceuticals.

In general, comments should address how FDA should cover the safety and effectiveness of radiopharmaceuticals in its regulations, as well as any identifiable characteristics that might distinguish them from other articles intended for use in the diagnosis and monitoring of diseases, or manifestations of diseases, in humans. Also, because the FDAMA requires that certain factors be included in a rule governing the evaluation and approval of radiopharmaceuticals, FDA invites comments on the following topics: (1) How should the proposed use of a radiopharmaceutical in the practice of medicine determine the nature and extent of safety and effectiveness evaluations; (2) what general characteristics of a radiopharmaceutical should be considered in the preclinical and clinical pharmacological and toxicological evaluations of a radiopharmaceutical (including the radionuclide as well as the ligand and carrier components, i.e., nonradioactive components); (3) how should the estimated absorbed radiation dose in