were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442), is amended effective 0901 GMT August 9, 1979, by adding the following new transition area:

Plattsmouth, Nebraska

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Plattsmouth Municipal Airport (latitude 40°57'05"N; longitude 095°55'05"W) within 3 miles each side of the 176° bearing from the Plattsmouth Municipal Airport, extending from the 5-mile radius to 8 miles south of the airport; excluding the portion within the Omaha, Nebraska transition area.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61, Federal Aviation Regulations (14 CFR 11.61).)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on May 22, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

[FR Doc. 79-17228 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-RM-08]

Alteration of Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of the amendment is to delete the 3,500 ft. MSL floor on V-26 between Pierre and Huron, S. Dak. This action reduces chart clutter by removing an airway floor designation that serves no purpose. Transition area airspace has recently been designated that incorporates the airspace within the lateral limits of V-26 between Pierre and Huron.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR 71) is to delete an airway floor that has become unnecessary because of previous designation of underlying transition area airspace (Airspace Docket No. 79-RM-08, effective June 14, 1979). Since this amendment receives an unnecessary restriction and is a minor matter on which the public would have no particular desire to comment, public notice and procedures thereon are unnecessary. The effective date of this rule is more than 30 days after publication in the **Federal Register** and is coincidental to a charting date.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 GMT, August 9, 1979, as follows:

Under V-26 after Pierre, S. Dak., "including a north alternate; 26 miles, 41 miles, 35 MSL, Huron, S. Dak." is deleted and "including a north alternate; Huron, S. Dak." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on May 25, 1979.

William E. Broadwater,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-17234 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 19166; Amdt. No. 1139]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Lewis O. Ola, Flight Procedures and Airspace Branch (AFS-730), Aircraft Programs Division, Flight Standards Service, Federal Aviation

Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

. . . Effective August 9, 1979

Flippin, AR—Marion County Regional, VOR-A, Amdt. 7
Mountain Home, AR—Mountain Home Muni., VOR-A, Amdt. 3

. . . Effective July 26, 1979

Alexandria, MN—Chandler Field, VOR Rwy 22, Amdt. 11
Columbus, MS—Columbus Loundes County, VOR-A, Amdt. 9
Florence, SC—Florence City-County, VOR-A (TAC), Amdt. 3

. . . Effective July 12, 1979

Sacramento, CA—Sacramento Executive, VOR Rwy 2, Amdt. 7
Sacramento, CA—Sacramento Executive, VOR/DME Rwy 20, Amdt. 5, cancelled
Vacaville, CA—Nut Tree, VOR-A, Amdt. 2
Centralia, IL—Centralia Municipal, VOR Rwy 36, Amdt. 12
DeKalb, IL—DeKalb Municipal, VOR/DME Rwy 27, Original
Effingham, IL—Effingham County Memorial, VOR Rwy 1, Amdt. 3
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 5, Amdt. 12
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 13, Amdt. 11
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 23, Amdt. 14
Jackson, MI—Jackson County-Reynolds Field, VOR Rwy 31, Amdt. 9
Manistique, MI—Schoolcraft County, VOR Rwy 27, Amdt. 4
Newberry, MI—Luce County Hale, VOR Rwy 11, Amdt. 6
Newberry, MI—Luce County Hale, VOR Rwy 29, Amdt. 6
Minneapolis, MN—Crystal, VOR-A, Amdt. 6
Lancaster, OH—Fairfield County, VOR-A, Amdt. 2

. . . Effective June 28, 1979

St. Louis, MO—Spirit of St. Louis, VOR Rwy 7, Amdt. 2

. . . Effective June 1, 1979

Chagrin Falls, OH—Chagrin Falls, VOR-A, Amdt. 5, cancelled

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

. . . Effective July 12, 1979

Sacramento, CA—Sacramento Executive, LOC BC Rwy 20, Amdt. 5, cancelled
Colorado Springs, CO—City of Colorado Springs Muni., LOC BC Rwy 17, Amdt. 1, cancelled
Lancaster, OH—Fairfield County, SDF Rwy 28, Original

. . . Effective June 14, 1979

Honolulu, HI—Honolulu International, LDA/DME Rwy 26L, Orig.

The FAA published an amendment in Docket No. 18942, Amdt. No. 1136 to Part 97 of the Federal Aviation regulations (Vol 44 FR No. 77 page 23210; dated Thursday, April 19, 1979) under section 97.25 effective June 14, 1979, which is hereby amended as follows:

Greensboro, NC—Greensboro-High Point-Winston-Salem regional, LOC BC Rwy 5, Amdt. 2, Cancelled is rescinded.

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

. . . Effective August 9, 1979

Boise City, OK—Boise City, NDB-A, Original
Dillon, SC—Dillon County, NDB Rwy 6, Amdt. 1
Clintonville, WI—Clintonville Municipal, NDB Rwy 32, Amdt. 4

. . . Effective July 26, 1979

Gaylord, MI—Otsego County, NDB Rwy 9, Amdt. 1
Waupaca, WI—Waupaca Municipal, NDB Rwy 30, Amdt. 1

. . . Effective July 12, 1979

Sacramento, CA—Sacramento Executive, NDB Rwy 2, Amdt. 7
Colorado Springs, CO—City of Colorado Springs Muni., NDB Rwy 35, Amdt. 22
Litchfield, IL—Litchfield Municipal, NDB Rwy 27, Amdt. 1
Harrisburg, IL—Harrisburg-Raleigh, NDB Rwy 24, Amdt. 5
Sparta, IL—Sparta Community-Hunter Field, NDB Rwy 18, Amdt. 3
De Ridder, LA—Beauregard Parish, NDB Rwy 18, Amdt. 2
De Ridder, LA—Beauregard Parish, NDB Rwy 36, Amdt. 1
Jackson, MI—Jackson County-Reynolds Field, NDB Rwy 23, Amdt. 6
Smithfield, NC—Johnston County, NDB Rwy 21, Amdt. 1
Lancaster, OH—Fairfield County, NDB Rwy 28, Original

. . . Effective June 28, 1979

St. Louis, MO—Spirit of St. Louis, NDB Rwy 7, Amdt. 5

. . . Effective May 15, 1979

Appleton, WI—Outagamie County, NDB Rwy 3, Amdt. 7
Appleton, WI—Outagamie County, NDB Rwy 11, Amdt. 7, cancelled
Appleton, WI—Outagamie County, NDB Rwy 21, Amdt. 4, cancelled

Appleton, WI—Outagamie County, NDB Rwy 29, Amdt. 8, cancelled

4. By amending § 97.29 ILS–MLS SIAPs identified as follows:

. . . *Effective July 12, 1979*

Sacramento, CA—Sacramento Executive, ILS Rwy 2, Amdt. 20
Colorado Springs, CO—City of Colorado Springs Muni., ILS Rwy 17, Original
Colorado Springs, CO—City of Colorado Springs Muni., ILS Rwy 35, Amdt. 30
Valdosta, GA—Valdosta Municipal, ILS Rwy 35, Amdt. 3
Jackson, MI—Jackson County-Reynolds Field, ILS Rwy 23, Amdt. 6
Myrtle Beach, SC—Myrtle Beach AFB/Civil Jet Port, ILS Rwy 17, Orig, cancelled

. . . *Effective June 28, 1979*

*Denver, CO—Stapleton Int'l ILS/DME Rwy 17L, Original
St. Louis, MO—Spirit of St. Louis, ILS Rwy 7, Amdt. 5

. . . *Effective May 23, 1979*

Memphis, TN—Memphis International, ILS Rwy 17R, Amdt. 5

. . . *Effective May 15, 1979*

Appleton, WI—Outagamie County, ILS Rwy 3, Amdt. 8

The FAA published an amendment in Docket No. 18942, Amdt. No. 1136 to Part 97 of the Federal Aviation regulations (Vol. 44 FR No. 77 page 23210; dated Thursday, April 19, 1979) under section 97.29 effective June 14, 1979, which is hereby amended as follows:

Greensboro, NC—Greensboro-High Point-Winston-Salem regional, ILS Rwy 5, original is rescinded.

5. By amending § 97.31 RADAR SIAPs identified as follows:

. . . *Effective July 12, 1979*

Colorado Springs, CO—City of Colorado Springs, Muni., RADAR-1, Amdt. 16
Baton Rouge, LA—Ryan, RADAR-1, Amdt. 4
Duluth, MN—Duluth International, RADAR-1, Amdt. 14

. . . *Effective May 3, 1979*

Louisville, KY—Standiford Field, RADAR-1, Amdt. 15

6. By amending § 97.33 RNAV SIAPs identified as follows:

. . . *Effective July 12, 1979*

Lancaster, OH—Fairfield County, RNAV Rwy 10, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on May 25, 1979.

James M. Vines,
Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 79-17238 Filed 6-1-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

Prohibited Trade Practices and Affirmative Corrective Actions; GAC Corp., et al.

Correction

In FR Doc. 79-15127 appearing on page 28305 in the issue of Tuesday, May 15, 1979, in the first column of page 28306, in the third line of the fifth complete paragraph, ". . . continue this contract . . ." should have read ". . . continue this contract or . . ."

BILLING CODE 1505-01-M

16 CFR Part 13

[Docket 9055]

Prohibited Trade Practices and Affirmative Corrective Actions; Cavanagh Communities Corp., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Miami, Fla. land sales firm and eight-wholly owned subsidiaries to cease misrepresenting or failing to disclose the nature and purpose of promotional activities; the legal significance of signing a contract form; the monetary risks involved in the purchase of undeveloped land; and the advisability of consulting with a real estate specialist prior to purchase. Unavailability of utilities, sewage disposal, water, or other improvements have to be set forth in contracts and sales presentations, and the firms are required to provide purchases with a cooling-off period during which they could cancel their dealings. The order also requires that purchasers be informed that certain subdivisions are located in designated flood areas and considerable expenditure would be required to make lots usable. Any sales representation concerning the availability of electricity, phone service, recreational facilities, and/or other improvements has to be contractually guaranteed, and failure to fulfill such obligations in a timely manner entitles purchasers to a refund of their full purchase price plus 7% interest. In addition, the order limits purchasers' liability in the event of default, and requires the firms to send previous purchasers prescribed "truth" letters which contain information about investments, subdivision development, assessments, contractual rights, and possible tax benefits should purchasers default.

DATES: Complaint issued Sept. 16, 1975. Decision issued May 3, 1979.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PM, Edward D. Steinman, Washington, D.C., 20580. (202) 523-3909.

SUPPLEMENTARY INFORMATION: On Wednesday, January 3, 1979, there was published in the **Federal Register**, 44 FR 899, a proposed consent agreement with analysis In the Matter of Cavanagh Communities Corporation, Cape Cave Corporation, Cavanagh Marketing Corporation, Cavad, Inc., Universal Properties, Inc., Wellington Orient, Inc., Miami Beach Vacations, Inc., Palm Beach Investment Properties, Inc., Perdido Bay Management Corp., corporations, and their subsidiaries, and Joseph Klein and Arthur Meltzer, individually and as officers of said corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10-1 Availability of

[1] Copies of the Complaint, Order Granting In Part And Remanding In Part Motion To Serve Supplemental Pleading, Motion To Amend Complaint, and Decision and Order are filed with the original document.

merchandise and/or facilities; § 13.15 Business status, advantages or connections; 13.15–20 Business methods and policies; 13.15–30 Connections or arrangements with others; 13.15–35 contracts and obligations; 13.15–240 Properties and rights; 13.15–245 Prospects; 13.15–275 Stock, product, or service; § 13.35 Condition of goods; § 13.55 Demand, business or other opportunities; § 13.60 Earnings and profits; § 13.90 History of product or offering; § 13.143 Opportunities; § 13.155 Prices; 13.155–5 Additional charges unmentioned; § 13.160 Promotional sales plans; § 13.175 Quality of product or service; § 13.185 Refunds, repairs, and replacements; § 13.195 Safety; 13.195–30 Investment; § 13.205 Scientific or other relevant facts; § 13.250 Success, use or standing; § 13.275 Undertakings, in general; § 13.285 Value. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–15 Destruction of records and/or data; 13.533–20 Disclosures; 13.533–45 Maintain records; 13.533–55 Refunds, rebates and/or credits; 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints. Subpart—Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed; § 13.677 Delaying or failing to deliver goods or provide services or facilities. Subpart—Failing To Provide Foreign Language Translations: § 13.1052 Failing to provide foreign language translations. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1365 Authorities and personages connected with; § 13.1370 Business methods, policies, and practices; § 13.1395 Connections and arrangements with others; § 13.1435 History; § 13.1540 Reputation, success or standing; § 13.1560 Stock, product or service.—Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1595 Condition of goods; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1710 Qualities or properties; § 13.1725 Refunds; § 13.1740 Scientific or other relevant facts; § 13.1760 Terms and conditions; 13.1760–50 Sales contract; § 13.1765 Undertakings, in general; § 13.1775 Value.—Prices: § 13.1778 Additional costs unmentioned.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1857 Instruments' sale to finance companies; § 13.1863 Limitations of product; § 13.1882 Prices; 13.1882–10 Additional prices unmentioned; § 13.1885 qualities or properties; § 13.1889 Risk of loss; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; 13.1905–50 Sales contract. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1935 Earnings and profits; § 13.1955 Free goods; § 13.2013 Offers deceptively made and evaded; § 13.2015 Opportunities in product or service; § 13.2040 Returns and reimbursements; § 13.2063 Scientific or other relevant facts; § 13.2090 Undertakings, in general.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Carol M. Thomas,
Secretary.

FR Doc. 79-17248 Filed 6-1-79; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 79-160]

19 CFR Parts 4, 6, 10, 123, 162, 171, 172

Fines, Penalties, Forfeitures, and Liquidated Damages for Violations of the Customs and Navigation Laws, Amended

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Public Law 95–410, the "Customs Procedural Reform and Simplification Act of 1978", made numerous changes to laws enforced by the Customs Service. Some of the changes relate to fines, penalties, and forfeitures incurred for violations of customs and navigation laws concerning:

1. The transportation of merchandise by foreign or other nonentitled vessels in the coastwise trade;
2. Foreign repairs and equipment purchases by vessels and aircraft of the United States;
3. The lack of a manifest or a discrepancy in a manifest; and
4. The entry of merchandise by fraud or negligence.

Generally, the Act changed the penalties provided, added new procedural rules to be followed at the administrative level, and provided for more extensive judicial review. This document amends the Customs Regulations to establish new procedures to reflect these changes.

EFFECTIVE DATE: July 5, 1979.

FOR FURTHER INFORMATION CONTACT: Aspects of penalties assessed under 19 U.S.C. 1592: Edward T. Rosse, Commercial Fraud and Negligence Penalties Branch (202-566-8317). Aspects of other penalties: Kathryn C. Peterson, Miscellaneous Penalties Branch (202-566-5746)—U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

The Customs Procedural Reform and Simplification Act of 1978 (Pub. L. 95–410), approved October 3, 1978 (the "Act"), made numerous amendments to statutes administered by Customs which relate to fines, penalties, forfeitures, and liquidated damages for violations of customs and navigation laws. Specifically, the Act amended:

1. Section 27, Merchant Marine Act of 1920 (46 U.S.C. 883), relating to the transportation of merchandise by foreign or other nonentitled vessels in the coastwise trade;
2. Section 466, Tariff Act of 1930 (19 U.S.C. 1466), relating to foreign repairs and equipment purchases by vessels of the United States (the statute is applicable to U.S.-registered aircraft in accordance with section 6.7(d), Customs Regulations, as authorized by 19 U.S.C. 1644 and 49 U.S.C. 1509(c));
3. Section 584, Tariff Act of 1930 (19 U.S.C. 1584), relating to lack of a manifest or a discrepancy in a manifest, and
4. Section 592, Tariff Act of 1930 (19 U.S.C. 1592), relating to entry of merchandise by fraud or negligence.

To reflect these changes, on November 16, 1978, Customs published a notice in the Federal Register (43 FR 53453), proposing amendments to Parts 4, 6, 10, 123, 162, and 171, Customs Regulations (19 CFR Parts 4, 6, 10, 123, 162, and 171). The proposed amendments provided procedures for assessing a monetary penalty as an alternative to forfeiture of merchandise for a violation of 46 U.S.C. 883. Procedures also were proposed for forfeiture of a monetary amount as an alternative to forfeiture of a vessel or aircraft for a violation of 19 U.S.C. 1466. Similarly, new maximum penalties and procedures were proposed for certain manifest violations under 19 U.S.C. 1584. Finally, new procedures were proposed for the imposition of a monetary penalty or, in limited circumstances, for the seizure of merchandise, for a violation of 19 U.S.C. 1592. A detailed description of the provisions of the Act which amended the penalty provisions administered by Customs and the background and purpose of the proposed changes to the Customs Regulations are contained in the November 16, 1978, notice.

That notice invited interested persons to submit comments on the proposed amendments on or before December 18, 1978. Many comments were received. Consideration of these comments and further review of the Act have resulted in a number of changes to the proposed amendments.

Discussion of Major Comments

Penalties Under 46 USC 883 and 19 USC 1466 and 1584

1. One commenter urged revision of proposed § 162.72(a) to provide that seizure actions against vessels and aircraft under 19 U.S.C. 1466 and 1584 be limited to the same circumstances as seizures of merchandise under 19 U.S.C. 1592; i.e., insolvency, lack of jurisdiction, or if seizure is essential to protection of the revenue or to prevent the importation of prohibited or restricted merchandise. Another commenter requested that the regulations for the assessment of penalties for violations of 46 U.S.C. 883 and 19 U.S.C. 1466 set forth maximum penalty levels based on the culpability of the violator, similar to the manner in which maximum penalties are determined for violations of 19 U.S.C. 1592.

These suggestions are not being adopted at this time because although the Act contains new provisions for monetary penalties and procedures under 46 U.S.C. 883 and 19 U.S.C. 1466, it does not mandate that the standards for seizures and maximum penalties added to 19 U.S.C. 1592 be applied to violations of these statutes. However, the question of adding standards to the regulations applying to violations governed by these statutes will be considered by Customs in the future.

2. A commenter referred to Customs policy, stated in connection with proposed § 162.72(b), that a penalty would not be assessed against a carrier under 19 U.S.C. 1584 if the record clearly shows that the unmanifested or falsely manifested cargo was packaged in such a way that the carrier's employees were prevented from knowing its contents. The commenter urged that this principle, as well as the specific criteria and procedures for determining liability, be set forth in the regulations. The commenter also requested that the regulations state that this principle would be applied to manifest irregularities involving loose cargo so that a carrier would not be liable if the record showed that the discrepancy occurred after the cargo left the carrier's custody. The same commenter requested that § 162.72(b) set forth the criteria and procedures for determining liability for discrepancies on manifests as between various persons handling imported goods, such as the importing and domestic carriers, and also the types of records which would suffice for proof that the carrier was not responsible for the discrepancy in the manifest. The commenter argued that Customs should not issue a penalty claim under 19 U.S.C. 1466 or 1584 in any circumstances which would require retention of records by air cargo carriers for more than 2 years.

While Customs will consider in the future the feasibility and desirability of publishing some general criteria used in determining liability under this section, adoption of regulations delineating the specific circumstances and factual situations in which carriers may be liable for manifest violations is considered impracticable at this time. In questionable cases, the carrier may contact Customs directly for guidance in establishing procedures which comply with the manifest requirements.

It also is considered impracticable to provide by regulation that the keeping of certain records by carriers would preclude the assessment of a penalty under 19 U.S.C. 1584. Further, the suggestion that a limit of 2 years should apply to the retention of records by carriers would be inconsistent with the provisions of 19 U.S.C. 1621 under which an action may be commenced by the United States for a violation of 19 U.S.C. 1466 or 1584 at any time up to 5 years after the time the alleged offense was discovered. Accordingly, these suggestions have not been adopted.

3. One commenter noted that the penalty prescribed in proposed § 162.72(b)(3) for manifest violations (overages) applicable to aircraft arrivals under 19 U.S.C. 1584 appears to be an exception to the general penalty provisions for entry and clearance and Customs violations applicable to aircraft under 49 U.S.C. 1474. The latter statute is implemented by § 6.11, Customs Regulations (19 CFR 6.11).

As amended by Pub. L. 95–410, 19 U.S.C. 1584 provides for a penalty equal to the value of the merchandise, but not to exceed $10,000, in the case of a vessel manifest discrepancy resulting in an overage. Under 49 U.S.C. 1509 (b) and (c), the Secretary of the Treasury is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the administration of the Customs laws and the entry and clearance of vessels. Section 6.7, Customs Regulations (19 CFR 6.7), establishes manifest requirements applicable to aircraft and describes the procedures to be followed in the event of shortages, overages, or other manifest discrepancies. 49 U.S.C. 1474 provides that any person who violates any entry or clearance or Customs regulation prescribed under 49 U.S.C. 1509 (b) or (c) shall be subject to a penalty of $500.

Customs is of the opinion that 19 U.S.C. 1431(b) would permit the assessment of penalties under either 19 U.S.C. 1584 or 49 U.S.C. 1474. However, 49 U.S.C. 1474, in prescribing a penalty of $500 for *any* violation of vessel entry or clearance laws or regulations made applicable to civil aircraft, is used presently rather than the provision of 19 U.S.C. 1584. The Customs Service believes that this practice should be continued. Accordingly, the word "aircraft" is being deleted from proposed section 162.72(b)(3), and a new sentence is being added to that section to distinguish the penalties applicable to vessels and vehicles for a violation of 19 U.S.C. 1584, involving a manifest discrepancy resulting in an overage, from the $500 penalty applicable to a similar violation by aircraft.

In addition, § 6.7(h)(5), Customs Regulations (19 CFR 6.7(h)(5)), the subject of a proposed conforming amendment, is being amended further (1) to provide that any penalty assessed under 19 U.S.C. 1584 for a manifest discrepancy by an aircraft resulting in an overage shall be $500, and (2) to delete the sentence relating to the procedure for determining the value of merchandise seized for a violation of 19 U.S.C. 1584 which is not applicable to aircraft.

4. One commenter suggested that the prepenalty notice procedure under 19 U.S.C. 1584 applicable to violations occurring after October 3, 1978, the effective date of the Act, also should be applicable to any violation which occurred before October 3, 1978, if a proceeding was not initiated until after that date.

Customs does not believe that any useful purpose would be served by issuing retroactive prepenalty notices for violations of the statute occurring before October 3, 1978. Only the master, aircraft commander, or the vessel or aircraft owner, was liable for manifest violations occurring before that date. Accordingly, for these violations, one of the principal purposes of the new prepenalty procedure, i.e., to determine the identity of the person actually responsible for the violation, would not apply.

5. Another commenter observed that in section 109(4) of the Act, Congress used specific language in defining "clerical error" for the purpose of exempting certain manifest violations under 19 U.S.C. 1584 from liability for penalties. The commenter contends that the definition of "clerical error" in proposed § 162.71(c) therefore is incorrect because it may be construed as limiting the kinds of descrepancies which Congress intended to exempt from liability.

The commenter's concern that the proposed regulatory definition will narrow the statutory definition of "clerical error" is unfounded. The language in the proposed regulation only clarifies the statutory definition and does not restrict it.

Penalties assessed under 19 U.S.C. 1592: Definitions

1. A commenter requested that proposed § 162.71 be expanded to include defintions of the terms "negligence", "gross negligence", and "intentional" as used in the statute and the proposed regulations.

Except for section 110(f)(1)(B) of the Act, and proposed § 162.70(b), Customs Regulations, which provide alternative effective dates for the provisions of the Act relating to "any alleged intentional violation" of 19 U.S.C. 1592 involving Japanese television receivers the subject of antidumping proceedings, the statute and the proposed regulations refer to "fraud" and "fraudulent violation" rather than "intentional violation". However, the terms "negligence", "gross negligence", "fraud", "fraudulent violation", and "intentional violation" are not defined in the Act. Accordingly, in proceedings under section 1592, these terms must be applied on a case-by-case basis, taking into account the facts and circumstances of each case, the purpose of the Act, and prior administrative and judicial interpretations. In these circumstances, it has been concluded that it would be impossible at this time for Customs to incorporate in the regulations definitions of these terms which could be relied upon by persons subject to the statute. The feasibility and desirability of doing this in the future will be considered.

2. A commenter suggested that the definition of "actual loss of duties" in proposed § 162.71 be expanded to provide that, for purposes of assessing any penalty, the actual loss of duties shall be reduced by the amount of any erroneous overpayment of duties by the alleged violator.

As stated in proposed § 162.71(a)(1), the term "actual loss of duties" refers to the duties which the Government is deprived of by a violation in respect of a liquidated entry. If, in fact, there has been an erroneous overpayment of duties on a liquidated entry, there would be no actual loss of duties for that entry. Customs does not believe, however, that the Act may be construed as contemplating any reduction in the actual loss of duties on an entry because the violator may have made an erroneous overpayment of duties on other entries. Accordingly, this suggestion has not been adopted.

3. One commenter asked clarification regarding whether the word "duties" in the term "loss of duties", as defined in proposed § 162.71, includes internal revenue taxes which attach upon importation.

The word "duties" as used in the Customs Regulations is defined in § 101.1(i) (19 CFR 101.1(i)) to mean "Customs duties and any internal revenue taxes which attach upon importation". Accordingly, the word "duties" used in the terms "loss of duties", "actual loss of duties", and "potential loss of duties", as defined in proposed § 162.71, includes internal revenue taxes which attach upon importation.

4. Another commenter urged amendment of the definition of the term "mistake of fact" in proposed § 162.71(d) to indicate that an erroneous belief, even though it has legal consequences, is a mistake of fact unless it is caused by the neglect of a legal duty.

This suggestion has not been adopted because a mistake of fact relates only to an erroneous factual belief, whereas the language proposed by the commenter could be construed to mean that an erroneous belief concerning the legal consequences of an act is a mistake of fact.

5. One commenter requested that a definition of the term "customs broker" be added to proposed § 162.71 and that proposed § 162.73 be revised to set forth guidelines governing the assessment of penalties against customs brokers under 19 U.S.C. 1592.

The term "customhouse broker" is defined in § 111.1(b), Customs Regulations (19 CFR 111.1(b)). Customs believes that it would be inappropriate as well as impracticable to set forth in the regulations information relating to the liability of a particular class of persons and firms under 19 U.S.C. 1592. Accordingly, these suggestions are not being adopted. Individual brokers and brokerage firms may obtain advice on any particular aspect of their operations by direct inquiry to Customs. As in other areas, Customs will consider the feasibility and desirability of publishing some guidelines in the future.

Seizures

1. Two commenters urged that proposed § 162.21(a), which states the general seizure authority of Customs officers, should be expanded to set forth specific circumstances under which seizures are authorized or, alternatively, the statutory provisions authorizing seizure should be enumerated. One commenter suggested that the restrictions on seizures enacted in 19 U.S.C. 1592(c)(5) should be set forth in proposed § 162.21(a).

Proposed § 162.21(a) authorizes seizure of property by Customs officers having a reasonable cause to believe that *any* law or regulation enforced by Customs has been violated. Because Customs enforces numerous laws and regulations, many on behalf of other agencies, it would be impracticable to set forth the specific circumstances under which seizures may be made or to enumerate all the various laws. In this regard, under § 162.31, Customs must provide information concerning the seizure, including the law violated, to any person from whom property is seized. Accordingly, these suggestions have not been adopted.

2. One commenter requested revision of proposed § 162.75(d)(1) to require that (i) district directors consider the degree of culpability and nature of the violation in determining the amount of security to be deposited to secure release of seized merchandise, and (ii) the security deposit be limited to an amount equal to the proposed monetary penalty.

Because of the necessity of investigating, verifying, and analyzing all pertinent information prior to any determination of the nature of the violation and culpability of the alleged violator in a seizure case, it would be impracticable to require that such a determination be made prior to release of the seized property. This suggestion, therefore, has not been adopted.

3. A commenter also requested that specific provisions be added to proposed § 162.75(d)(2) for release of seized merchandise to persons acquiring an interest in the merchandise subsequent to its seizure by Customs.

This section provides that the district director may release seized merchandise to "any other person" than the person from whom the merchandise was seized, if the district director is satisfied that the person has a substantial interest in the merchandise and the person submits (i) an agreement to hold the United States and its officers and employees harmless, or (ii) a release from the person from whom the merchandise was seized. These provisions are considered to authorize the release of merchandise to a person who acquired an interest in the merchandise after seizure and, accordingly, Customs does not believe that more detailed procedures are required.

4. A commenter recommended the addition of a provision to proposed § 162.77(b)(1) to require that if a prepenalty notice is issued following a seizure, the notice shall include a statement of the grounds for the seizure, in addition to the classes of information required under the proposed regulations.

The provisions for a prepenalty notice in proposed § 162.77(b)(1) require that the person be furnished with information specified in 19 U.S.C. 1592(b)(1)(A) concerning the alleged violation and proposed penalty. Concerning the grounds for seizure, § 162.31, Customs Regulations (19 CFR 162.31), provides that following a seizure, the person from whom the property is seized shall be given a notice which sets forth all material information, including the grounds for the seizure. Accordingly, it is considered unnecessary that this information be repeated in the prepenalty notice.

Prior Disclosure

1. Proposed § 162.74(d) would require that any person making a prior disclosure of a violation must establish lack of knowledge of any existing formal investigation of the violation by Customs. A commenter requested that this section include a provision that Customs must supply to the person any information in its possession which would tend to establish that the person had knowledge of an investigation, and that the person then be afforded a reasonable opportunity to refute the information.

This request is considered to be inconsistent with 19 U.S.C. 1592(c)(4), which expressly provides that the person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. If Customs does not agree that a valid prior disclosure has been made and the issue is raised in petition for relief, the person of course will be provided with Customs findings of fact and conclusions of law concerning lack of knowledge. For these reasons, this suggestion has not been adopted.

2. Two commenters recommended that proposed § 162.74(g) be revised to increase the amount of loss of duties to the Government which would warrant investigation and a penalty for a violation which is subject to a prior disclosure. The commenters suggested that the amount be increased from $250 to $500.

This recommendation has been adopted. Proposed § 162.74(g) has been revised further to provide that if the violation involves a loss of duties of $500 or less, the district director shall not refer the matter for investigation or establish a penalty case unless there is evidence of fraud.

3. Commenters also requested that the time period provided in proposed §§ 162.76, 162.77, and 162.78, during which persons may make presentations in response to a prepenalty or penalty notice, should be 60 rather than 30 days. Further, it was contended that when a shorter time period is required because less than 1 year remains before the statute of limitations may be asserted as a defense (§ 162.78), the shorter period should not be less than 14 days, rather than 7 days, and the date on which any shorter period shall commence should be the date on which the notice was received by the person, rather than the date on which the notice was mailed by Customs.

Customs considers that the 30-day period for responding to the prepenalty notice is ample in most cases. If at least 1 year remains before the statute of limitations may be asserted as a defense, a district director may extend the time for preparation of a response for any of the reasons stated in § 162.32(a), such as the unavailability of evidence or testimony, or the complexity of legal or factual issues involved.

In cases where less than 1 year remains before the statute of limitations may be asserted, the 7-day period is a minimal time for response, and a district director may provide a longer period if the delay will not prejudice the Government's ability to enforce the claim.

Customs considers it essential to the enforcement of this provision that the period for response commence with the mailing of the notice. However, to improve this situation, § 162.78(a) has been revised to provide that if less than a 30-day period is allowed for response, the district director shall notify the person of the issuance and contents of the prepenalty notice by telephone, if possible.

Penalty Assessment Procedures

1. One commenter requested that proposed § 162.73 be revised to require that before issuing a prepenalty notice, the appropriate Customs officer examine the circumstances surrounding the alleged offense to determine whether the proposed claim should be in an amount less than the maximum penalty amount provided by 19 U.S.C. 1592.

This request has not been adopted because at the time a prepenalty notice must be issued, the district director ordinarily will not have received all of the information necessary to determine whether a claim should be assessed for less than the maximum amount. Of course, a person receiving a prepenalty notice will have an opportunity to present information concerning the amount of any penalty at the time he responds to the notice and before the penalty is assessed.

2. A commenter requested revision of proposed § 162.73(c) to specify that repetition of the same mistake of fact or clerical error, standing alone, would not be held to constitute a pattern of negligent conduct.

Customs considers that adoption of this suggestion would be inappropriate because repeated mistakes or errors do tend to indicate a lack of due care. Of course, the person would have the opportunity to show that the mistakes or errors occurred despite the use of due care.

3. A commenter requested revision of proposed §#162.79 to include a definition of what constitutes prompt notice by the district director of the determination whether a penalty is being assessed in a particular case. It also was requested that any penalty notice state the reasons why arguments in response to the prepenalty notice were not accepted.

Differences in the complexity of penalty cases make it impracticable for the district director to issue a penalty notice in each case within a specified period. Under proposed § 162.79, the district director is required to issue a penalty notice "promptly", given the circumstances of each case. Any written response by the district director to the arguments made in response to the prepenalty notice would be premature in view of the requirement that the person to whom the penalty notice is issued may file a petition for relief and must be provided a written decision on the petition. Accordingly, these suggestions have not been adopted.

4. A commenter suggested that the provisions in proposed § 162.79b for recovery of any actual loss of duties

(withheld duties) should be expanded to set forth more specifically the procedures for deposit of withheld duties.

These provisions implement new 19 U.S.C. 1592(d). Section 1592(d) provides that notwithstanding section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), if the United States has been deprived of lawful duties as a result of a violation of section 1592(a), the appropriate Customs officer shall require that duties be restored, whether or not a monetary penalty is assessed. To state more specifically the procedures for collection of withheld duties under § 162.79b, a provision has been added to § 162.79(b)(2) for payment of withheld duties by a person to whom a penalty notice has been issued. The provision requires that the person deposit or arrange for payment of withheld duties within 30 days of the date of the penalty notice. Similarly, § 162.79b has been revised to provide that if payment of withheld duties is being required from a person to whom a penalty notice is not issued, the district director shall issue a notice of withheld duties to the person concerned. The notice shall contain generally the information which would be included in a penalty notice. The person will be required to deposit or arrange for payment of the withheld duties within 30 days of the date of the mailing of the notice. Any determination by a district director to require a deposit of withheld duties will be subject to review by Customs Headquarters.

Petitions for Relief

1. Commenters urged that decisions of the district director on petitions for relief under § 171.21 should be made subject to review by the regional commissioner or by Customs Headquarters, prior to issuance. As an alternative, it was suggested that the maximum claim which the district director is authorized to mitigate or remit in response to a petition for relief be reduced from $25,000 to $10,000.

These suggestions have not been adopted because they are inconsistent with Customs policy to delegate authority to the level at which it can be most effectively exercised. To limit the authority of field officers to act on petitions for relief as suggested would hamper Customs efforts to promote the prompt disposition of penalties cases.

Existing procedures for review of initial and supplemental petitions for relief contained in Subparts C and D of Part 171, Customs Regulations, provide adequate means for review of initial determinations by district directors on petitions for relief from penalty claims. The administrative processing of penalty assessments and decisions on petitions for relief under 19 U.S.C. 1592 will be monitored carefully by Customs Headquarters to ensure that the assessments and decisions are uniform and reached in a timely manner.

2. A commenter requested that proposed § 171.31 be expanded to indicate the procedure for the dissemination to the general importing public of Customs decisions on petitions for relief.

Decisions on initial and supplemental petitions considered to be precedential in nature or otherwise significant will be published in the weekly *Customs Bulletin* with appropriate deletion of information exempt from disclosure under Part 103 of this chapter. This provision has been added to § 171.31.

Additional Changes

As a result of a further review by Customs of existing and proposed procedures in the areas of fines, penalties, forfeitures, and liquidated damages, the following amendments to the Customs Regulations, although not referred to in the November 16, 1978, notice of proposed rulemaking, have been found to be necessary to implement Pub. L. 95-410:

1. Pub. L. 95-410 amended 19 U.S.C. 1621 to provide that in cases of alleged violations of 19 U.S.C. 1592 arising out of gross negligence or negligence, the statute of limitations may be asserted as a defense in any action brought by the Government more than 5 years after the date the alleged violation was *committed*. Formerly, the statute of limitations could be asserted as a defense in those cases only if the action was brought more than 5 years after the date of *discovery* by Customs of the alleged violation. In view of this new provision, § 162.32(a), Customs Regulations, has been amended to provide that if a penalty is assessed alleging a violation of 19 U.S.C. 1592, and fewer than 180 days remain from the date of the penalty notice before the statute of limitations may be asserted as a defense, the district director may specify in the notice a reasonable period shorter than 60 days, but not less than 7 days, for filing a petition for relief.

2. Under 19 U.S.C. 1613, a person claiming an interest in property which has been forfeited and sold for a violation of the customs laws may apply to the Secretary of the Treasury for remission of the forfeiture and restoration of the proceeds of sale. The application must demonstrate a lack of awareness by the person of the forfeiture proceeding and that the forfeiture was incurred without willful negligence or intent to defraud. The statute sets forth the costs to be deducted in determining the net proceeds available to the person. Provisions for the distribution of restored proceeds to successful applicants currently are set forth in section 162.51, Customs Regulations.

The Act further amended section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), by redesignating its present provisions as section 613(a) and by adding a new section 613(b). This new section provides that if the proceeds of sale of merchandise forfeited under 19 U.S.C. 1592 exceed the sum of (i) the monetary penalty finally assessed and (ii) the expenses incurred in forfeiture and sale as referred to in section 613(a), the excess proceeds shall be refunded to the person against whom the penalty was assessed. Accordingly, Part 162, Customs Regulations, has been amended by adding a new § 162.52 to provide for the refund of any excess proceeds from the sale of merchandise seized and forfeited under 19 U.S.C. 1592. Section 162.52 also includes a listing of the order in which expenses and charges related to forfeiture and sale for violations of 19 U.S.C. 1592 shall be paid out of the proceeds of sale. Similarly, § 162.51 has been amended to provide that expenses and charges shall be paid out of the proceeds of sale in the same order as set out in § 162.52 before refunds can be made.

3. Section 6.11 is amended to make clear that as an alternative to seizure and forfeiture of the aircraft, the owner of any aircraft in violation of section 466, Tariff Act of 1930, as amended (see § 6.7(d)), shall be liable for seizure and forfeiture of a monetary amount up to the value of the aircraft in addition to the civil penalty of $500 provided by § 6.11 for any violation of a Customs requirement prescribed in 19 CFR Part 6.

4. Section 162.31, Customs Regulations, provides that written notice of any fine, penalty, or liability to forfeiture incurred under the laws administered by Customs shall be given to each person the facts of record indicate has an interest in the claim or seized property. The notice must inform each interested person of the provisions concerning the filing of petitions for relief from the claim or forfeiture in Part 171.

In a recent decision, the Ninth Circuit Court of Appeals stated that the filing of a petition for relief from a forfeiture does not of itself excuse the Government from its obligation to commence prompt judicial proceedings, although the parties may agree that judicial action shall be postponed until the conclusion of the administrative action on the petition for relief (*Ivers* v. *United States*, 581 F.2d. 1362 (9th Cir. 1978)). In view of this decision, § 162.31(a) is amended to provide notice that petitioners must file an express agreement to defer judicial or administrative forfeiture action pending resolution of the administrative consideration of the petition. In the absence of such an agreement, cases involving seizures will be referred immediately to the United States attorney for the commencement of forfeiture proceedings or the seized property will be forfeited summarily in accordance with the provisions of Subpart E, Part 162 of this chapter. Reference to this procedural requirement also is being added to § 171.11(d).

5. Section 162.41(c)(1), Customs Regulations, provides that a Customs entry which is the subject of an investigation or penalty action under 19 U.S.C. 1592 may be liquidated by the district director prior to the conclusion of the investigation or final disposition of the forfeiture proceedings or claim for forfeiture value if the district director determines that liquidation would be in the best interest of the Government.

Pub. L. 95-410 added a new section 504 to the Tariff Act of 1930, as amended (19 U.S.C. 1504), to provide that an entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted by the importer, consignee, or his agent at the time of entry. The period for liquidation may be extended or suspended, however, upon notice to the importer, consignee or his agent, and surety if (1) information needed for the proper appraisement or classification of the merchandise is not available to Customs, or (2) the importer, consignee, or his agent requests an extension and shows good cause therefor, or (3) liquidation is suspended as required by statute or court order. Any entry not liquidated after 4 years shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry unless liquidation continues to be suspended by statute or court order, in which event the entry shall be liquidated within 90 days after removal of the suspension.

Accordingly, § 162.41(c) is being amended by redesignating paragraph (c)(1) as (c)(1)(i) and by adding a new paragraph (c)(1)(ii) to refer to the provisions of new section 504 of the tariff act. A provision has been added to redesignated paragraph (c)(1)(i) to provide that the district director's discretionary authority to liquidate during the pendency of a penalty proceeding shall be subject to the provisions of new paragraph (c)(1)(ii).

In addition, "penalty action" has been substituted for "forfeiture proceedings or claim for forfeiture value" in redesignated paragraph (c)(1)(i). Also, a period has been placed after "merchandise" and "in addition to the seizure of the merchandise or demand for forfeiture value." has been deleted in paragraph (c)(2). These revisions reflect the amendment of 19 U.S.C. 1592 by Pub. L. 95-410 to provide for imposing a monetary penalty in addition to forfeiture and in lieu of a claim for forfeiture value and restricting the circumstances under which seizure and forfeiture may take place for violations of 19 U.S.C. 1592.

Editorial Changes

1. The words "at the time of discovery of the violation" have been deleted from proposed § 162.71(a) (1) and (2), because an actual loss of revenue may result after discovery of a violation. In many cases, the violation involves numerous entries at various ports, and liquidation often becomes final through inadvertence or otherwise after discovery of the violation.

2. The word "actual" has been inserted before "loss" where the term "loss of duties" is used in proposed § 162.74(a) and in the heading and the first sentence of proposed § 162.74(e) to clarify that the required tender of duties applies only to the actual loss of duties.

3. The language after "in the discretion of" in proposed § 171.14(b), has been deleted and the following is substituted:

"* * * any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition".

This change has been made because various officials within Customs and the Treasury Department other than those specifically enumerated in the proposed section are authorized to act on petitions and supplemental petitions.

4. A reference to a claim for a "monetary amount" is being added in §§ 162.72 and 162.76 to reflect the alternative to forfeiture of the vessel provided for in section 466, Tariff Act of 1930, as amended by the Act (applied to aircraft by § 6.7(d), Customs Regulations). A conforming change is being made in proposed § 4.80(b)(1).

5. The words "together with a copy of 19 U.S.C. 1584" are deleted from § 162.65(c) to reflect the current practice of Customs to refer to the law violated in the seizure notice rather than to attach a separate copy of the statute itself.

6. Reference to collection action required by the Federal Claims Collection Act of 1966 (31 U.S.C. 951-953) in respect of a penalty or claim for monetary penalty prior to referral of the matter to the United States attorney is being added to §§ 162.32(a), 162.41(b), 162.65(d), 171.32, 172.2(a), and 172.32.

After consideration of all comments received and further review of the proposed amendments, it has been determined that the amendments should be adopted as proposed, except for the changes described.

Inapplicability of Executive Order 12044

This document is not subject to the provisions of the Treasury Department directive (43 FR 52120) implementing E.O. 12044, "Improving Government Regulations", because the document was in the process of preparation before May 22, 1978.

Drafting Information

The principal author of this document was Edward T. Rosse, Regulations and Legal Publications Division, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendments to the Regulations

Parts 4, 6, 10, 123, 162, 171 and 172, Customs Regulations (19 CFR Parts 4, 6, 10, 123, 162, 171 and 172), are amended as set forth below.

R. E. Chasen,
Commissioner of Customs.

Approved: May 23, 1979.

Richard J. Davis,
Assistant Secretary of the Treasury.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Footnote 23 to § 4.12 is amended to read as follows:

§ 4.12 Explanation of manifest discrepancy.

* * * * *

[23] "* * * if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifiest shall be subject to a penalty of $500: *Provided*, That if the appropriate Customs officer shall be satisfied that the manifest * * * is incorrect

by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master said penalties shall not be incurred. * * *. The term 'clerical error' means a non-negligent, inadvertent or typographical mistake in the preparation, assembly, or submission of the manifest. * * *"

(Sec. 584, Tariff Act of 1930, as amended; 19 U.S.C. 1584)

2. The second sentence of § 4.12(a)(5) is amended to read as follows:

(a) * * *

(5) * * * For purposes of this section the term "clerical error" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. * * *

3. Section 4.80 is amended by redesignating present paragraphs (b), (c), (d), (e), (f), and (g) as (c), (d), (e), (f), (g), and (h), respectively, and by inserting a new paragraph (b) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * *

(b) *Penalties for violating coastwise laws.* (1) The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or, in the discretion of the district director, forfeiture of a monetary amount up to the value of the merchandise to be recovered from the consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing the merchandise to be transported (46 U.S.C. 883).

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $200 for each passenger so transported and landed (46 U.S.C. 289).

(R.S. 251, as amended, sections 466, 584, 624, 46 Stat. 718, 748, 759 (19 U.S.C. 66, 1466, 1584, 1624) section 27, 41 Stat. 999, as amended (46 U.S.C. 883), and section 1109, 72 Stat. 799, as amended (49 U.S.C. 1509))

PART 6—AIR COMMERCE REGULATIONS

Section 6.7(h)(5) is amended to read as follows:

§ 6.7 Documents for entry.

* * * * *

(h) * * *

(5) Unless the required notification and explanation are made timely and the district director is satisfied that the discrepancies resulted from clerical error or other mistake and that there has been no loss of revenue (and in the case of a discrepancy not initially reported by the aircraft commander or agent, that there was a valid reason for the failure to so report), applicable penalties under section 584, Tariff Act of 1930, as amended, shall be assessed, except that any penalty involving a manifest discrepancy resulting in an overage shall be $500 (see § 162.31 of this chapter). For purposes of this section, the term "clerical error" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical error or other mistake. The fact that the aircraft commander or owner had no knowledge or a discrepancy shall not relieve him from the penalty.

2. Section 6.11 is amended to read as follows:

§ 6.11 Penalties and forfeitures.

Any person violating any Customs requirement prescribed in this part, or any provision of the Customs laws or regulations made applicable to aircraft by § 6.10, shall be subject to a civil penalty of $500, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the customs laws. As an alternative to seizure and forfeiture of the aircraft, the owner of any aircraft in violation of section 466, Tariff Act of 1930, as amended (see § 6.7(d)), shall be liable for seizure and forfeiture of a monetary amount up to the value of the aircraft in addition to the civil penalty of $500. The penalty and forfeitures may be remitted or mitigated in accordance with the provisions of Part 171 of this chapter.

(R.S. 251, as amended, 624, 46 Stat. 759, 92 Stat. 901 (19 U.S.C. 66, 1466, 1624); sections 904, 1109, 72 Stat. 787, 799, as amended (49 U.S.C. 1474, 1509))

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

The last sentence of § 10.41(d) is amended to read as follows:

§ 10.41 Instruments, exceptions.

* * * * *

(d) * * * The use of any such vehicle, aircraft, or boat without a proper entry having been made may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(R.S. 251, as amended, 624, 592, 46 Stat. 750, as amended, 759 (19 U.S.C. 66, 1592, 1624))

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. Section 123.12(c) is amended to read as follows:

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

* * * * *

(c) *Penalty for improper use.* The use of any foreign locomotive and other foreign railroad equipment in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

2. Section 123.14(d) is amended to read as follows:

§ 123.14 Entry of foreign-based trucks, buses, and taxicabs in international traffic.

* * * * *

(d) *Penalty for improper use.* The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(R.S. 251, as amended, 624, 592, 46 Stat. 750, as amended, 759 (19 U.S.C. 66, 1592, 1624))

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. Section 162.21(a) is amended to read as follows:

§ 162.21 Responsibility and authority for seizures.

(a) *Seizures by Customs officers.* Property may be seized, if available, by any Customs officer who has reasonable cause to believe that any law or regulation enforced by the Customs Service has been violated, by reason of which the property has become subject to seizure or forfeiture. This paragraph does not authorize seizure when seizure or forfeiture is restricted by law or regulation (see, for example, § 162.75), nor does it authorize a remedy other than seizure when seizure or forfeiture is required by law or regulation. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized.

§ 162.31 [Amended]

2. Section 162.31(a) is amended by adding the following at the end thereof:

(a) * * * The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the U.S. attorney for institution of judicial proceedings, or summary forfeiture proceedings will be begun.

* * * * *

3. Section 162.32(a) is amended by revising the first sentence and by adding a new sentence between the first and second sentences to read as follows:

§ 162.32 Where petition for relief not filed.

(a) *Fines, penalties, and forfeitures.* If any person who is liable for a fine, penalty, or claim for a monetary amount, or who has an interest in property subject to forfeiture, fails to petition for relief under Part 171 of this chapter, or fails to pay or to arrange to pay the fine or penalty within 60 days from the mailing date of the violation notice provided in § 162.31 (unless additional time is authorized for filing a petition, as specified below), the district director, after required collection action, if appropriate, shall refer the case promptly to the U.S. attorney unless the Commissioner of Customs expressly authorizes other action. If a penalty is assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), and fewer than 180 days remain from the date of the penalty notice before the statute of limitations may be asserted as a defense, the district director may specify in the notice a reasonable period of time shorter than 60 days, but not less than 7 days, for the filing of a petition for relief. * * *

§ 162.32 [Amended]

4. Section 162.32(b) is amended to read as follows:

* * * * *

(b) *Appraised value of seized property exceeds $10,000.* If the appraised value of seized property exceeds $10,000 and neither a petition for relief in accordance with Part 171 of this chapter, nor an offer to pay the domestic value as provided for in § 162.44, is made within 60 days (unless additional time has been authorized under § 162.32(a)), the district director shall refer the case promptly to the U.S. attorney for the judicial district in which the seizure was made.

5. Paragraph (b) and (c) of § 162.41 is amended to read as follows:

* * * * *

(b) *Claim for domestic value unpaid.* If a claim for domestic value made by the district director is not paid or settled as prescribed in this part or in Part 171 of this chapter, the district director, after required collection action, shall refer the case promptly to the U.S. attorney.

(c) *Liability for duties; liquidation of entries.* (1)(i) When an entry is the subject of an investigation for possible violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the district director, subject to the provisions of paragraph (c)(1)(ii) of this section, may liquidate the entry and collect duties before the conclusion of the investigation of final disposition of the penalty action if he determines that liquidation would be in the interest of the Government.

(ii)(A) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the district director because—

(*1*) Information needed by Customs for the proper appraisement or classification of the merchandise is not available,

(*2*) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extension should be granted, or

(*3*) The 1-year liquidation period is suspended as required by statute or court order.

(B) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(C) The district director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(2) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(3) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

6. The first sentence of § 162.43(b) is amended to read as follows:

§ 162.43 Appraisement.

* * * * *

(b) *Property not under seizure.* The basis for a claim for forfeiture value or for an assessment of a penalty relating to the forfeiture value of property not under seizure is the domestic value as defined in paragraph (a) of this section, except that the value shall be fixed as of the date of the violation. * * *

7. Section 162.51 is amended to read as follows:

§ 162.51 Disposition of proceeds of sale of property seized and forfeited other than under 19 U.S.C. 1592.

(a) *Order of payment of expenses incurred.* (1) *When application for remission and restoration is filed and approved.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), § 171.41 of this chapter authorize the filing of an application for remission of the forfeiture and restoration of the proceeds from the sale of seized and forfeited property. If the application is filed within 3 months after the date of sale and is approved, the proceeds of the sale, or any part thereof, shall be restored to the applicant after deducting the following charges in the order named:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Duties.

(vi) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(2) *When no application for remission and restoration is filed or the application is denied.* If no application for remission and restoration is filed within 3 months after the date of sale of seized and forfeited property, or if the application is denied, the proceeds of the sale shall be disbursed in the following order:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor, except that expenses incurred for Government labor and storage on Government-owned or leased property shall not be included. When the proceeds are insufficient to pay expenses of cartage, storage, and labor fully, they shall be paid pro rata.

(v) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(vi) The residue, if any, shall be deposited with the Treasurer of the United States as a customs or navigation fine.

(b) *Transfer of seized and forfeited property to another Federal agency.* In the event that the seized and forfeited property has been authorized for transfer to another Federal agency for official use, the receiving agency shall reimburse Customs for the costs incurred in moving and storing the property from the date of seizure to the date of delivery.

8. Part 162 is amended by adding a new § 162.52 to read as follows:

§ 162.52 Disposition of proceeds of sale of property seized and forfeited under 19 U.S.C. 1592.

(a) *Order of disposition of proceeds.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), provides for the disposition of the proceeds from the sale of property seized and forfeited under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), as provided for in § 162.75 of this part. Distribution shall be made in the following order:

(1) Internal revenue taxes.

(2) Marshal's fees and court costs.

(3) Expenses of advertising and sale.

(4) Expenses of cartage, storage, and labor. When proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(5) Duties.

(6) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(7) The monetary penalty assessed under 19 U.S.C. 1592.

(8) The remaining proceeds, if any, shall be paid to the appropriate party-in-interest as provided in paragraph (b).

(b) *Determination of appropriate party-in-interest.* (1) If the property is subject to a judicial forfeiture proceeding and if it appears at the time of this proceeding that 2 or more parties claim an interest in the remaining proceeds referred to in paragraph (a)(8), each of the parties shall be joined in the proceeding so that the issue of proper distribution may be determined by the court.

(2) If the property is sold under the summary forfeiture procedure, or if the court has not specified the manner of distribution, the district director shall hold the excess proceeds for 3 months from the date of the sale to allow any party-in-interest to claim the proceeds.

(3) If there is one alleged violator and no petition has been filed for the excess proceeds by another person, the excess proceeds shall be disbursed to the person against whom the penalty was assessed.

(4) If there are 2 or more persons with claims or possible claims to the excess proceeds, the district director shall attempt to obtain a written agreement from the parties as to the distribution. If an agreement cannot be reached, the matter shall be referred to Customs Headquarters for determination.

(c) *Official use of seized and forfeited property.* If the seized and forfeited property has been authorized for official use, its retention or delivery shall be regarded as a "sale" for the purposes of section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613). The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of the type of property involved shall be distributed as provided in paragraphs (a) and (b).

9. The first sentence of § 162.65(c) is amended to read as follows:

162.65 Penalties for failure to manifest narcotic drugs or marihuana.

* * * * *

(c) *Notice and demand for payment of penalty.* A written notice and demand for payment of the penalty for failure to manifest incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be sent to the master of the vessel, or commander of the aircraft, or the person in charge of the vehicle and to the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible. * * *

10. Section 162.65(d) is amended to read as follows:

* * * * *

(d) *Referral to the U.S. attorney.* If the penalty incurred under section 584, Tariff Act of 1930, as amended, is not paid, or a petition is not filed as provided in Part 171 of this chapter, or if payment is not made in accordance with the decision on a petition or a supplemental petition, the district director, after required collection action, shall refer the case to the U.S. attorney.

11. Part 162 is amended by adding a new Subpart G to read as follows:

Subpart G—Special Procedures for Certain Violations

Sec.

Subpart G—Special Procedures for Certain Violations

§ 162.70 Applicability.

(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:

(1) Violations of sections 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and

(2) Except as provided in paragraph (o) of this section, violations of section 922, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which preceedings have commenced after December 31, 1978. For purposes of this subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation—

(1) Involves television receivers that are the products of Japan and were or are the subject to antidumping proceedings (see § 153.46 of this chapter),

(2) Occurred before October 3, 1978, and

(3) Was the subject of a Customs investigation begun before October 3, 1978.

(c) The provisions of Subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise.

§ 162.71 Definitions.

When used in this subpart, the following terms shall have the meanings indicated:

(a) *Loss of duties.* "Loss of duties" means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) *Actual loss of duties.* "Actual loss of duties" means the duties of which the Government has been deprived by reason of the violation in respect of

entries on which liquidation had become final.

(2) *Potential loss of duties.* "Potential loss of duties" means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final.

(b) *Noncommercial importation.* "Noncommercial importation" means merchandise imported by a traveler for an individual's personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(c) *Clerical error.* "Clerical error" means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

(d) *Mistake of fact.* "Mistake of fact" means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to the person, or that he believes something is a fact when in reality it is not. An action is not a mistake of fact if the erroneous belief is caused by the neglect of a legal duty.

§ 162.72 Penalties and forfeitures under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.

(a) *Foreign repairs and equipment purchases; election to proceed.* If the district director has reasonable cause to believe that a violation of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), has occurred, he may elect to proceed against the vessel or aircraft, or against the violator for forfeiture of a monetary amount up to the domestic value of the vessel or aircraft.

(b) *Lack of manifest or discrepancy in manifest.* The penalties for violation of section 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1584(a)(1)), are as follows:

(1) A penalty of $500 against the master of a vessel, the commander of an aircraft, or the person in charge of a vehicle bound to the United States who does not produce the manifest on demand.

(2) A penalty of $500 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a "shortage").

(3)(i) A penalty equal to the lesser of $10,000 or the domestic value of merchandise found on board of or after having been unladen from a vessel or vehicle, or

(ii) A penalty of $500 (see § 6.11, Customs Regulations) if merchandise is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an "overage").

(iii) Unmanifested merchandise beonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

The appropriate of these penalties may be assessed against the master or crew of the vessel, the commander or crew of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§ 4.12(a)(5) and 6.7(h)(5) of this chapter.

§ 162.73 Penalties under section 592, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure.* If the person concerned has not made a prior disclosure as provided in section 162.74, the monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations,

(i) The lesser of the domestic value of the merchandise or four times the loss of duties, or

(ii) If there is no loss of duties, 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations, (i) The lesser of the domestic value of the merchandise or two times the loss of duties, or

(ii) If there is no loss of duties, 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations, (i) One times the loss of duties, or

(ii) If there is no loss of duties, 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under section 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact.* There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of the pattern of negligent conduct.

§ 162.74 Prior disclosure.

(a) *In general.* A prior disclosure is made if the person concerned discloses the circumstances of a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (e) of this section. If a prior disclosure is made, the maximum penalties shall be as set forth in § 162.73(b).

(b) *Referral for investigation.* Any disclosure of a violation shall be referred immediately by the district director to the appropriate field office of the Office of Investigations. Upon completion of its investigation, the field office immediately shall return the disclosure, together with its report, to the district director for appropriate action.

(c) *Commencement of formal investigation.* A formal investigation of a violation is considered to be commenced:

(1) In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosure party and the disclosed information of 19 U.S.C. 1592, on the date the matter was referred to the Office of Investigations;

(2) In the case of referral by an import specialist or other Customs officer of a request for value, classification or other technical investigation, on the date recorded in writing by an investigating agent as the date on which he discovered facts and circumstances which caused him to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information:

(3) In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded on the Memorandum of Information Received, Customs Form 4621, by the Office of

Investigations as the date on which the information was received;

(4) In the case of an ongoing investigation of a possible violation of 19 U.S.C. 1592 not involving the disclosing party and the information disclosed, on the date recorded in writing by an investigating agent as the date on which he discovered facts and circumstances which caused him to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(5) In the case of a general ongoing investigation of a specific class of goods or industry, on the date recorded by the Office of Investigations as the date on which it determined to direct its investigation specifically to the disclosing party and the disclosed information; and

(6) In all other cases, on the date recorded in a Report of Investigation, Customs Form 23, as the date on which an investigator was assigned to investigate possible violations of 19 U.S.C. 1592 by the disclosing party with respect to the disclosed information.

(d) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge.

(e) *Tender of actual loss of duties.* A person who discloses the circumstances of the violation shall tender any actual loss of duties at the time of disclosure, or within 30 days after the district director notifies the person in writing of his calculation of the actual loss of duties. The district director may extend the period if he determines there is good cause to do so.

(f) *Undisclosed violations.* Undisclosed violations discovered by Customs as the result of an investigation of a prior disclosure of another violation shall not be entitled to treatment under the prior disclosure provisions.

(g) *Minor violations.* The district director shall not refer a disclosed violation for investigation or establish a penalty case if:

(1) The disclosed violation involves a loss of duties of $500 or less,

(2) Any actual loss of duties has been deposited,

(3) There is no evidence that the violation was fraudulent, and

(4) There are no other compelling reasons for a penalty proceeding, such as a history of similar violations.

§ 162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.

(a) *When authorized.* Merchandise may be seized for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the district director has reasonable cause to believe that a person has violated the statute and that

(1) The person is insolvent,

(2) The person is beyond the jurisdiction of the United States,

(3) Seizure otherwise is essential to protect the revenue, or

(4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the district director shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise*—(1) *To person from whom seized.* The district director shall return seized mechandise to the person from whom seized upon the deposit of security, in a form acceptable to the district director, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted.

(2) *To others.* The district director may release seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the district director, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted, and if:

(i) The district director is satisfied that the person has a substantial interest in the merchandise, and

(ii) The person submits either an agreement to hold the United States and its officers and employees harmless, or a release from the owner and/or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with Part 171 of this chapter, nor the monetary penalty paid within the time provided by law, the district director immediately shall:

(1) Report the facts to the U.S. attorney for the judicial district in which the seizure was made, if the appraised value of the seized merchandise exceeds $10,000 or

(2) Proceed under the summary forfeiture provisions of Subpart E of this part, if the appraised value does not exceed $10,000.

§ 162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of section 466 or 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim or a claim of forfeiture, as appropriate.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise, if applicable,

(ii) Set forth the details of the error in the manifest, if applicable,

(iii) Specify all laws and regulations allegedly violated,

(iv) Describe all material facts and circumstances which establish the alleged violation, and

(v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed penalty claim or claim of forfeiture, as appropriate.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a penalty claim or claim of forfeiture should not be issued or, if issued and it involves a monetary amount, why it should be in a lesser amount than proposed.

(c) *Exception.* No prepenalty notice shall be issued if the proposed penalty for an alleged violation of 19 U.S.C. 1584(a)(1) is $500 or less.

§ 162.77 Prepenalty notice for violations of section 592, Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), has occurred, and determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to issue a claim for a monetary penalty. The prepenalty notice shall be issued whether or not a seizure has been made.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise,

(ii) Set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or abetting of the entry, introduction, or attempt,

(iii) Specify all laws and regulatons allegedly violated,

(iv) Disclose all material facts which establish the alleged violation,

(v) State whether the alleged violation occured as the result of fraud, gross negligence, or negligence, and

(vi) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued if:

(1) The claim is for $1,000 or less, or

(2) The violation occurred with respect to a noncommercial importation.

§ 162.78 Presentations responding to prepenalty notice.

(a) *Time within which to respond.* Unless a shorter period is specified in the prepenalty notice or an extension is given in accordance with paragraph (b) of this section, the named person shall have 30 days from the date of mailing of the prepenalty notice to make a written and an oral presentation. The district director may specify a shorter reasonable period of time, but not less than 7 days, if less than 1 year remains before the statute of limitations may be asserted as a defense. If a period of fewer than 30 days is specified, the district director, if possible, shall inform the named person of the prepenalty notice and its contents by telephone at or about the time of issuance.

(b) *Extensions.* If at least 1 year remains before the statute of limitations may be asserted as a defense, the district director, upon written request, may extend the time for filing a written presentation, or making an oral presentation, or both, for any of the reasons given in § 162.32(a) relating to extensions of time for filing petitions for relief. Other extensions may be authorized only by Headquarters.

(c) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is the written presentation in response to the prepenalty notice. It should contain answers to the allegations in the prepenalty notice and set forth the reasons why the person believes the claim should not be issued or, if issued, why it should be in a lesser amount than proposed.

(d) *Additional presentations.* In addition to one written and one oral presentation, the district director, in his discretion, may allow further presentations.

§ 162.79 Determination as to violation.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no claim for a monetary penalty will be issued.

(b) *Violation*—(1) *Written notice of claim.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of a claim for a monetary penalty to that person.

(2) *Contents.* The notice of a claim for a monetary penalty shall contain any changes in the information provided in the prepenalty notice, and shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter. If the person to whom the notice is issued is liable for any actual loss of duties recoverable under § 162.79b, the notice shall identify the entries involved, state the amount of duties payable and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days of the date of the notice.

§ 162.79a Other notice.

If no prepenalty notice is issued, a written notice of any monetary penalty incurred shall contain the information required under § 162.76(b)(1) or § 162.77(b)(1), except that the notice shall state the amount of the claim for a monetary penalty. The notice also shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with Part 171 of this chapter.

§ 162.79b Recovery of actual loss of duties.

Whether or not a monetary penalty is assessed under this subpart, the district director shall require the deposit of any actual loss of duties resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties in any case in which a monetary penalty is not assessed or a written notice of claim of monetary penalty is not issued, the district director shall issue a written notice to the person of the liability for the actual loss of duties. The notice shall identify the merchandise and entries involved, state the loss of duties and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days from the date of the notice. Any determination of actual loss of duties under this section is subject to review upon written application to the Commissioner of Customs.

(R.S. 251, as amended (19 U.S.C. 66) sections 466, 584 592, 613, 618, 46 Stat. 718, 748, 750, as amended 757, as amended, 759 (19 U.S.C. 1466, 1584, 1592, 1613, 1618))

PART 171—FINES, PENALTIES, AND FORFEITURES

1. Section 171.1 is amended by adding a new paragraph (c) to read as follows:

§ 171.1 Special procedures for certain liabilities incurred under section 592, Tariff Act of 1930, as amended.

* * * * *

(c) *Exceptions.* The provisions of this section do not apply to violations referred to in § 162.70(a)(2) of this chapter.

§ 171.11 [Amended].

2. Section 171.11(d) is amended by adding a new sentence at the end thereof to read as follows:

* * * * *

* * * The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the United States attorney for institution of judicial proceedings, or summary forfeiture proceedings will be begun.

* * * * *

3. Part 171 is amended by adding a new § 171.14 to read as follows:

§ 171.14 Oral presentations seeking relief.

(a) *For certain violations.*—(1) *Right to make oral presentation.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the person named in the notice also 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 a claim for a monetary penalty.

(2) *Prerequisites.* The person shall be given a reasonable opportunity to make an oral presentation provided that a petition has been filed under § 171.12, and that the petition contains a request to present orally the reasons for remission or mitigation of the penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discertion of the district director, regional commissioner, or Commissioner whenever a petition or supplemental petition is under his consideration.

4. § 171.22(a) is amended to read as follows:

§ 171.22 Special cases acted upon by district director.

(a) *Merchandise illegally transported coastwise.* A forfeiture of merchandise or a claim for forfeiture of a monetary amount under title 46, United States Code, section 883, for illegally transporting merchandise coastwise, may be remitted by the district director, regardless of the value of the merchandise or the amount of the penalty, if the petition for relief establishes to the satisfaction of the district director that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

5. Part 171 is amended by adding a new section 171.31a to read as follows:

§ 171.31a Written decision.

If a petition or supplemental petition (see section 171.33) for relief relates to a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, 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. Decisions on initial or supplemental petitions which are considered to be precedential in nature or otherwise significant will be published in the weekly CUSTOMS BULLETIN with appropriate deletion of information exempt from disclosure under Part 103 of this chapter. For purposes of this section, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

§ 171.32 [Amended]

6. Section 171.32 is amended by revising the second sentence thereof to read as follows:

* * * If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full penalty or claim of forfeiture shall be deemed applicable and shall be enforced by promptly referring the matter, after required collection action, if appropriate, to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

(R.S. 251, as amended (19 U.S.C. 66), section 592, 46 Stat. 570, as amended (19 U.S.C. 1592), section 27, 41 Stat. 99, as amended (46 U.S.C. 883))

PART 172—LIQUIDATED DAMAGES

1. Section 172.2 is amended to read as follows:

§ 172.2 Failure to petition for relief.

(a) *Referral of claim to United States attorney.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 60 days from the date of mailing of the notice of the liquidated damages incurred, as provided in section 172.1, or within such additional time as may have been granted, the district director of Customs, after required collection action, shall refer the claim promptly to the United States attorney.

§ 172.32 [Amended]

2. Section 172.32 is being amended by revising the second sentence thereof to read as follows:

* * * If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full claim for liquidated damages shall be deemed applicable and, after required collection action, shall be referred promptly to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

(R.S. 251, as amended (19 U.S.C. 66), sections 623, 624, 46 Stat. 759, as amended (19 U.S.C. 1623, 1624))

[FR Doc. 79-17245 Filed 6-1-79; 8:45 am]

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[T.D. 79-159]

19 CFR Parts 10, 11, 18, 19, 54, 111, 112, 133, 134, 148, 151, 162

Recordkeeping, reporting by customhouse brokers, trademarks, and the disposition of forfeited distilled spirits, wines, and malt liquor, amended

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978" ("the Act"), made numerous changes to the Tariff Act of 1930. One significant change was to require that records of the type normally kept in the ordinary course of business be made pertaining to the importation of merchandise and furnished to Customs, upon request, for examination and inspection. The Act also required licensed customhouse brokers to file a status report with Customs on specified dates. In addition, the Act modified the procedures relating to the importation, seizure, and disposal of articles having a U.S.-registered trademark, and the disposal of imported liquor forfeited to the Government.

This document amends various parts of the Customs Regulations to reflect these changes and to specify how long certain records must be retained by the public for possible Customs examination and inspection.

The regulations also are being amended to reflect the administrative practice of granting, for good cause, an extension of time in which an importer may comply with the country of origin marking requirements for imported merchandise or redeliver to Customs improperly marked merchandise.

EFFECTIVE DATE: July 5, 1979.

FOR FURTHER INFORMATION CONTACT: The following individuals at the U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229:

Allard D'Heur, Inspection and Control Division (202-566-5354) (Amendments to sections 10.62, 18.7, 112.29, Customs Regulations); Marcus Sircus, Regulatory Audit Division (202-566-2812) (Amendments to sections 10.24, 10.90, 19.16, 54.6, 148.90, 151.44, Customs Regulations);
Bob Gray, Duty Assessment Division (202-566-5307) (Amendment to section 54.6,