

"Edward F. Knapp (Barre-Montpelier) State Airport".

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete in the description of the Montpelier, Vt., transition area the words "Barre-Montpelier State Airport" and insert the following in lieu thereof, "Edward F. Knapp (Barre-Montpelier) State Airport".

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y. on August 4, 1970.

IRVING MARK,
Acting Director, Eastern Region.

[F.R. Doc. 70-11084; Filed, Aug. 21, 1970; 8:48 a.m.]

[Airspace Docket No. 70-EA-62]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

Alteration of Control Zone

The Federal Aviation Administration is amending § 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the Chincoteague, Va., control zone (35 F.R. 2066). The hours of operation of the NASA Wallops Station Airport control tower have been changed so as to require a change in the period of time during which the control zone will be effective.

Since the change in the period of effectiveness is minor in nature, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In view of the foregoing, Federal Aviation Administration having reviewed the airspace requirements in the terminal airspace of Chincoteague, Va., the amendment is herewith made effective upon publication in the FEDERAL REGISTER as follows:

Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete in the description of the Chincoteague, Va., control zone, "0800 to 1700", and insert in lieu thereof, "0730 to 1730".

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y. on August 4, 1970.

IRVING MARK,
Acting Director, Eastern Region.

[F.R. Doc. 70-11085; Filed, Aug. 21, 1970; 8:48 a.m.]

[Docket No. 10508; Amdt. 123-3]

PART 123—CERTIFICATION AND OPERATIONS: AIR TRAVEL CLUBS USING LARGE AIRPLANES

Miscellaneous Amendments

The purpose of these amendments is to update references to certain sections in

Part 121 that are incorporated by reference in Part 123.

Amendment 121-55, which became effective February 2, 1970 (35 F.R. 84), made major revisions in Subparts N and O and Appendix E of Part 121 and many of the affected sections are incorporated by reference in Part 123. Therefore, in order to make proper reference to those sections in Part 121 to which Part 123 certificate holders are subject, this amendment is necessary.

Since these amendments which update the references to Part 121 are editorial in nature, I find that notice and public procedure are unnecessary and that good cause exists for making them effective in less than 30 days.

In consideration of the foregoing, Part 123 of the Federal Aviation Regulations is amended, effective August 22, 1970, as follows:

1. By amending paragraphs (i) and (j) of § 123.27 to read as follows:

§ 123.27 Applicable regulations of Part 121.

(i) Sections 121.400 and 121.415 through 121.427 of Subpart N of Part 121 of this chapter except § 121.422.

(j) Sections 121.432 through 121.453 of Subpart O of Part 121 of this chapter except §§ 121.434, 121.435, and 121.440.

2. By amending paragraph (a) (1) of § 123.41 to read as follows:

§ 123.41 Training program.

(a) * * *

(1) Provides the training required by §§ 121.415 through 121.427 (except § 121.422) of this chapter as applicable to commercial operators except that the training program need not meet the requirements for approved programed hours of training; and

3. By amending § 123.43 to read as follows:

§ 123.43 Flight crewmember qualifications.

No certificate holder may use a flight crewmember and no flight crewmember may perform duties under his airman certificate, unless the flight crewmember has completed the appropriate training in accordance with the requirements of § 123.41 and §§ 121.415 through 121.427 (except § 121.422) of this chapter as applicable to commercial operators and has met the appropriate requirements of §§ 121.432 through 121.453 (except §§ 121.434, 121.435, and 121.440) of this chapter as applicable to commercial operators.

(Secs. 313(a), 601(a), and 607, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421(a), and 1427; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on August 14, 1970.

J. H. SHAFFER,
Administrator.

[F.R. Doc. 70-11080; Filed, Aug. 21, 1970; 8:48 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-637; Amdt. 10]

PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

General and Special Limitations on Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of August 1970.

In ER-627, adopted June 18, 1970,¹ the Board amended Part 298 to permit an air taxi operator to regularly serve markets in which certificate holders provide scheduled passenger or community and interairport service where the air taxi operator has provided service between points "continuously on a regularly scheduled basis with a minimum of five round trips per week since at least 30 days immediately prior to the inauguration or resumption of service between points by the holder of a certificate of public convenience and necessity" (§ 298.21(b)). In addition, except where such service was provided by the air taxi operator, no service by helicopter, STOL or VTOL aircraft shall be offered or performed by an air taxi operator between any two points between which scheduled helicopter, STOL or VTOL service is provided by a certificate holder (§ 298.21(d)).

The rule permitted petitions for reconsideration to be filed, and such petitions have been filed by Golden West Airlines and Los Angeles Airways (LAA).² Upon consideration the Board has determined to modify the rule to the extent indicated below and otherwise the petitions are denied.

Golden West suggests that the Board should broaden the rule so as to deny helicopter carriers competitive protection in any market they plan to enter (or re-enter) where an air taxi operator has applied for state operating authority in the market and then receives and implements such authority with a pattern of at least five round trips per week. In support, Golden West states that under the Board's rule an air taxi operator could make an investment of resources and effort to provide service and generate traffic, institute a substantial pattern of service, and then be forced to terminate its services, if a certificated helicopter institutes service prior to expiration of the 30-day period. It alleges that the situation is even more difficult and inequitable where the air taxi operator is subject to state regulation and must apply to a state commission for authority to enter a new market. Golden West refers to the fact that in its case it must seek and obtain authority from the California Public Utilities Commission prior to instituting service in any new intrastate market and, as a result, the air taxi must give notice of its intention to serve a new market so long in advance that a

¹ Docket 20662 (35 F.R. 10202).

² To permit the Board sufficient time to consider the matters raised in the petitions, the effective date of ER-627 was postponed by ER-633, August 3, 1970.

helicopter carrier would have little difficulty in preparing for and actually instituting a pre-emptive service in the market.

We shall deny the requested modification, since the situation Golden West depicts is atypical. Ordinarily, an air taxi operator need not obtain a certificate from state authorities or otherwise go through protracted proceedings before entering a new market. In the usual situation, where a market is not served by a helicopter carrier, the air taxi operator may inaugurate service expeditiously, leaving little time under the present rule for a helicopter carrier to react. Since Golden West refers to a special problem, the appropriate relief is not by regulation but through request for ad hoc exemption.

Golden West also contends that "helicopter carriers" should not retain competitive protection after they have terminated all rotary-wing operations. The term "helicopter carriers" is, of course, a misnomer. These carriers are certificated for helicopter, STOL, VTOL and even conventional fixed-wing aircraft.² Golden West disagrees with the Board's statement in ER-627 that "since the financial viability of their helicopter operations may be vitally affected by their STOL and VTOL operations" the competitive protection accorded the certificated carriers should cover their operations with STOL and VTOL aircraft. However, Golden West cites nothing to refute the statement, but indeed refers to "the fact that an economically viable passenger helicopter has yet to be developed." Accordingly, there is nothing in Golden West's petition which persuades us to reconsider and revise the rule in the manner suggested.

In its petition LAA requests a number of revisions in the rule. First, it asserts that the 30 days of prior service which brings an air taxi within the proviso, allowing it to compete on a permanent basis, does not provide adequate time for the certificated carrier to effect inauguration of service. LAA claims that a period of 90 days is necessary to afford the certificated carrier adequate opportunity. Alternatively, it suggests that the air taxi operator give the certificated carrier 60 days' notice before the 30-day minimum service begins to run.

We shall not adopt either proposal. It may be true, in some cases, as asserted by LAA, that "the certificated carrier upon learning of inauguration of service by an air taxi operator (or operators) cannot possibly react by inaugurating service within 30 days." However, it is not the Board's purpose to facilitate such reaction. The markets in question are markets which the certificated carrier is authorized to serve but has chosen not to serve. And if the certificated carrier is motivated to serve such markets solely because an air taxi operator has entered them, it would likewise be motivated to abandon the market once it ousts the air taxi operator. While LAA's proposal would certainly benefit the certificated carriers, it would, in our judgment, be manifestly unfair to the air taxi operator

who has invested resources to operate in an unserved market and would not be in the public interest.

LAA also claims that the 30-day provision would be harmful to a certificated carrier which has taken the initiative, even before any air taxi operator, to effect inauguration of service. Thus, it states that while the certificated carrier attempts to prepare for inauguration in a planned, step-by-step manner the air taxi operator can inaugurate service, at whatever cost, in order to secure operating rights for the indefinite future.

The situation envisioned by LAA is conceivable, but not likely. In the first place, as previously noted, an air taxi operator seeking to enter an LAA market would first have to receive state authority. The possibility that such an air taxi operator could react quickly enough and provide 30-days' service before LAA inaugurates service would appear remote. In the usual case where state authority is not required, this impediment would not exist. However, it would appear unlikely in most instances that an air taxi operator would suddenly decide to enter a market upon receiving news that a certificated carrier was planning to inaugurate service and be able to react quickly enough to provide 30 days' service prior to the time service is inaugurated. Furthermore the markets involved are typically marginal, and the fact that a certificated carrier was intending to inaugurate service would tend to discourage entry by an air taxi operator.

LAA also contends that five round trips per week is insufficient service to justify acquisition of permanent operating rights and that the Board should require minimum service of at least 10 round trips per week. We shall not adopt this suggestion. The fact that a market has not been served by a certificated carrier indicates that it is marginal and may only support marginal service. A 10 round trip per week requirement may foreclose any service, to the detriment of the public. We shall, however, revise the rule to require that the air taxi operator conform to the definition of "commuter air carrier," i.e., perform at least five round trips per week between two or more points and publish flight schedules which specify the times, days of the week and service, provide nonscheduled service, or reduce frequencies without endangering in any way its permanent operating rights in the market.

We do not believe that the rule can be read in the manner suggested by LAA, since it requires that the points be served "continuously on a regularly scheduled basis" etc. However, to remove ambiguity on the subject, the rule will be revised to read "continuously and without interruption (except for involuntary interruption of service for reasons such as those specified in § 205.8 of this chapter)."

In addition to the foregoing revisions, the second proviso to § 298.21 (b) and (d) will be clarified in two respects. First, it will be amended to make clear that the 30-day period does not run during a time when the certificated carrier has been suspended for involuntary postponement of inauguration of service under § 205.8.

Second, the provision respecting suspension of service pursuant to Board order has been expanded to include that the 30-day period does not run where the Board authorizes a certificated carrier to postpone inauguration of service.

Accordingly, the Civil Aeronautics Board hereby amends § 298.21 of Part 298 of the Economic Regulations (14 CFR Part 298), effective September 24, 1970, as follows:

§ 298.21 Scope of service authorized; geographical, equipment and mail service limitations, insurance and reporting requirements.

(b) *Prohibition of regular service in markets served by certificated helicopter carriers.* An air taxi operator is prohibited from providing air transportation, or holding out to the public expressly or by course of conduct, that it provides such transportation regularly or with a reasonable degree of regularity between any points where scheduled helicopter passenger service, or community center and interairport service, is provided by the holder of a certificate of public convenience and necessity either in accordance with such certificate or pursuant to exemption order of the Board: *Provided, however,* That, subject to the provisions of paragraph (e) of this section, the foregoing limitation shall not apply to an air taxi operator with respect to pairs of points it has served continuously and without interruption (except for involuntary interruption of service for reasons such as those specified in § 205.8 of this chapter) on a regularly scheduled basis with a minimum of five round trips per week since at least 30 days immediately prior to the inauguration or resumption of service between points by the holder of a certificate of public convenience and necessity (See also paragraph (d) of this section): *And provided, further,* That the foregoing proviso shall not apply where service by the holder of a certificate of public convenience and necessity has been suspended during such 30-day period for involuntary postponement of inauguration or involuntary interruption of service under the provisions of § 205.8 of this chapter or where the Board authorizes a certificated carrier to suspend or postpone inauguration of service in an order providing that the suspension or postponement shall not operate to authorize air taxi operators inaugurating service during such suspension or postponement to continue service after the certificated carrier resumes or inaugurates service.

(d) *Limitation on use of helicopter, STOL or VTOL aircraft.* No service by helicopter, STOL, or VTOL aircraft shall be offered or performed by an air taxi operator between any two points between which scheduled helicopter, STOL, or VTOL aircraft service is provided by the holder of a certificate of public convenience and necessity authorizing scheduled helicopter service or community center and interairport service: *Provided, however,* That the foregoing limitation shall not apply to an air taxi

² See Order 69-2-37.

operator with respect to pairs of points it has served continuously and without interruption (except for involuntary interruption of service for reasons such as those specified in § 205.8 of this chapter) on a regularly scheduled basis with a minimum of five round trips per week since at least 30 days immediately prior to the inauguration or resumption of service between the points by the holder of a certificate of public convenience and necessity (See also paragraph (b) of this section): *And provided, further*, That the foregoing proviso shall not apply where service by the holder of a certificate of public convenience and necessity has been suspended during such 30-day period for involuntary postponement of inauguration or involuntary interruption of service under the provisions of § 205.8 of this chapter or where the Board authorizes a certificated carrier to suspend or postpone inauguration of service in an order providing that the suspension or postponement shall not operate to authorize air taxi operators inaugurating service during such suspension or postponement to continue service after the certificated carrier resumes or inaugurates service.

(e) *Filing of notice of inauguration of service; publication and filing of flight schedules.* An air taxi operator which intends to inaugurate service on a regularly scheduled basis with a minimum of five round trips per week between points where it is not prohibited from providing such transportation by paragraph (b) of this section shall file a notice with the Director, Bureau of Operating Rights, as to the time such service is to be inaugurated not later than 1 day prior to inauguration. The notice shall contain a certification that it has been served on the certificated carrier authorized to provide service between the points. The air taxi operator shall publish flight schedules for the service specifying the times, days of the week and places between which such flights are performed and within 30 days after commencing operations shall file such schedules pursuant to § 298.61.

(Secs. 204, 416, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-11105; Filed, Aug. 21, 1970;
8:50 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 70-181]

ADMINISTRATIVE REVIEW

On June 5, 1970, notice of proposed rule making regarding regulations to implement the Customs Administrative Act of 1970, and necessary miscellaneous

amendments to Chapter I of Title 19 of the Code of Federal Regulations was published in the FEDERAL REGISTER (35 F.R. 8741). Interested persons were given until July 15, 1970, to submit written comments, suggestions, or objections regarding the proposed regulations.

The proposed new Parts 173 through 176 and the miscellaneous amendments to Chapter I of Title 19 of the Code of Federal Regulations are hereby adopted, subject to the following changes:

In § 174.1(b), language is added to clarify the definition of "further review."

In § 174.2(a) (4) and (5), language is added to make clear that both subparagraphs refer to two distinct factual situations.

In § 174.3, paragraph (b) setting forth a procedure when no power of attorney is filed is deleted and paragraphs (c), (d), and (e) are redesignated accordingly.

Section 174.12 as proposed appears as § 174.15, and a new § 174.12 sets forth the provisions of proposed § 174.14 relating to the filing of protest with the following changes in the text:

1. A new paragraph (b) rephrases the provisions of the first two sentences of proposed § 174.13(a) but permits a protest to be filed on a form other than Customs Form 19 in certain circumstances. Language is added to exempt samples or similar exhibits from the requirement of filing attachments to a protest in quadruplicate.

2. A new paragraph (c) sets forth separately the signature requirements for a protest which were contained in § 174.13(a).

3. Paragraph (d) contains those provisions of proposed § 174.14(b) relating to the place of filing a protest.

4. Paragraph (e) contains the provisions of proposed § 174.14(c), with the example of a refusal to reliquidate for clerical error added to subparagraph (2).

5. Paragraph (f) sets forth the text of proposed § 174.14(d).

6. Paragraph (g) is added to provide for the submission of a fifth copy of the protest and its return as a record copy.

In § 174.13, paragraph (a) retains the general listing of the contents of a protest without reference to its return if all information is not supplied. In the listing of contents there is an editorial change in (1), a more concise statement of (6) to require justification for an objection, and an added (7) to supply information to support a request for suspension of action on a protest while a prior protested decision is undergoing further review.

Also in § 174.13, paragraph (b) is redesignated (c), and is rephrased to permit designation only for refunds by the importer, consignee, or protesting party. A new paragraph (b) is added to § 174.13 to provide for protests with respect to multiple entries.

Section 174.14 sets forth the provisions of proposed § 174.15 relating to amendments to protests, with the following changes:

1. The heading of paragraph (a) is changed.

2. A new paragraph (b) provides for the filing of an amendment on Customs

Form 19 or a facsimile, the number of copies which must be presented, and for schedules or other attachments to amendments.

3. That portion of paragraph (b) dealing with the contents of an amendment becomes paragraph (c), and is revised to omit reference to its return if all information is not supplied. In the listing of contents, the entry number and date of entry is no longer required; the date of filing of the original protest is added to the requirement of the protest number; justification for the objection raised is substituted in (5) now redesignated as (4); and a new (5) is added to supply information to support a request for suspension of action on the amendment and protest in the same circumstances as for protests.

4. Paragraph (c) becomes paragraph (d) and includes a provision for the signing of an amendment.

5. Paragraph (d) becomes paragraph (e) and includes a provision for the date of filing an amendment.

6. A new paragraph (f) is added to provide for presentation and return of a record copy of an amendment.

In § 174.21, paragraph (a) remains as § 174.21, and paragraph (b) is redesignated as § 174.22, with changes to delete the requirement that the request state the number and date of the entry involved and to clarify the phraseology relating to multiple protests.

Section 174.22 is renumbered as § 174.23, and is rephrased to clarify the further review concept.

Section 174.23 is renumbered as § 174.24, and paragraphs (b) and (c) are expanded to include rulings by the Customs Courts.

Section 174.24 is renumbered as § 174.25, and is revised so that provision is made for a record copy of the application for further review and language is added to clarify the relationship of the allegations required to the criteria in the prior section.

Section 174.25 is renumbered as § 174.26 and is rephrased to clarify the concept of further review.

Sections 174.26, 174.27, and 174.28 are renumbered as §§ 174.27, 174.28, and 174.29 respectively.

Section 174.29 appears as paragraph (a) of new § 174.30, and is rephrased to indicate notice of denial will be sent to each person filing a protest. Paragraph (b) is added to allow substitution of persons to receive notice, and paragraph (c) is added to provide for notification of payment of increased duties in certain circumstances.

In § 175.12, paragraph (c) is deleted and (d) is redesignated (c).

In § 175.21, the cross reference is changed to § 103.7.

In § 175.23, a sentence is added to provide for designation of ports of entry at which the petitioner desires to protest.

In paragraph (a) of § 175.25, a conforming change is made to refer to ports designated in the notice of desire to contest.

Section 176.2 is rephrased to provide clearly for service of the notice of appeal

upon the Assistant Chief Counsel for Customs Court Litigation.

Sections 176.22 and 176.23 are deleted, and § 176.24 is renumbered as § 176.22.

In § 176.31, a cross reference to paragraph (c) is added in paragraphs (a) and (b), and a new paragraph (c) is added to provide for liquidation after notification of waiver of the right of appeal.

In the amendment to § 8.29, language is added to clarify the proposed amendment of paragraph (c), and the time allowed for withholding liquidation is changed to 20 days.

An amendment to paragraph (b) of § 9.10 is added to the miscellaneous amendments, together with an amendment to footnote 8 appended thereto.

Minor editorial changes, and conforming changes to reflect changes in cross references and the redesignation of certain parts of the Customs Regulations, are also made.

The text of Parts 173 through 176 and the miscellaneous amendments to Chapter I, Title 19 of the Code of Federal Regulations as adopted is set forth below.

Effective date. These amendments shall become effective on October 1, 1970.

[SEAL] ROBERT V. MCINTYRE,
Acting Commissioner of Customs.

Approved: August 13, 1970.

WILLIAM L. DICKEY,
Acting Assistant Secretary
of the Treasury.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

- Sec.
173.0 Scope.
173.1 Authority to review for error.
173.2 Transactions which may be reviewed and corrected.
173.3 Voluntary reliquidation.
173.4 Correction of clerical error, mistake of fact, or inadvertence.
173.5 Review of entry covering household or personal effects.
173.6 Review of entry for fraud.

AUTHORITY: The provisions of this Part 173 issued under R.S. 251, secs. 501, 624, 46 Stat. 730, as amended, 759; 19 U.S.C. 66, 1501, 1624.

§ 173.0 Scope.

This part deals with the general authority of review, the authority to reliquidate voluntarily, the authority to correct for clerical error, mistake of fact, or other inadvertence under section 520 (c) (1), Tariff Act of 1930, as amended, the authority to review an entry of household or personal effects, and the power to reliquidate an entry on account of fraud.

§ 173.1 Authority to review for error.

District directors have broad responsibility and authority to review transactions to insure that the rate and amount of duty assessed on imported merchandise is correct and that the transaction is otherwise in accordance with the law. This authority extends to errors in the construction of a law and to

errors adverse to the Government as well as the importer.

§ 173.2 Transactions which may be reviewed and corrected.

The district director may review transactions for correctness, and take appropriate action under his general authority to correct errors, including those in appraisement where appropriate, at the time of:

- (a) Liquidation of an entry;
- (b) Voluntary reliquidation completed within 90 days after liquidation;
- (c) Voluntary correction of an exaction within 90 days after the exaction was made;
- (d) Reliquidation made pursuant to a valid protest covering the particular merchandise as to which a change is in order; or
- (e) Modification, pursuant to a valid protest, of a transaction or decision which is neither a liquidation or reliquidation.

§ 173.3 Voluntary reliquidation.

(a) **Authority to reliquidate.** The district director within 90 days from the date notice of the original liquidation is given to the importer, consignee, or agent, may reliquidate on his own initiative a liquidation or a reliquidation to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. A voluntary reliquidation may be made even though a protest has been filed, and whether the error is discovered by the district director or is brought to his attention by an interested party.

(b) **Notice of reliquidation.** Notice of a voluntary reliquidation shall be given in accordance with the requirements for giving notice of the original liquidation.

(Sec. 501, 46 Stat. 730, as amended; 19 U.S.C. 1501)

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) **Authority to review and correct.** Even though a valid protest was not filed, the district director, upon timely application, may correct pursuant to section 520(c) (1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c) (1)), a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section, by reliquidation or other appropriate action.

(b) **Transactions which may be corrected.** Correction pursuant to section 520(c) (1), Tariff Act of 1930, as amended, may be made in any entry, liquidation, appraisement, or other Customs transaction if the clerical error, mistake of fact, or other inadvertence:

- (1) Does not amount to an error in the construction of a law;
 - (2) Is adverse to the importer; and
 - (3) Is manifest from the record or established by documentary evidence.
- (c) **Limitation on time for application.** A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section

must be brought to the attention of the district director:

(1) Within 1 year after the date of entry, or other transaction (including liquidation, reliquidation, or exaction) if the error, mistake of fact, or other inadvertence is in the entry, or other transaction (including a liquidation, reliquidation, or exaction), or

(2) Within 90 days after liquidation or exaction when the liquidation or exaction is made more than 9 months after the date of entry, or other transaction, except that in cases where the error is in liquidation, reliquidation, or exaction, the 1-year limitation shall apply.

(Sec. 520, 46 Stat. 739, as amended; 19 U.S.C. 1520)

§ 173.5 Review of entry covering household or personal effects.

An error in the liquidation of an entry covering household or personal effects may be corrected by the district director even though a timely protest was not filed if an application for refund is filed with the district director within 1 year after the date of the entry and no waiver of compliance with applicable regulations is involved other than a waiver which the district director has authority to grant. Where the district director has no authority to grant the waiver, the application shall be referred to the Commissioner of Customs.

(Sec. 520, 46 Stat. 739, as amended; 19 U.S.C. 1520)

§ 173.6 Review of entry for fraud.

The district director may review any entry in which fraud is suspected. Where probable cause to believe there is fraud in the case is found by the district director, he may reliquidate an entry within 2 years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation.

(Sec. 521, 46 Stat. 739; 19 U.S.C. 1521)

PART 174—PROTESTS

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| 174.0 | Scope. |
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Sec.
174.29 Allowance or denial of protests.
174.30 Notice protest denied.

AUTHORITY: The provisions of this Part 174 issued under R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624. Subpart B also issued under sec. 514, 46 Stat. 736, as amended; 19 U.S.C. 1514. Subpart C also issued under sec. 515, 46 Stat. 736, as amended; 19 U.S.C. 1515.

§ 174.0 Scope.

This part deals with the administrative review of decisions of the district director, including the requirements for the filing of protests against such decisions, amendment of protests, review and accelerated disposition, and provisions dealing with further administrative review.

Subpart A—General Provisions

§ 174.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *District director.* "District director" means the district director of Customs at a headquarters port other than the port of New York, N.Y., and the regional commissioner of Customs for Customs Region II at the port of New York, N.Y.

(b) *Further review.* "Further review" means review of the decision which is the subject of the protest by Customs officers on a level higher than the district, and in Region II by Customs officers who did not participate directly in the decision which is the subject of the protest.

§ 174.2 Applicability of provisions.

(a) *In general.* The provisions of this part shall be applicable to protests against decisions involving:

(1) Articles excluded from entry or entered or withdrawn from warehouse for consumption on or after October 1, 1970;

(2) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which appraisal has not become final by October 1, 1970;

(3) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which the appraisal has become final but with respect to which the entry has not been liquidated prior to October 1, 1970;

(4) Articles entered or withdrawn from warehouse for consumption with respect to which the entry has been liquidated prior to October 1, 1970, if

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970; or

(5) Articles excluded from entry before October 1, 1970, with respect to which

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970.

(b) *Limitations.*—(1) *Appraisal not final.* When the appraisal of articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, is not final by October 1, 1970, because an appeal for reappraisal was timely filed prior to such date, the provisions of this part relating to protests shall be applicable to a protest filed after the court's decision on the appeal to reappraisal has become final. Such protest shall not include issues which were raised or could have been raised on the appeal for reappraisal.

(2) *Protest not disallowed.* When a protest filed prior to October 1, 1970, has not been disallowed in whole or in part before such date, the provisions of this part shall be applicable to such protests. The time within which any action must be taken under the provisions of this part with respect to such a protest shall commence on the date the protest was in fact filed.

§ 174.3 Power of attorney to file protest.

(a) *When required.* When a protest is filed by a person acting as agent or attorney in fact for the principal, other than an attorney at law or a customhouse broker or his authorized employee acting in his behalf, there shall have been filed or shall be filed with the protest a power of attorney which either specifically authorizes such agent to make, sign, and file the protest or grants unlimited authority to such agent. No power of attorney to file a protest shall be required in the following cases:

(1) *Attorney at law.* When the protest is filed by an attorney at law as agent or attorney for the principal, the signing of the protest as agent or attorney for the principal by the attorney at law shall be considered a declaration by him that he is currently a member in good standing of the highest court of a State, possession, territory, commonwealth, or the District of Columbia, and has been authorized to sign and file the protest for the principal.

(2) *Customhouse broker or his employee.* When the protest is filed by a customhouse broker, or an authorized employee acting in his behalf, as agent or attorney in fact for the principal, the signing of the protest by the customhouse broker or an authorized employee in his behalf shall be considered a declaration by the broker that he or the employee signing in his behalf, is authorized to sign and file the protest for the principal. The customhouse broker shall have on file, however, a general power of attorney to transact Customs business for the principal on Customs Form 5291.

(b) *Execution of power of attorney.*—

(1) *Corporation.* A corporate power of attorney to file protests shall be signed by a duly authorized officer or employee of the corporation. If the district director is otherwise satisfied as to the authority of such corporate officer or employee to grant such power of attorney, compliance with the requirements of § 8.19(e) of this chapter may be waived with respect to such power.

(2) *Partnership.* A partnership power of attorney to file protests may be signed by one member in the name of the partnership, provided the power recites the name of all the members.

(c) *Duration.* Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of receipt thereof by the district director. All other powers of attorney may be granted for an unlimited period.

(d) *Revocation.* Any power of attorney shall be subject to revocation at any time by written notice given to and received by the district director.

(Secs. 514, 515, 46 Stat. 734, as amended; 19 U.S.C. 1514, 1515)

Subpart B—Protests

§ 174.11 Matters subject to protest.

The following decisions of the district director, including the legality of all orders and findings entering into the same, may be protested under the provisions of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514):

(a) The appraised value of merchandise;

(b) The classification and rate and amount of duties chargeable;

(c) All charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(d) The exclusion of merchandise from entry or delivery under any provision of the Customs laws;

(e) The liquidation or reliquidation of an entry, or any modification thereof;

(f) The refusal to pay a claim for drawback; and

(g) The refusal to reliquidate an entry under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)).

§ 174.12 Filing of protests.

(a) *By whom filed.* Protests may be filed by the importer, consignee, or the person paying any charge or exaction, filing any claim for drawback, or seeking entry or delivery with respect to merchandise which is the subject of the decision protested, or his agent or attorney subject to the provisions of § 174.3.

(b) *Form and number of copies.* Protests against decisions of a district director shall be filed in quadruplicate on Customs Form 19 or a form of the same size clearly labeled "Protest" and setting forth the same content in its entirety, in the same order, addressed to the district director. All schedules or other attachments to a protest (other than samples or similar exhibits) shall also be filed in quadruplicate.

(c) *Signature.* The protest shall be signed by the person filing the protest, or his agent, or attorney. If the person filing is not the importer of record or consignee, he shall include his address and importer number, if any.

(d) *Place of filing.* Protests shall be filed with the district director to whom addressed, except that when the entry which is the subject of protest is made at a port other than the district headquarters, the protest may be filed with the port director at that port.

(e) *Time of filing.* Protests shall be filed, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 90 days after either:

(1) The date of notice of liquidation or reliquidation in accordance with § 16.2(d), § 16.12(a), or § 16.12(c) of this chapter; or

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (e.g., the date of an exaction, the date of written notice excluding merchandise from entry or delivery under any provision of the Customs laws or the date of a refusal to reliquidate under section 520(c) (1) of the Tariff Act of 1930, as amended).

(f) *Date of filing.* The date on which a protest is received by the Customs officer with whom it is required to be filed shall be deemed the date on which it is filed.

(g) *Return of fifth copy.* If a fifth copy of the protest is presented for the purpose of having recorded thereon the date of its receipt and the protest number assigned thereto, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the protest.

§ 174.13 Contents of protest.

(a) *Contents, in general.* A protest shall contain the following information:

(1) The name and address of the protestant, i.e., the importer of record or consignee, and the name and address of his agent or attorney if signed by one of these;

(2) The importer number of the protestant. If the protestant is represented by an agent having power of attorney, the importer number of the agent shall also be shown;

(3) The number and date of the entry;

(4) The date of liquidation of the entry, or the date of a decision not involving a liquidation or reliquidation;

(5) A specific description of the merchandise affected by the decision as to which protest is made;

(6) The nature of, and justification for the objection set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal; and

(7) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review pursuant to Subpart C of this part and that is alleged to involve the same merchandise and the same issues, if the protesting party requests disposition in accordance with the action taken on such previously filed protest.

(b) *Multiple entries.* A single protest may be filed with respect to more than one entry in any district if all such entries involve the same protesting party, and if the same category of merchandise and a decision or decisions common to all entries are the subject of the protest. In such circumstances, the entry numbers, dates of entry, and dates of liquidation of all such entries, as well as the ports of entry where they may not coin-

cide, should be set forth as an attachment to the protest.

(c) *Optional designation for refunds.* If desired by the importer/consignee the statement "any refunds with respect to the entry under protest shall be mailed to the importer/consignee in care of"

(Name and Address of Agent)
may be appended to the protest. This designation supersedes any existing designation previously authorized on Customs Form 4811.

§ 174.14 Amendment of protests.

(a) *Time for filing.* A protest may be amended at any time prior to the expiration of the 90-day period within which such protest may be filed determined in accordance with § 174.12(e). The amendment may assert additional claims pertaining to the administrative decision which is the subject of the protest, or may challenge an additional administrative decision relating to the same category of merchandise which is the subject of the protest. For the presentation of additional grounds or arguments in support of a valid protest after the 90-day period has expired see § 174.28.

(b) *Form and number of copies of amendment.* An amendment to a protest shall be filed in quadruplicate on Customs Form 19 or on a form of the same size, clearly labeled "Amendment to Protest" at the top of the form. Schedules or other attachments (other than samples or similar exhibits) shall also be filed in quadruplicate.

(c) *Contents.* An amendment to a protest shall contain the following information:

(1) The name, address, and importer number of the protesting party, i.e., the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these;

(2) The number and date of filing of the original protest;

(3) A specific description of the merchandise affected by the decision as to which the amendment to the protest is filed;

(4) The nature of and justification for the objection raised by the amendment set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal; and

(5) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review and that is alleged to involve the same merchandise and the same issues involved in the amendment.

(d) *By whom filed and signed.* An amendment to a protest may be filed and signed only by the person filing such protest or his agent or attorney subject to the provisions of § 174.3.

(e) *Place and date of filing.* An amendment to a protest shall be filed with the district director or port director with whom the protest was filed. The amendment shall be deemed filed on the date it is received by the Customs officer with whom it is required to be filed.

(f) *Return of fifth copy.* If a fifth copy of the amendment is presented for

the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the amendment.

§ 174.15 Consolidation of protests filed by different parties.

Separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

§ 174.16 Limitation on protests after reliquidation.

A protest shall not be filed against the decision of the district director on reliquidation upon any question not involved in the reliquidation.

Subpart C—Review and Disposition of Protests

§ 174.21 Time for review of protests.

The district director shall review and act on a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) within 2 years from the date the protest was filed. If several timely filed protests are treated as part of a single protest pursuant to § 174.15, the 2-year period shall be deemed to run from the date the last such protest was filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514).

§ 174.22 Accelerated disposition of protest.

(a) *Request for accelerated disposition.* Accelerated disposition of a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) may be obtained at any time after 90 days from the filing of such protest, by filing by registered or certified mail a written request for accelerated disposition with the district director to whom the protest was addressed.

(b) *Contents of request.* A request for accelerated disposition of protest shall contain the following information:

(1) The name, address, and importer number of the protestant, i.e., the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these; and

(2) The date of filing and number of the protest for which accelerated disposition is requested.

(c) *Review following request.* The district director shall review the protest which is the subject of the request within 30 days from the date of mailing of a request for accelerated disposition filed in accordance with the provisions of this section, and may allow or deny the protest in whole or in part.

(d) *Failure to allow or deny protest within 30-day period.* If the district director fails to allow or deny a protest which is the subject of a request for accelerated disposition within 30 days from the date of mailing of such request, the protest shall be deemed to have been denied at the close of the 30th day following such date of mailing.

(e) *Multiple protests.* If several protests by different persons are timely filed and treated as part of a single protest pursuant to § 174.15, a request for accelerated disposition filed by any one of the protesting parties shall be treated as a request for accelerated disposition by all the parties.

§ 174.23 Further review of protests.

A protesting party may seek further review of a protest in lieu of review by the district director by filing, on the form prescribed in § 174.25, an application for such review within the time allowed and in the manner prescribed by § 174.12 for the filing of a protest. The filing of an application for further review shall not preclude a preliminary examination by the district director whose decision is the subject of the protest for the purpose of determining whether the protest may be allowed in full. If such preliminary examination indicates that the protest would be denied in whole or in part by the district director in the absence of an application for further review, however, he shall forward the protest and application for consideration in accordance with § 174.26.

§ 174.24 Criteria for further review.

Further review of a protest which would otherwise be denied by the district director shall be accorded a party filing an application for further review which meets the requirements of § 174.25 when the decision against which the protest was filed:

(a) Is alleged to be inconsistent with a published ruling of the Commissioner of Customs or his designee, or a published abstract thereof, or with a decision made in any district with respect to the same or substantially similar merchandise;

(b) Is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the Customs courts; or

(c) Involves matters previously ruled upon by the Commissioner of Customs or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling.

§ 174.25 Application for further review.

(a) *Form and number of copies.* An application for further review shall be filed in quadruplicate on Customs Form 20. If a fifth copy of the application is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the application.

(b) *Contents.* An application for further review shall contain the following information:

(1) Information identifying the protest to which it applies and the protesting party and his importer number;

(2) Allegations that the protesting party:

(i) Has not previously received an adverse administrative decision from the

Commissioner of Customs or his designee nor has presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise; and

(ii) Has not received a final adverse decision from the Customs courts on the same claim with respect to the same category of merchandise and does not have an action involving such a claim pending before the Customs courts.

(3) A statement of any facts or additional legal arguments, not part of the record, upon which the protesting party relies, including the criterion set forth in § 174.24 which justifies further review. A showing of facts that support the allegation of a criterion set forth in § 174.24

(c) will constitute a ground for the granting of further review in circumstances where the applicant's inability to affirmatively make the allegations described in subparagraph (2) of this paragraph would otherwise result in its denial.

§ 174.26 Review of protest after application for further review.

(a) *Protest allowed.* If upon examination of a protest for which an application for further review was filed the district director is satisfied that the claim is valid, he shall allow the protest.

(b) *Other protests.* If upon examination of a protest for which an application for further review was filed the district director decides that the protest in his judgment should be denied in whole or in part, he shall forward the application together with the protest and appropriate documents to be reviewed as follows:

(1) A protest shall be reviewed by the Commissioner of Customs or his designee under Customs Delegation Order No. 1 (Revision 1), T.D. 69-126 (34 F.R. 8208), as amended from time to time, if the protest and application for review raise an issue involving either:

(i) Lack of uniformity of treatment;

(ii) The existence of an established and uniform practice;

(iii) The interpretation of a court decision or ruling of the Commissioner of Customs or his designee; or

(iv) Questions which have not been the subject of a Bureau ruling or court decision.

(2) All other protests shall be reviewed by the regional commissioner of Customs or his designee for the region in which the district lies. Such designee shall be a Customs officer who did not participate directly in the decision which is the subject of the protest.

§ 174.27 Disposition after further review.

Upon completion of further review, the protest and appropriate documents forwarded for review shall be returned to the district director together with directions for the disposition of the protest.

§ 174.28 Consideration of additional arguments.

In determining whether to allow or deny a protest filed within the time allowed, a reviewing officer may consider alternative claims and additional grounds or arguments submitted in writing by the protesting party with respect to any de-

cision which is the subject of a valid protest at any time prior to disposition of the protest.

§ 174.29 Allowance or denial of protests.

The district director shall allow or deny in whole or in part a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) within 2 years from the date the protest was filed. If the protest is allowed in whole or in part the district director shall remit or refund any duties, charge, or exaction found to have been collected in excess, or pay any drawback found due. If the protest is denied in whole or in part the district director shall give notice of the denial in the form and manner prescribed in § 174.30.

§ 174.30 Notice of denial of protest.

(a) *Issuance of notice.* Notice of denial of a protest shall be mailed to any person filing a protest or his agent in all cases other than those in which accelerated disposition was requested and in which no action has been taken within 30 days after the date of mailing of the request. For purposes of section 515(a), Tariff Act of 1930, as amended (19 U.S.C. 1515(a)), the date appearing on such notice shall be deemed the date on which such notice was mailed.

(b) *Substitution of persons designated to receive notice.* The importer of record or consignee may give notice to the district director instructing that notice of denial of any protest involving merchandise imported in his name or on his behalf shall be mailed to a person other than the person filing such protest or the designee of such person. Such notice of substitution shall be filed in quadruplicate and shall identify the protest by number and date of receipt. Notice of denial of a protest shall be mailed to the substituted person so designated only if the notice of substitution is received by the district director prior to a denial by him of such protest.

(c) *Notification of payment of increased duties.* The district director shall note on the notice of denial of a protest the payment of all liquidated duties, charges, or exactions, if he has actual knowledge of such payment at the time that the protest is denied.

PART 175—PETITIONS BY AMERICAN MANUFACTURERS, PRODUCERS, AND WHOLESALERS

Sec.
175.0 Scope.

Subpart A—Request for Classification and Rate of Duty

175.1 Submission of request.
175.2 Contents of request.

Subpart B—Petitions

175.11 Filing of petitions.
175.12 Contents of petitions.

Subpart C—Procedure Following Petition

175.21 Inspection of documents and papers.
175.22 Publication of decisions following petition.
175.23 Notice of desire to contest decision.
175.24 Publication following notice of desire to contest.

175.25 Procedure at port of entry designated by petitions.

AUTHORITY: The provisions of this Part 175 issued under R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 19 U.S.C. 66, 1516, 1624.

§ 175.0 Scope.

This part sets forth the procedures applicable to requests by American manufacturers, producers, and wholesalers for the classification and rate of duty applicable to designated imported merchandise, and to petitions alleging that the appraised value is too low, that the classification is not correct, or that the proper rate of duty is not being assessed upon designated imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced, or wholesaled by the petitioner.

Subpart A—Request for Classification and Rate of Duty

§ 175.1 Submission of request.

Written requests pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), for information as to the classification and rate of duty imposed upon designated imported merchandise shall be submitted in triplicate to the Commissioner of Customs.

§ 175.2 Contents of request.

The request for information shall contain the following information:

(a) The name of the person making the request, his principal place of business, and the fact that he is an American manufacturer, producer, or wholesaler;

(b) A designation of the imported merchandise for which the classification and rate is requested; and

(c) A showing of the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner to establish the similarity between the domestic and foreign merchandise.

Subpart B—Petitions

§ 175.11 Filing of petitions.

(a) *Number of copies and where filed.* All petitions pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be submitted to the Commissioner of Customs in triplicate.

(b) *By whom filed.* Petitions may be filed by the American manufacturers, producers, or wholesalers themselves, or by duly authorized attorneys or agents on their behalf. A petition filed by a corporation shall be signed by an officer thereof, and a petition filed by a partnership shall be signed by a member thereof.

§ 175.12 Contents of petition.

The petition shall be itemized as to each class or kind of merchandise involved, and shall contain the following:

(a) The name of the petitioner, his principal place of business, and the fact that he is an American manufacturer, producer, or wholesaler;

(b) A statement showing the class or kind of merchandise manufactured, produced, or sold by him which is claimed to

be similar to the imported merchandise in such detail as will permit the Commissioner of Customs to establish the similarity between the domestic and foreign merchandise; and

(c) A presentation, in detail, of the information required by section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

Subpart C—Procedure Following Petition

§ 175.21 Inspection of documents and papers.

A petitioner shall not be permitted in any case to inspect documents or papers of the consignee or importer which are exempted from disclosure under § 103.7 of this chapter.

§ 175.22 Publication of decisions following petition.

(a) *Incorrect appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon imported merchandise of the character which is the subject of a petition is found to be incorrect, the Commissioner of Customs shall so inform the petitioner, and shall cause the proper value, classification, or rate of duty to be published in the FEDERAL REGISTER and the weekly Customs Bulletin. Such merchandise entered for consumption or withdrawn from warehouse for consumption after 30 days after the date of publication of such notice to the petitioner in the Customs Bulletin shall be appraised, classified, or assessed as to rate of duty in accordance with the published decision.

(b) *Correct appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon the imported merchandise which is the subject of the petition is found to be correct, the Commissioner of Customs shall so notify the petitioner, but the decision shall not be published.

§ 175.23 Notice of desire to contest decision.

If the petitioner is dissatisfied with the decision of the Commissioner that the appraised value, classification, or rate of duty is correct for the merchandise which was the subject of the petition, in accordance with section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) he may file with the Commissioner of Customs not later than 30 days after the date of the decision a notice that he desires to contest the appraised value of, classification of, or rate of duty assessed upon the imported merchandise. Such notice shall designate the port or ports at which such merchandise is being imported into the United States, and at which the petitioner desires to protest.

§ 175.24 Publication following notice of desire to contest.

Upon receipt of a properly filed petitioner's notice that he desires to contest the decision as to the appraised value of, classification of, or rate of duty assessed upon the imported merchandise, the Commissioner of Customs shall cause to be published in the FEDERAL REGISTER and the weekly Customs Bulletin a notice of

his decision as to the proper appraised value of, classification of, or rate of duty assessed upon the imported merchandise, and of petitioner's desire to contest the decision.

§ 175.25 Procedure at port of entry designated by petitioner.

(a) *Information as to character and description of merchandise.* All information secured by the district director for the port designated by the petitioner in his notice of desire to contest as to the character and description of merchandise of the kind covered by the petition and entered after publication by the Commissioner of Customs of his decision as to the proper appraised value, classification and rate of duty, and samples of such merchandise, shall be made available to the petitioner upon application by him to the district director.

(b) *Notice of liquidation.* Notice of liquidation of the first of the entries to be liquidated which would enable the petitioner to present the issue desired shall be given to the petitioner by the district director or the designated port as required by section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

(c) *Further notice when issue not presented.* If, upon examination of the information and inspection of any sample supplied by the district director, the petitioner believes and the district director agrees that the merchandise or the facts surrounding this importation are not sufficient to raise the issue involved in the petition, the district director shall then give the petitioner notice of the first liquidation thereafter which will permit the framing of the issue covered by the petition. The district director shall, under the same conditions, continue to give notice for so long as he is of the opinion that the petitioner affirmatively intends to contest. When the district director concludes that the petitioner does not intend to contest the decision of the Commissioner of Customs, he shall refer the matter to the Commissioner of Customs for his decision before issuing any further notice of liquidation.

PART 176—PROCEEDINGS IN THE CUSTOMS COURT

Sec.

176.0 Scope.

Subpart A—Service

176.1 Service of summons.

176.2 Service of notice of appeal.

Subpart B—Transmission of Records

176.11 Transmission of records to Customs Court.

Subpart C—Statement of Agreed Facts

176.21 Referral of statements of agreed facts for certification.

176.22 Deletion of protest or entry number.

Subpart D—Procedure Following Court Decision

176.31 Reliquidation following decision of court.

AUTHORITY: The provisions of this Part 176 issued under R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624.

§ 176.0 Scope.

This part deals with service of summons and notice of appeal in actions before the Customs Court, the transmission of records to the court, statements of agreed facts, and Customs procedures following a decision by the court.

Subpart A—Service**§ 176.1 Service of summons.**

When an action is initiated in the Customs Court a copy of the summons shall be served in the manner prescribed by the Customs Court upon the district director for each Customs district in which a protest cited in the summons was denied, and an additional copy shall be served upon the Assistant Chief Counsel for Customs Court Litigation, Bureau of Customs, 26 Federal Plaza, New York, N.Y. 10007.

(28 U.S.C. 2632, as amended)

§ 176.2 Service of notice of appeal.

When the United States is an appellee in an appeal taken to the Court of Customs and Patent Appeals, a copy of the notice of appeal shall be served upon the Assistant Chief Counsel for Customs Court Litigation.

(28 U.S.C. 2601, as amended)

Subpart B—Transmission of Records**§ 176.11 Transmission of records to Customs Court.**

Upon receipt of service of a summons in an action initiated in the Customs Court the following items shall be immediately transmitted to the Customs Court as part of the official record by the Customs officer concerned:

- (a) Consumption or other entry;
- (b) Commercial invoice;
- (c) Special Customs invoice;
- (d) Copy of protest and any amendments thereto;
- (e) Copy of denial of protest in whole or in part;
- (f) Importer's exhibits;
- (g) Official samples;
- (h) Any official laboratory reports;
- (i) The summary sheet;
- (j) In any case in which one or more of the items listed in paragraphs (a) through (i) of this section do not exist, the Customs officer shall include a statement to that effect, identifying the items which do not exist.

(28 U.S.C. 2632, as amended)

Subpart C—Statement of Agreed Facts**§ 176.21 Referral of statement of agreed facts for certification.**

Statements of agreed facts (also referred to as stipulations) to be used by the Department of Justice in submitting cases to the Customs Court may be referred for certification to Customs officials by the office of the Assistant Attorney General, Customs Section, Civil Division, Department of Justice, 26 Federal Plaza, New York, N.Y. 10007.

§ 176.22 Deletion of protest or entry number.

If any protest number or entry number is to be deleted from a schedule of protest numbers or entry numbers attached to or embodied in a statement of agreed facts, a line shall be drawn through the number and the change shall be initiated by the authorized official making and approving the deletion.

Subpart D—Procedure Following Court Decision**§ 176.31 Reliquidation following decision of court.**

(a) *Decision of U.S. Customs Court.* Except as provided in paragraph (c) of this section, an entry which is the subject of a decision of the U.S. Customs Court shall be reliquidated in accordance with the judgment order thereon at the expiration of 60 days from the date of the decision, unless an appeal or motion for a rehearing is filed. However, entries which are the subject of decisions of the court following a decision of the Court of Customs and Patent Appeals which involve the same issue, or which are based on submission of an agreed statement of fact, may be reliquidated immediately upon receipt of the judgment orders from the U.S. Customs Court.

(b) *Decision of the Court of Customs and Patent Appeals.* Except as provided in paragraph (c) of this section, an entry covering merchandise which is the subject of a decision of the Court of Customs and Patent Appeals shall be reliquidated at the expiration of 90 days from the date of entry of decision by that court and only upon receipt of the judgment order from the U.S. Customs Court. However, no such entry shall be reliquidated pursuant to such order if a petition for certiorari is taken to the Supreme Court.

(c) *Waiver of right of appeal.* Upon receipt of a letter from the Assistant Attorney General, Civil Division, Department of Justice, signed by the Chief, Customs Section, advising that no appeal will be taken from a decision of the U.S. Customs Court or that it has been determined that no petition for certiorari shall be filed in the Supreme Court to review a decision of the Court of Customs and Patent Appeals, any entry or entries covered by such decision may be reliquidated pursuant to the judgment of the U.S. Customs Court prior to the expiration of the times specified in paragraphs (a) and (b) of this section.

(Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514)

PART 8—LIABILITY FOR DUTIES; ENTRY OF IMPORTED MERCHANDISE

In § 8.29, the last sentence of paragraph (c) is amended to read: "Liquidation shall be made promptly and shall not be withheld for a period of more than 20 days from the date of mailing such notice unless in the judgment of the

district director there are compelling reasons that would warrant such action."

The citation of authority for § 8.29 is amended to read:

(Secs. 499, 505, 623, 46 Stat. 728, as amended, 732, as amended, 759, as amended; 19 U.S.C. 1499, 1505, 1623)

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 9—IMPORTATIONS BY MAIL

In § 9.10, the last sentence in paragraph (b) is amended by deleting "60" and substituting "90", and the last sentence of footnote 8 appended thereto is deleted.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 14—APPRAISEMENT

Section 14.1 is amended as follows: Paragraph (a) and footnote 1 are deleted.

Paragraph (b) is amended by substituting "district director" for "collector" in the first sentence, and "District directors" for "Collectors of Customs" in the second sentence.

Paragraph (c) is amended by substituting "district director" for "collector or the appraiser".

The citation of authority for § 14.1 is amended to read:

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

The citation of authority for § 14.2 is amended to read:

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

Section 14.3 is amended as follows:

In paragraph (c), "district director" is substituted for "appraiser".

Paragraph (e) and footnote 8 are deleted.

The citation of authority for § 14.3 is amended to read:

(Secs. 402, 500, 46 Stat. 708, as amended, 729, as amended; sec. 402, 70 Stat. 943; 19 U.S.C. 1401a, 1402, 1500)

Section 14.4 is amended by substituting "district director" for "appraiser" in the first sentence and in paragraphs (b) and (c) and "district director's" for "appraiser's" in paragraph (d).

In § 14.5, paragraphs (d), (e) and (n) are amended by substituting "Regional Commissioner" for "appraiser" wherever it appears.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 15—RELIEF FROM DUTIES ON MERCHANDISE LOST, STOLEN, DESTROYED, INJURED, ABANDONED, OR SHORT-SHIPED

Section 15.7 is amended as follows:

Paragraph (a) is amended by substituting "district director" for "collector" wherever it appears.

Paragraph (b) is amended to read:

(b) If the district director is satisfied after any necessary investigation that

the merchandise contains excessive moisture or other impurities not usually found in or upon such or similar merchandise, he shall make allowance for the amount thereof in the liquidation of the entry.

Paragraph (c) is deleted.

Section 15.8 is amended to read as follows:

§ 15.8 Shortages; lost packages; deficiencies in contents of packages.

(a) Allowance in the assessment of duties shall be made for lost or missing merchandise included in the entry when it is established to the satisfaction of the district director of Customs before the liquidation of the entry becomes final that the merchandise claimed to be lost or missing was not imported. The foregoing shall not apply in the case of merchandise arriving under an immediate transportation entry. (See § 18.6 of this chapter.)

(b) Allowance for deficiency in any package found upon examination in accordance with section 499, Tariff Act of 1930, as amended, shall be made in the liquidation of the entry if it is established to the satisfaction of the district director that the merchandise was not imported.

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

Section 15.10 is amended as follows:

Paragraph (a) is amended by deleting "and is so reported to the collector by the appraiser".

Subparagraph (1) of paragraph (b) is amended by substituting "district director" for "collector".

Subparagraph (3) of paragraph (b) is amended by deleting "reported by the appraiser" and substituting "determined".

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 16—LIQUIDATION OF DUTIES

Part 16 is amended by deleting footnote 1 and the section heading, of § 16.1 is amended by deleting the footnote reference "1".

The citation of authority for § 16.1 is amended to read:

(Sec. 500, 46 Stat. 729, as amended; 19 U.S.C. 1500)

The citation of authority for § 16.2 is amended to read:

(Sec. 500, 46 Stat. 729, as amended, sec. 321, 52 Stat. 1801, as amended; 19 U.S.C. 1321, 1505)

In § 16.3 paragraph (a) is amended to read:

(a) The district director of Customs shall suspend the liquidation of entries on which bonds are open for the production of documents affecting the rate of duty pending the performance or non-performance under the bond, except as provided in § 8.15(d) of this chapter.

The citation of authority for § 16.3 is amended to read:

(Sec. 500, 46 Stat. 729, as amended; 19 U.S.C. 1500)

In § 16.4, paragraph (e) is amended as follows:

That portion of the second sentence preceding the colon is amended to read: "Thereafter, when the district director is in possession of sufficient information to apply the instructions in this section, he shall proceed with the appraisal and liquidation in the case of any importation of merchandise exported on a date for which the Federal Reserve Bank of New York certifies such multiple rates, according to the following procedure:"

Subparagraph (2) is deleted.

In subparagraphs (3), (4), and (5), "appraiser or collector" is deleted wherever it appears, and "district director" is substituted.

The citation of authority for § 16.4 is amended to read:

(Secs. 500, 522, 46 Stat. 729, as amended, 739, as amended; 19 U.S.C. 1500, 31 U.S.C. 372)

In § 16.5, paragraph (c) is amended by deleting at the end thereof the words "as indicated by the appraiser's report".

The citation of authority for § 16.5 is amended to read:

(Secs. 315, 500, 46 Stat. 695, as amended, 729, as amended; 19 U.S.C. 1315, 1500)

Section 16.7 is amended by deleting from the first sentence the words "by the appraiser and is reported to the collector in accordance with section 499, Tariff Act of 1930, as amended,".

The citation of authority for § 16.7 is amended to read:

(Secs. 499, 505, 555, 46 Stat. 728, as amended, 732, as amended, 743, as amended; 19 U.S.C. 1499, 1505, 1555)

Section 16.10 is amended as follows:

Paragraphs (a), (b), (d), (e), and (f), are amended by deleting "60" and substituting "90".

Paragraph (c) is amended by deleting the last sentence and substituting the following: "A change to a lower rate of duty, when decided upon, shall be applicable to all unliquidated entries and to all protested entries involving the same issue which have not been denied in whole or in part."

Paragraph (g) is amended by deleting "forwarded to the Customs Court" and substituting "denied in whole or in part".

The citation of authority for § 16.10 is amended to read:

(Secs. 315, 500, 501, 46 Stat. 695, as amended, 729, as amended, 730, as amended; 19 U.S.C. 1315, 1500, 1501)

The citation of authority for § 16.11 is amended to read:

(Sec. 500, 46 Stat. 729, as amended; 19 U.S.C. 1500)

The citation of authority for § 16.12 is amended to read:

(Sec. 500, 46 Stat. 729, as amended; 19 U.S.C. 1500)

Part 16 is amended by deleting §§ 16.13 and 16.14, and footnote 12.

Section 16.24 is amended by substituting "district director" for "appraiser" wherever it appears.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 17—PROTESTS AND REAPPRAISEMENTS

Part 17 is deleted from Chapter I of Title 19 of the Code of Federal Regulations.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 624)

PART 22—DRAWBACK

Section 22.44 is amended by deleting "collector" and substituting "district director" therefore whenever it appears, and by substituting "90 days" for "60 days".

The citation of authority for § 22.44 is amended to read:

(Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514)

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 23—ENFORCEMENT OF CUSTOMS AND NAVIGATION LAWS

In § 23.18 the second sentence is amended to read: Upon determination that the value does not exceed \$2,500, the district director shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable.

Section 23.28 is amended by deleting "appraiser, person acting as appraiser, collector" and substituting "district director".

Part 23 is amended by deleting footnote 44, and § 23.28 is amended to delete the footnote reference "44".

In § 23.29 the first sentence is amended by deleting "proper officer" and substituting "district director".

Part 23 is amended by deleting footnote 45, and § 23.29 is amended to delete the footnote reference "45".

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

In § 54.3, subparagraph (3) of paragraph (b) is amended to read:

(3) Such a declaration, adequately describing and identifying the articles, is subsequently filed at the customhouse, and the entry, if liquidated, can be re-liquidated in accordance with section 501, Tariff Act of 1930, as amended (19 U.S.C. 1501), or section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)).

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 111—CUSTOMHOUSE BROKERS

Section 111.40 is amended to read:

§ 111.40 Protests.

A broker shall not act in behalf of any person, or attempt to represent any person, in respect of any protest, unless he shall previously have been authorized to do so in accordance with § 174.3 of this chapter.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 146—FOREIGN-TRADE ZONES

In § 146.21, paragraph (e) is amended to read:

(e) *Procedures for protest.* The requirements, privileges, and procedures of notices of appraisal, posting of liquidations, and protests against decisions of the district director relating to privileged foreign merchandise are the same as those prescribed in the case of merchandise covered by an entry for warehouse in Customs territory.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 147—TRADE FAIRS

In § 147.42, paragraph (b) is amended by deleting the second sentence thereof.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

PART 153—ANTIDUMPING

Section 153.1 is amended by deleting "appeals for reappraisal, applications for review of reappraisements,".

Section 153.57 is amended by deleting the second sentence thereof.

The title of Subpart E of Part 153 is amended to read "Antidumping Protests".

Section 153.64 is amended to read as follows:

§ 153.64 Antidumping protests procedures.

Protests relating to the Antidumping Act, 1921, shall be made in the same manner as protests relating to ordinary Customs duties.

(R.S. 251, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

[F.R. Doc. 70-11012; Filed, Aug. 21, 1970; 8:51 a.m.]

Title 21—FOOD AND DRUGS**Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare****SUBCHAPTER B—FOOD AND FOOD PRODUCTS****PART 121—FOOD ADDITIVES****Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food****ETHYLENE-VINYL ACETATE COPOLYMERS**

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition (FAP 9M2421) filed by E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. 19898, and other relevant material, concludes that the food additive regulations should be amended to provide for safe food-contact use of irradiated ethylene-vinyl acetate copolymers. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (c) (1), 72 Stat. 1786; 21 U.S.C. 348 (c) (1)) and under authority delegated to the Commissioner (21 CFR 2.120),

§ 121.2570 is amended by adding a new paragraph, as follows:

§ 121.2570 Ethylene-vinyl acetate copolymers.

(d) Ethylene-vinyl acetate copolymers may be irradiated under the following conditions to produce molecular cross-linking of the polymers to impart desired properties such as an increased strength and increased ability to shrink when exposed to heat:

(1) Electron beam source, not to exceed 3 million volts intensity.

(2) The irradiated copolymers shall have a minimum melt index of 0.01 as determined by ASTM Method D 1238-65T modified by 0.1 percent dusting the irradiated copolymers with 2,6-ditertiary-butyl-4-methyl phenol.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER.

(Sec. 409(c) (1), 72 Stat. 1786; 21 U.S.C. 348 (c) (1))

Dated: August 4, 1970.

R. E. DUGGAN,
Acting Associate Commissioner
for Compliance.

[F.R. Doc. 70-11042; Filed, Aug. 21, 1970; 8:46 a.m.]

SUBCHAPTER C—DRUGS**PART 148e—ERYTHROMYCIN****Combination Drug Containing Erythromycin Ethylsuccinate and Sulfanilamide; Confirmation of Effective Date of Order**

An order was published in the FEDERAL REGISTER of May 16, 1970 (35 F.R. 7647), amending the antibiotic drug regulations to repeal provision for certification of erythromycin ethylsuccinate-sulfanilamide dental powder. The order repealed § 148e.9 and revoked all antibiotic certificates previously issued thereunder.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050-51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drugs (21

CFR 2.120), notice is given that no objections were filed to the above-identified order. Accordingly, the amendment promulgated thereby became effective June 25, 1970.

Dated: July 30, 1970.

SAM D. FINE,
Acting Associate Commissioner
for Compliance.

[F.R. Doc. 70-11043; Filed, Aug. 21, 1970; 8:46 a.m.]

Title 26—INTERNAL REVENUE**Chapter I—Internal Revenue Service, Department of the Treasury****SUBCHAPTER C—EMPLOYMENT TAXES**

[T.D. 7056]

PART 32—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969**Extension of Income Tax Withholding to Pension and Annuity Payments if Requested by Payee**

In order to prescribe temporary regulations, which shall remain in force and effect until superseded by permanent regulations, relating to the withholding of income tax at source upon payments of pensions and annuities under section 3402(o) of the Internal Revenue Code of 1954, as added by section 805(g) of the Tax Reform Act of 1969 (83 Stat. 708), the following regulations are hereby adopted:

§ 32.1 Extension of withholding of income tax at source on wages to annuity payments if requested by payee.

(a) *In general.* Under section 3402(o) of the Internal Revenue Code of 1954 and this section, the payee (as defined in paragraph (g) (2) of this section) of an annuity (as defined in paragraph (g) (1) of this section) may request the payer (as defined in paragraph (g) (3) of this section) of the annuity to withhold income tax with respect to payments of the annuity made after December 31, 1970. If such a request is made, the payer shall deduct and withhold as requested.

(b) *Manner of making request.* A payee who wishes a payer to deduct and withhold income tax from annuity payments shall file a request with the payer to deduct and withhold a specific whole dollar amount from each annuity payment. Such specific dollar amount requested shall be at least \$5 per month and shall not reduce the net amount of any annuity payment received by the payee below \$10. The request shall be made on Form W-4P (annuitant's withholding exemption certificate and request) in accordance with the instructions applicable thereto, and shall set forth fully and clearly the data therein called for. In lieu of Form W-4P, payers may prepare and use a form the provisions of which are identical with those of Form W-4P.

(c) *When request takes effect.* Upon receipt of a request under this section