

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.33 [Amended]

2. Section 73.33 is amended as follows:

R-3302 Savanna, IL [Amended]

By adding the following: "Controlling agency, FAA, Chicago ARTCC."

Issued in Washington, DC, on November 2, 1994.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-27911 Filed 11-9-94; 8:45 am]

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14 CFR Part 73

[Airspace Docket No. 94-AGL-22]

Amendment to Using Agency for Restricted Areas R-3403A, B, and C; Jefferson Proving Ground, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for Restricted Areas R-3403A, B, and C, from "Commanding Officer, Jefferson Proving Ground, Madison, IN" to "Adjutant General, Indiana National Guard." This is an administrative change initiated by the U.S. Army due to decisions of the Base Realignment and Closure Commission. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT:

Robert Kadechka, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7683.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R-3403A, B, and C, Jefferson Proving Ground, IN, from "Commanding Officer, Jefferson Proving Ground, Madison, IN" to "Adjutant General, Indiana National Guard." This is an administrative change initiated by the U.S. Army due to decisions of the Base Realignment and Closure Commission. There are no

changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.34 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action changes the using agency of the restricted areas. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.34 [Amended]

2. Section 73.34 is amended as follows:

R-3403A Jefferson Proving Ground, IN [Amended]

By removing "Using agency, Commanding Officer, Jefferson Proving Ground, Madison, IN." and substituting the following: "Using agency, Adjutant General, Indiana National Guard."

R-3403B Jefferson Proving Ground, IN [Amended]

By removing "Using agency, Commanding Officer, Jefferson Proving Ground, Madison, IN." and substituting the following: "Using agency, Adjutant General, Indiana National Guard."

R-3403C Jefferson Proving Ground, IN [Amended]

By removing "Using agency, Commanding Officer, Jefferson Proving Ground, Madison, IN." and substituting the following: "Using agency, Adjutant General, Indiana National Guard."

Issued in Washington, DC, on November 2, 1994.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-27910 Filed 11-9-94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 94-90]

Technical Corrections to the Customs Regulations Relating to Customs Modernization

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections necessitated by one of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, which went into effect when signed on December 8, 1993. The changes involve the time period that Customs must retain goods seized for certain intellectual property violations before the goods can be sold.

EFFECTIVE DATE: November 10, 1994.

FOR FURTHER INFORMATION CONTACT:

George F. McCray, Intellectual Property Rights Branch, at 202-482-6960.

SUPPLEMENTARY INFORMATION:

Background

The Customs Modernization provisions contained in Title VI of the North American Free Trade Agreement Implementation Act of 1993, Public Law 103-182, 107 Stat. 2057 (the NAFTA Act), went into effect when the NAFTA

Act was signed on December 8, 1993 (section 692 of the NAFTA Act). One of the changes effected by this legislation was an amendment to 19 U.S.C. 1526(e)(3), which involves the time period for retention of goods seized by Customs for certain intellectual property rights violations. Section 663 of the NAFTA Act amended 19 U.S.C. 1526(e)(3) to allow Customs to sell merchandise bearing a counterfeit trademark at a public auction 90 days after the forfeiture of the merchandise if Customs has determined that a need for the merchandise has not been established by any federal, state, or local government or eleemosynary institution. Prior to this amendment, the statute had required Customs to wait more than one year before the sale of the merchandise by appropriate Customs officers.

As a result of the changes in 19 U.S.C. 526(e)(3), corresponding changes are required in the Customs Regulations, in § 133.52(c)(3) (19 CFR 133.52(c)(3)).

Discussion of Changes

In 19 CFR 133.52(c)(3), the time period is changed from "one year" to "90 days," and the entity responsible for the sale is changed from "the Commissioner or his designee" to "the Customs Service."

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law, pursuant to 5 U.S.C.(a)(2) and (b)(3)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with the requirement for a delayed effective date, under 5 U.S.C. (a)(2) and (d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 133

Copyright, Customs duties and inspection, Imports, Reporting and

recordkeeping requirements, Trade names, Trademarks.

Amendments to the Regulations

Part 133 of the Customs Regulations (19 CFR Part 133) is amended as set forth below:

PART 133—TRADEMARK, TRADE NAMES AND COPYRIGHTS

1. The general authority citation for Part 133 continues to read and specific authority for § 133.52 is added to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Section 133.52 also issued under 19 U.S.C. 1526;

* * * * *

§ 133.52 [Amended]

2. Section 133.52(c)(3) is amended by removing the words "1 year" in the first sentence and adding in their place "90 days"; and removing the words "Commissioner or his designee" wherever they appear and adding in their place the words "Customs Service".

George J. Weise,
Commissioner of Customs.

Approved: October 24, 1994.

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

[FR Doc. 94-27906 Filed 11-9-94; 8:45 am]
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19 CFR Part 171

(T.D. 94-89)

Penalty Guidelines Applicable to Transshipped Textiles and Textile Products

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

SUMMARY: This document amends the revised penalty guidelines pertaining to section 592 of the Tariff Act of 1930, as amended, by adopting the interim rule that added, as an example of an aggravating factor in arriving at a final administrative penalty decision, violations involving the illegal importation and entry of transshipped textiles and textile products. This amendment will enhance the U.S. textile import program and other programs or laws administered or enforced by Customs which involve a determination of the country of origin of imported merchandise.

DATES: Final rule is effective on November 10, 1994. This final rule is

applicable to all textiles and textile products entered or withdrawn from warehouse for consumption, on or after, November 10, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch, Office of Regulations and Rulings (202-482-6950).

SUPPLEMENTARY INFORMATION:

Background

Customs is confronted with a continuing problem involving textiles and textile products which, after exportation from their country of origin, are transshipped through a second country, thereby facilitating a false or otherwise unlawful statement, act, or omission regarding the country of origin of the merchandise when ultimately imported and entered in the United States. Such statements, acts or omissions may impinge on a number of programs or laws administered or enforced by Customs, including country of origin marking requirements, textile quota limitations and visa requirements under the U.S. textile import program, duty assessment and collection, and collection of trade statistics. The consequences of such unlawful statements, acts or omissions may include interference with the consumer's right to make an informed decision regarding a prospective purchase, undermining of bilateral and multilateral textile agreements to which the United States is a party and with resulting injury to domestic producers of textiles and textile products, loss of revenue, and inability to maintain proper trade statistics to support overall U.S. trade policy and analysis.

Under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), a penalty may be assessed against any party who has committed fraud, gross negligence or negligence in connection with the unlawful entry of any merchandise in the United States, including textiles and textile products that have been transshipped in the circumstances described above. Provisions relating to the filing of petitions, and action upon petitions, for relief from fines, penalties and forfeitures incurred under laws administered by Customs, including penalties under section 592, are set forth in Part 171 of the Customs Regulations (19 CFR Part 171). Appendix B to Part 171 sets forth Revised Penalty Guidelines under section 592. Although Appendix B is not intended to have regulatory effect, it represents the official Customs position regarding the standards that are generally applicable to the administrative review of petitions

for remission or mitigation of penalties incurred under section 592. Appendix B includes, in section (G), certain factors that may be determined by Customs to be aggravating factors in arriving at a final administrative penalty decision. Appendix B is currently undergoing review within Customs with a view to publication of a proposed revision of those guidelines, with opportunity for public comment, in the near future.

Notwithstanding the upcoming revision of Appendix B to Part 171 and the intended solicitation of public comments thereon, Customs determined that immediate action should be taken in a penalty mitigation context to address the textile and textile products transshipment problem described above. Customs notes that transshipments have resulted in material false statements, acts or omissions regarding the country of origin of the imported merchandise, including false designations of origin. Consequently, it is Customs position that transshipment must be susceptible to treatment as an aggravating factor in arriving at a final mitigated section 592 penalty decision under Part 171 of the regulations.

On March 30, 1994, Customs published as T.D. 94-29 an interim rule in the *Federal Register* (59 FR 14745) to amend section (G) of Appendix B to Part 171 by adding a reference to "transshipment in the case of textiles and textile products affecting a country of origin determination" as an aggravating factor. Although this change was effective for merchandise entered, or withdrawn from warehouse for consumption, on or after April 1, 1994, Customs stated that it would consider any comments submitted.

Customs received eleven comments in response to the interim rule. The comments received, and Customs responses to them, where appropriate, are set forth below.

Comment Analysis

The comments received ostensibly fell into two categories: those unequivocally endorsing the interim rule as written (three comments); and those opposing the interim rule or seeking to limit its application (eight comments).

Comments Supporting the Interim Rule

The three commenters supporting the interim rule expressed concern over Customs ability to combat transshipment resulting in an unlawful entry of textiles and textile products, and were of the opinion that the interim rule, as written, would serve as a useful deterrent to such unlawful practices.

Comments Opposing the Interim Rule

Regarding the eight commenters opposing the interim rule or seeking to limit its application, three claimed that the interim rule unfairly discriminated against textile importers by holding such importers to a higher standard of care than that required of parties importing other merchandise. Two of these three commenters indicated that it was illogical for Customs to consider the act of transshipment an aggravating factor when, in fact, the act of transshipment constitutes the violation in question or, at least, an element of the violation. Put another way, these two commenters were of the opinion that aggravating factors cannot constitute the violation in question. Otherwise, according to one of these commenters, undervaluation logically would have to be an aggravating factor in cases involving understatement of value.

Two other commenters stated that the interim rule should be limited in its application to those instances where the importer had actual knowledge of the improper transshipment of the textile products at issue.

Regarding the remaining three commenters fully opposed to the interim rule, they objected on the basis that the rule constituted the imposition of unfair additional penalties and that mitigation in such cases would become meaningless. These commenters felt that existing guidelines were adequate and that the interim rule was not in keeping with the spirit of the recently enacted Customs Modernization Act. One of these commenters also expressed concern that the rule would permit Customs to raise the assessed penalty in cases involving transshipment. Finally, one of the commenters indicated that rules such as the interim rule have forced the closure of his apparel importing company.

Customs Response

Customs acknowledges the concerns expressed by those commenters opposed to the interim rule on the basis that the rule discriminates against textile importers, but the importing community and domestic industry must, in Customs opinion, acknowledge the dilemma faced by the agency, namely, balancing the interests of the importer against the explosion of illegal transshipments to the United States. Aside from the obvious negative impact such shipments can have on domestic industry, illegally transshipped goods deceive U.S. consumers regarding the country of origin of imported merchandise, as well as distort the application of bilateral agreements with

our trading partners. When faced with similar situations, Customs has had to take enforcement actions which focus on specific commodities or types of merchandise. In effect, the interim rule provides a warning to textile importers about the threat of illegal transshipment and suggests that such importers take extra pre-importation measures to ensure the accuracy of the country of origin of the products in question.

Contrary to some commenters' views, it is clear that these textile transshipments do not, *per se*, constitute a violation of section 1592. Such transshipments may, or may not, result in false statements concerning the country of origin on entry documents, or goods being falsely marked with an incorrect country of origin. Consequently, a violation occurs at the time when the transshipped textile goods arrive for entry in the United States and are falsely marked, or the entry documents contain culpable, material false statements, omissions or acts. In other words, with respect to the circumstances under discussion, the act of textile transshipment does not, in and of itself, constitute a violation of section 1592.

With respect to those commenters who recommended implementation of the rule provided that it only apply to those instances where the importer has actual knowledge of the improper transshipment, Customs notes that application of this aggravating factor would first require that Customs establish a violation of section 1592. If the importer is an innocent party to the transaction, then that importer will not be considered culpable, and therefore, cannot be charged with a violation of section 1592.

Customs also would like to clear up what appears to be a misunderstanding regarding the meaning of the term "aggravating factor" and the practical impact of the presence of an aggravating factor in a penalty situation. First, as indicated above, aggravating factors alone do not constitute a violation of section 1592. Second, contrary to some commenters' belief, the presence of an aggravating factor does not increase or decrease the asserted level of culpability set forth in Customs section 1592 prepenalty and/or penalty notices. For example, in the case of an importer's material grossly negligent false statement of origin on an entry document, Customs does not increase the asserted level of culpability to fraud because the goods were transshipped. Rather, in arriving at the administrative disposition in a penalty action, Customs treats the presence of an aggravating factor (designated as such in the

Customs guidelines) as an offset to the presence of a mitigating factor. It should also be noted that because the interim rule involves Customs penalty guidelines and such guidelines are neither statutory nor regulatory, per se, certain circumstances may warrant deviation from the ordinary application of the guidelines.

Customs also is of the opinion that the interim rule is, in fact, in keeping with the spirit of the Customs Modernization provisions (Title VI) of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103-182, 107 Stat. 2057 (December 8, 1993). Both the language of the Act and its legislative history clearly set forth the concepts of "shared responsibility" and "informed compliance" as critical to its effectiveness and application. In the instant situation, the interim rule is one of the measures Customs intends to use to address the significant problem of illegal transshipment. The interim rule informs the textile importer that he or she can avoid application of the interim rule by taking adequate measures prior to importation to attempt to ensure the accuracy and completeness of the information provided to Customs at the time of entry, including proper marking or other indication of the country of origin of the articles. In light of the problems associated with illegal transshipment, Customs believes that it is not unreasonable to expect textile importers to exert diligence in attempting to verify the source of their goods prior to importation commensurate with the statutory requirement to exercise reasonable care in presenting documentation to Customs during the entry process. If a textile importer can demonstrate that such measures were taken (i.e., the importer

was not culpable and acted with reasonable care), then there can be no violation of section 1592 because culpability is a requisite element of such a violation. Put another way, the interim rule does not apply to those textile importers who responsibly take such adequate measures prior to importation.

In view of the foregoing, Customs is adopting the text of the interim rule as final without change.

The Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 171

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

Amendment to 19 CFR Chapter I

For the reasons stated above, the interim rule amending part 171 of the Customs Regulations (19 CFR part 171), which was published at 59 FR 14745-14746 on March 30, 1994 (T.D. 94-29), is adopted as a final rule without change.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: October 24, 1994.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-27905 Filed 11-9-94; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for eight new animal drug applications (NADA's) from Hoffmann-La Roche, Inc., to SmithKline Beecham Animal Health.

EFFECTIVE DATE: November 10, 1994

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1646.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to SmithKline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380:

NADA Number	Ingredient	Trade name
15-102	Sulfadimethoxine	Albon Tablets.
31-205	Sulfadimethoxine	Albon Drinking Water Solution.
31-715	Sulfadimethoxine	Albon Bolus.
41-245	Sulfadimethoxine	Albon Injection 40%.
43-785	Sulfadimethoxine	Albon Oral Suspension 5%.
46-285	Sulfadimethoxine	Albon Soluble Powder.
93-107	Sulfadimethoxine	Albon Sustained-Release Bolus.
100-929	Sulfadimethoxine/ormetoprim	Primor Tablets.

Accordingly, the agency is amending the regulations in 21 CFR 520.2220a(b), 520.2220b(b)(1), 520.2220c(c), 520.2220d(b) and 522.2220(a)(2)(i) to reflect the change of sponsor.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).