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Kenneth F. Plumb,  
Secretary.

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## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Parts 111 and 141

[T.D. 84-93]

#### Customs Regulations Amendments Concerning Powers of Attorney

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations relating to powers of attorney. The document: (1) Eliminates the requirement that powers of attorney required for resident corporations be supported by a certificate showing the authority of the person who executed the power of attorney; (2) reduces the documentation required in support of powers of attorney executed by nonresident corporations; (3) eliminates the requirement that powers of attorney for sealed documents be under seal; and (4) changes several sections of the regulations to conform with a section which states that powers of attorney for customhouse brokers are not required to be filed with the district director of Customs.

**EFFECTIVE DATE:** May 25, 1984.

#### FOR FURTHER INFORMATION CONTACT:

Jerry Laderberg, Entry, Licensing and Restricted Merchandise Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

#### SUPPLEMENTARY INFORMATION:

##### Background

A power of attorney (a legal instrument authorizing another to act as one's agent or attorney) may be executed for the transaction by an agent or attorney of a specified part or all of the Customs business of the principal. Sections 141.31 through 141.46, Customs Regulations (19 CFR 141.31-141.46), pertain to powers of attorney. The power of attorney may be executed on Customs Form 5291, or as otherwise provided in § 141.32, Customs Regulations.

Customs has reviewed its regulations relating to powers of attorney, and has concluded that certain requirements

may be eliminated or simplified. A notice, which was published in the Federal Register on March 22, 1983 (48 FR 11955), proposed to amend the Customs Regulations by: (1) Eliminating the requirement that powers of attorney required for resident corporations be supported by a certificate showing the authority of the person who executed the power of attorney; (2) reducing the documentation required in support of powers of attorney executed by nonresident corporations; (3) eliminating the requirement that powers of attorney for sealed documents be under seal; and (4) amending several sections of the regulations to conform with a section which states that powers of attorney for customhouse brokers are not required to be filed with the district director of Customs.

#### Discussion of Comments

In response to the notice, Customs received nine comments, most of which supported the proposed changes.

Two commenters recommend that § 141.37 be eliminated entirely since it requires information which is unnecessary and which creates an impediment to obtaining powers of attorney from nonresident corporations. One commenter suggests the addition of a sentence to § 141.37 in order to intermesh § 141.37 with § 141.18. Customs agrees that the requirement of proposed § 141.37(a) is unnecessary and amended § 141.37 does not include that requirement. Amended § 141.37 contains the requirement of proposed § 141.37(b) that a power of attorney executed by a nonresident corporation shall be supported by documentation establishing the authority of the grantor to execute such a power of attorney on behalf of the corporation, but that requirement will only be operative when the nonresident corporation has not qualified to conduct business under state law in the state in which Customs district the agent is empowered to act.

One commenter believes that the requirement of a certificate of authority in § 141.38 should be retained. He believes that it is inconsistent to eliminate such a requirement in § 141.38, and to keep the requirements of § 113.34 (c) and (d), Customs Regulations (19 CFR 113.34 (c), and (d)), relating to the execution of bonds. Customs believes that the requirement of a certificate of authority in § 141.38 is unnecessary, and, as was proposed, that requirement is eliminated. The notice did not pertain to § 113.34; Customs is considering changes to § 113.34 (c) and (d) in another regulatory project.

The same commenter recommends against the adoption of proposed

§ 111.3(b)(1), Customs Regulations, which provides that a broker is not required to file with Customs a power of attorney authorizing the broker's employee to sign Customs documents on his behalf. The commenter states that this change would work to the detriment of Customs operation. Customs disagrees that the proposal would adversely effect its operation. In fact, Customs believes that its goals of administration and facilitation are better served by adoption of the proposal.

One commenter states that § 141.34 should be amended to provide that powers of attorney for partnerships may be granted for an indefinite period, rather than a maximum of two years. Customs disagrees. The two-year limit is necessary for partnerships because by their very nature, they may be easily dissolved under certain circumstances.

One commenter suggests that § 141.35 be amended to provide that it is not necessary for a principal to notify Customs of the revocation of a power of attorney granted to a broker. Customs disagrees. The better policy is to have the district directors notified of the revocation of all powers of attorney.

Two commenters address the Customs Form 5291 used for the power of attorney, as referenced in § 141.32. One of those commenters suggests a simpler format for powers of attorney; the second commenter suggests that § 141.32 be amended to provide that a power of attorney may include additional authority to that stated on the Customs Form 5291. As the proposal did not specifically address this matter, Customs has decided to proceed with the amendments proposed in the notice and to take the matter of the form and § 141.32 under further study. If it is determined that the form should be revised or that additional amendments are needed, another notice will be published in the Federal Register.

#### Executive Order 12291

Because this document will not result in regulations which will be "major rules" as defined in section 1(b) of E.O. 12291, a regulatory impact analysis as prescribed by section 3 of the E.O. is not required.

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these regulations, because they will not have a significant economic impact on a substantial number of small entities. The regulations are not expected to have

significant secondary or incidental effects on a substantial number of small entities, or to impose or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the regulations will not have a significant economic impact on a substantial number of small entities.

#### Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### List of Subjects

##### 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports.

##### 19 CFR Part 141

Customs duties and inspection, Imports.

#### Amendments to the Regulations

Parts 111 and 141, Customs Regulations (19 CFR Parts 111 and 141), are amended as set forth below.

William von Raab,

Commissioner of Customs.

Approved: April 6, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

#### PART 111—CUSTOMHOUSE BROKERS

Section 111.3(b)(1) is revised to read as follows:

##### § 111.3 Transactions for which license is not required.

(b) *As employee of brokers.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(1) *Authorized to sign Customs documents.* The broker has authorized the employee to sign Customs documents on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the district director, but shall provide proof of its existence to Customs upon request. Only employees who are residents of the United States may be authorized to sign Customs documents;

or

(R. S. 251, as amended, sec. 484, 46 Stat. 722, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1484, 1624))

#### PART 141—ENTRY OF MERCHANDISE

1. Section 141.31 is amended by removing paragraph (b).

2. Section 141.34 is revised to read as follows:

##### § 141.34 Duration of power of attorney.

Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of execution. All other powers of attorney may be granted for an unlimited period.

3. Section 141.36 is amended by removing the word "filed" and inserting in its place the word "executed".

4. Section 141.37 is revised to read as follows:

##### § 141.37 Additional requirements for nonresident corporations.

If a nonresident corporation has not qualified to conduct business under state law in the state in which Customs district the agent is empowered to perform the delegated authority, the power of attorney shall be supported by documentation establishing the authority of the grantor designated to execute the power of attorney on behalf of the corporation.

5. Section 141.38 is revised to read as follows:

##### § 141.38 Resident corporations.

A power of attorney shall not be required if the person signing Customs documents on behalf of a resident corporation is known to the district director to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized to do so.

6. Section 141.39(a) is revised to read as follows:

##### § 141.39 Partnerships.

(a) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of a partnership may execute a power of attorney in the name of the partnership for the transaction of all of its Customs business.

(R. S. 251, as amended, sec. 484, 46 Stat. 722, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1484, 1624))

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#### 19 CFR Part 171

[T.D. 84-92]

#### Customs Regulations Amendment Relating to Petitions for Relief From Certain Seizures

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations relating to evidence required with petitions for relief from certain seizures. The amendment: (1) Expands the regulations to cover certain situations where the petitioner was not in possession of the seized property at the time of the seizure; (2) requires certain additional evidence in petitions for relief from such seizures; and (3) gives examples of the types of evidence that will be considered in determining the relief that the petitioner is to be afforded.

These changes are necessary to make the pertinent regulation more complete, and so that petitioners cannot obscure any involvement in or knowledge of the acts or omissions which may have resulted in a violation of law.

**EFFECTIVE DATE:** May 25, 1984.

**FOR FURTHER INFORMATION CONTACT:** Harriett Blank, Miscellaneous Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5746).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 596, Tariff Act of 1930, as amended (19 U.S.C. 1595a), among other seizure provisions enforced by Customs, provides for the seizure and forfeiture of vessels, vehicles, aircraft and other conveyances used in the entry of any article into the United States contrary to law. Section 162.22(a), Customs Regulations (19 CFR 162.22(a)), similarly provides for the seizure of conveyances. Section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), provides that the Secretary of the Treasury may remit or mitigate, upon such terms and conditions as he deems reasonable and just, any fine, penalty, or forfeiture, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify remission or mitigation. Subpart B of Part 171, Customs Regulations (19 CFR Subpart B, Part 171), pertains to petitions for remission or mitigation of fines, penalties, and forfeitures. Section 171.13,

Customs Regulations (19 CFR 171.13), provides that additional evidence is required with petitions for relief when: (1) the party who was responsible for or caused the act which resulted in the seizure is a party other than the petitioner; or (2) the petitioner holds a chattel mortgage or a conditional sales contract on the seized property.

As set forth in a notice of proposed rulemaking published in the Federal Register on August 17, 1983 (48 FR 37227) this amendment expands § 171.13 to: (1) Cover certain other situations (long-term lease agreements, voluntary bailments and straw purchase transactions) where the petitioner was not in possession of the seized property at the time of the seizure; (2) require certain other additional evidence in petitions for relief; and (3) give examples of the types of evidence that will be considered in determining the relief that the petitioner is to be afforded.

#### Explanation of Changes

Specifically, several changes to § 171.13 are involved. Both subparagraphs (a) and (b) of the section, relating to the various types of evidence the petitioner must present, have been changed from paragraph form to numbered phrases. The content however, has remained the same except for two changes. First, in subparagraph (a), relating to a situation in which the party who was responsible for or caused the act which resulted in the seizure is a party other than the petitioner, the fourth category of evidence required is deleted. That situation related to the case of a family member having an interest in property seized while in possession of another family member. The provision required evidence to be submitted that the petitioning family member did not know or have reason to know that the property was likely to be used in the act which resulted in the seizure.

In lieu of the foregoing, the amendment will require evidence that, with respect to a seized transporting conveyance, the petitioner took reasonable steps to prevent the conveyance from being used in violation of Customs laws or other laws of the United States. Second, subparagraph (b), which relates to the situation in which the petitioner holds a chattel mortgage or a conditional sales contract on the seized property, a third category of evidence will be required. The petitioner must now provide evidence that at no time did it have any

knowledge or reason to believe that the owner of the beneficial interest in the property had a criminal record or general reputation for commercial crime.

The document also adds new subparagraphs (c) through (g) to § 171.13. Subparagraphs (c) through (e) cover certain other situations similar to subparagraphs (a) and (b) when the petitioner was not in possession of the seized property at the time of the seizure. These new provisions are controlled by the same additional evidence required in subparagraph (b). Specifically, subparagraph (c) relates to long-term lease agreements when a petitioner leases property on a long-term basis to another with the right to sublease and the property is later seized. Subparagraph (d) relates to voluntary bailments when a petitioner, who is not in the business of lending money secured by property or of renting property for profit, allows another to use the property without cost and the property is later seized. Subparagraph (e) relates to straw purchase transactions when a petitioner is a lienholder and a person purchases property in his own name from the petitioner for another who has a criminal record or general reputation for commercial crime and the petitioner knows or has reason to believe that the purchaser of record is not the real purchaser. Subparagraph (f) contains some examples of the types of evidence that will be considered when determining whether the petitioner is entitled to relief from the forfeiture of a seized transporting conveyance. The types of evidence listed relate to how thoroughly the petitioner investigated the individual who was in possession of the transporting conveyance when it was seized. Finally, subparagraph (g) relates to a denial of relief for the petitioner when he fails to furnish adequate evidence as required by the foregoing provisions or when remission would be inimical to the interests of justice.

These changes are necessary to make the regulation more complete, and prevent petitioners from obscuring any involvement they may have in, or knowledge they have of, the acts or omissions which may have resulted in a violation of law.

#### Discussion of Comment

Only one comment was received in response to the notice of August 17, 1983. The commenter suggested that if the owner is not in possession of the conveyance at the time of a violation, the conveyance is used for any

commercial purpose (other than as a common carrier), and the conveyance is used under circumstances which do not involve a long-term lease agreement, voluntary bailment, or straw purchase transaction, such a conveyance would not be covered by the amendment. Customs disagrees with the commenter's position and feels that such circumstances would be covered.

Accordingly, the changes are adopted as proposed.

#### Executive Order 12291

Because the amendment does not meet the criteria for a "major rule", as defined by section 1(b) of E.O. 12291, the regulatory impact analysis prescribed by section 3 of the E.O. is not required.

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment because the rule will not have a significant economic impact on a substantial number of small entities. The amendment is not expected to have significant secondary or incidental effects on a substantial number of small entities, or to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

#### Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings (202-566-8237). However, personnel from other Customs offices participated in its development.

#### List of Subjects in 19 CFR Part 171

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

#### Amendments to the Regulations

Part 171, Customs Regulations (19 CFR Part 171), is amended as set forth below.

William von Raab,

Commissioner of Customs.

Approved: April 6, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

**PART 171—FINES, PENALTIES, AND FORFEITURES**

Section 171.13, Customs Regulations (19 CFR 171.13), is revised to read as follows:

**§ 171.13 Additional evidence required with certain petitions.**

(a) *Seized property in possession of another responsible for act.* If the seized property was in the possession of another who was responsible for or caused the act which resulted in the seizure, the petitioner shall present the following evidence, as applicable:

(1) Evidence as to the manner in which the property came into the possession of such other person;

(2) Evidence that before parting with the property the petitioner did not know, or have reasonable cause to believe, that the property would be used to violate customs laws or other laws of the United States;

(3) Evidence that the petitioner did not know, or have reasonable cause to believe, that the violator had a criminal record or general reputation for commercial crime; and

(4) Evidence that, with respect to a seized transporting conveyance, the petitioner took reasonable steps to prevent the conveyance from being used in violation of the customs laws or other laws of the United States.

(b) *Petitioner holding chattel mortgage or conditional sales contract.* A petitioner holding a chattel mortgage or conditional sales contract covering the seized property shall submit with his petition evidence showing that:

(1) He has an interest in such property, as owner or otherwise, which he acquired in good faith;

(2) He had at no time any knowledge or reason to believe that the property was being or would be used in violation of the customs laws or other laws of the United States; and

(3) He had at no time any knowledge or reason to believe that the owner of the beneficial interest in the property had a criminal record or general reputation for commercial crime.

(c) *Long-term lease agreements.* A lessor who leases property on a long-term basis with the right to sublease shall submit with his petition evidence in accordance with paragraph (b) of this section.

(d) *Voluntary bailments.* A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall submit with his petition evidence in accordance with paragraph (b) of this section. Property belonging to one family member which is seized from

another is property subject to a voluntary bailment within the meaning of this subsection.

(e) *Straw purchase transactions.* If a person purchases in his own name property for another who has a criminal record or general reputation for commercial crime, and if a lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, the lienholder shall submit with his petition evidence in accordance with paragraph (b) of this section as to both the purchaser of record and the real purchaser.

(f) *Evidence to be considered in determining extent of mitigation with respect to transporting conveyances.* Listed below are some examples of the types of evidence that will be considered in determining whether the petitioner is entitled to relief from the forfeiture of a seized transporting conveyance. This list is not all-inclusive; Customs officers may consider other similar types of evidence in making their determination.

(1) Whether the petitioner asked the person taking possession of the property whether he had a criminal record;

(2) Whether the petitioner asked for and was provided with business or financial references;

(3) Whether the petitioner asked for and was provided with personal references;

(4) Whether the petitioner contacted the references to confirm the reliability and good reputation of such person;

(5) Whether an agreement was reached between the petitioner and the person taking possession that the property would be used only in accordance with law; and

(6) Whether the petitioner contacted Federal, State or local law enforcement authorities as to the criminal record or reputation of the person taking possession. Information from a Federal law enforcement agency may require a waiver of the Privacy Act from the person who is the subject of the request.

(g) *Denial of relief.* The failure to furnish adequate evidence as required by this section may be a basis for denial of relief. Relief may also be denied to a petitioner who has met the applicable criteria, but with respect to whom remission would be inimical to the interests of justice.

(R.S. 251, as amended, sec. 618, 46 Stat. 757, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1618, 1624))

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[A-VI-FRL-2570-6]

**Approval of Implementation Plans Oklahoma; Regulation 3.4—Control of Emission of Sulfur Compounds**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rulemaking.

**SUMMARY:** This notice approves a revision to Oklahoma Air Pollution Control Regulation 3.4—Control of Sulfur Compounds which was submitted by the Governor on May 19, 1983.<sup>1</sup> The revision was adopted by the Oklahoma State Department of Health on May 12, 1983. On October 14, 1983, the Oklahoma State Department of Health submitted a letter stating that the change to subsection 3.4(c)(1)(C)(i)(a)—Sulfur Recovery Plants—Natural Gas Processing is a clarification of the original intent of the regulation.

**EFFECTIVE DATE:** This action will be effective on June 25, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Incorporation by reference material is available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street, NE., Washington, D.C. Rm. 8401

Environmental Protection Agency, Public Information Reference Unit, EPA Library Rm. 2404, 401 M. Street, SW., Washington, D.C. 20460

Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270

Oklahoma State Department of Health, 1000 Northeast 10th Street, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Griffith, State Implementation Plan Section, Environmental Protection Agency, Region 6, Air and Waste Management Division, Air Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-9853.

**SUPPLEMENTARY INFORMATION:** On May 19, 1983, the Governor of Oklahoma submitted a revision to Regulation 3.4—Control of Emission of Sulfur Compounds. The revision changes

<sup>1</sup> EPA review of Oklahoma State Implementation Plan revision to Regulation 3.4—Control of Emission of Sulfur Compounds.