

of which is a small entity. Paragraph (e) of the Rule 0–10⁴⁹ states that the term “small business,” when referring to an exchange, means any exchange that has been exempted from the reporting requirements of § 240.11Aa3–1. Because no exchange has been exempted from the reporting requirements of § 240.11Aa3–1, there will be no impact for purposes of the RFA on small businesses.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendment does not impose any new reporting, recordkeeping, or other compliance requirements on exchanges, or entities indirectly affected by the proposal.

E. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. In connection with the proposal, the Commission considered the following alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the Rule, or any part thereof, for small entities.

The Commission believes that none of the above alternatives is applicable to the amendment. The exchanges are directly subject to the requirements of Rule 12f–2(a) and are not “small entities” because they are all national securities exchanges that do not meet the definition of small entity. Therefore, the Commission does not believe the alternatives are applicable in the present amendment.

VIII. Statutory Authority

The rule amendments in this release are being adopted pursuant to 15 U.S.C. 78 *et seq.*, particularly Sections 11A(a)(1)(C)(ii), 11A(a)(1)(D), 12(f)(1)(C), 12(f)(1)(D), and 23(a) of the Exchange Act, 15 U.S.C. 78k–1, 78l(f)(1)(C), 78l(f)(1)(D), 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends Part 240 of Chapter II of Title 17 of the *Code*

of *Federal Regulations* to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78l(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

1. Section 240.12f–2 is amended by revising paragraph (a) to read as follows:

§ 240.12f–2 Extending unlisted trading privileges to a security that is the subject of an initial public offering.

(a) *General provision.* A national securities exchange may extend unlisted trading privileges to a subject security when at least one transaction in the subject security has been effected on the national securities exchange upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan, as defined in § 240.11Aa3–1.

* * * * *

Dated: August 29, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172

[T.D. 00–57]

RIN 1515–AC01

Petitions for Relief: Seizures, Penalties, and Liquidated Damages

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document revises the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. Parts 171 and 172 of the Customs Regulations are recrafted in this rule to include petition processing in seizure and unsecured penalty cases under part 171 and liquidated damages and secured penalty petition processing under part 172. The document revises the regulations to

allow more flexibility and useful contact with Government officials in an effort to make the administration of penalty, liquidated damages and seizure cases more efficient. These regulations eliminate needless or redundant provisions.

EFFECTIVE DATE: October 5, 2000.

FOR FURTHER INFORMATION CONTACT:

Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–927–2344.

SUPPLEMENTARY INFORMATION:

Background

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

In a Notice of Proposed Rulemaking published in the **Federal Register** (63 FR 5329) on February 2, 1998, Customs proposed to substantially revise Parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases to make the proposed regulations briefer and to allow more flexibility and useful contact with government officials in an effort to administer cases in the most efficient way possible. The amendments to the regulations were also proposed to eliminate needless or redundant provisions.

Summary of Proposal

Below is a summary of the Notice of Proposed Rulemaking:

1. The scope of Parts 171 and 172 was proposed to be changed. Part 171, as proposed, related to unsecured fines and penalties and all seizure and forfeiture cases. Inasmuch as the payment of certain penalties is

⁴⁹ 17 CFR 240.0–10(e).

guaranteed by the conditions of the International Carrier Bond and, therefore, can involve demands against sureties, the provisions of Part 172 were proposed to be amended to relate to all claims for liquidated damages and penalties secured by a bond. This proposed change would guarantee that all such claims against sureties would be handled in a consistent manner.

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

3. The proposed regulations required that petitions for relief be signed by the petitioner, his attorney-at-law or a Customs broker, but would allow others, in certain non-commercial violations (such as passenger/baggage-line violations), to file petitions on behalf of non-English speaking claimants to property or other petitioners who have some disability that may impede the ability to file a petition. Instances have occurred where such petitions were rejected because they did not meet the signature requirements of the current regulations. A strict reading of the current regulations would bar Customs from considering those petitions. This position caused needless delay in administrative processing of cases. As proposed, the process would be opened in these situations and efficiency would be promoted by allowing, in non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition to enlist a family member or other representative to file a petition on his behalf.

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

5. The regulatory section entitled "Additional evidence required with certain petitions" was proposed to be eliminated as unnecessary. The proposed new § 171.2 indicated that the claimant or petitioner must establish a petitionable interest in seized property.

How that proof is presented is not a subject requiring control by regulation.

6. The current regulations provide that there is a right to make an oral presentation to seek relief from a penalty incurred for a violation of 19 U.S.C. 1592 for which proceedings commenced after December 31, 1978, and that oral presentations seeking relief for other penalties incurred may be allowed at the discretion of Customs. It was proposed to simply remove the reference to cases commenced subsequent to December 31, 1978, as that provision has become obsolete with the passage of time.

7. Title VI of the North American Free Trade Agreement Implementation Act (known commonly as the Customs Modernization Act) (Pub.L. 103-182, 107 Stat. 2057) amended the provisions of 19 U.S.C. 1595a(c) to provide for the seizure and forfeiture of stolen property. This amendment rendered current § 171.22(c) obsolete, as those provisions of the new statute are applicable to any stolen property, not only that stolen in Canada and brought into the United States. Accordingly, it was proposed to eliminate that provision.

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

9. The offices of Regional Commissioner and District Director were eliminated under Customs reorganization; therefore, all references to those offices and delegations of authority to those individuals to decide petitions and supplemental petitions for relief became obsolete. In Treasury Decision 95-78 (T.D. 95-78, 60 FR 48645, September 20, 1995), Customs published an Interim Rule which amended the regulations and authorized Fines, Penalties, and Forfeitures Officers to decide petitions for relief, and certain designated Headquarters officials assigned to field locations to decide supplemental and second supplemental petitions for relief in certain cases (although the Notice of Proposed Rulemaking proposed the elimination of second supplemental petitions, as discussed later herein). T.D. 95-78 was later finalized by Treasury Decision 99-27 (T.D. 99-27, 64 FR 13673, March 22, 1999). Changes promulgated by the interim rule were reflected in the Notice of Proposed Rulemaking.

10. Consistent with the Customs reorganization, it was proposed to

remove specific delegations of mitigation authority from the body of regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions to the field through delegation orders, without the necessity of amending the regulations. It was contemplated that a separate document would be published in the **Federal Register** detailing the new delegations.

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

12. Novel or complex issues often arise concerning Customs policy with regard to Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or penalty assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. In those instances, Headquarters advice may need to be sought. Accordingly, it was proposed to include a section in both Parts 171 and 172 to allow any Customs officer or an alleged violator to initiate a request for advice to be submitted to the Fines, Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. It was proposed that the Fines, Penalties, and Forfeitures Officer would retain the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

13. Under current policy, Customs officers may accept petitions filed untimely in response to claims for liquidated damages. Those petitions can be accepted at any time prior to commencement of any sanctioning action against a bond principal or the issuance of any notice to show cause against a surety. It was proposed to permit Customs to accept late petitions in penalty cases as well, but, as articulated in guidelines published for cancellation of bond charges (*see* T.D. 94-38, 59 FR 17830, April 12, 1994), lateness in filing a petition was to be factored when considering remission or mitigation of a claim and less generous relief, if otherwise merited, was to be afforded to the petitioner who files in an untimely manner.

14. The courts have consistently held that a claim for liquidated damages is not a "charge or exaction" which is

properly the subject of a protest filed pursuant to the authority of 19 U.S.C. 1514. See *United States versus Toshoku America, Inc.*, 879 F.2d 815 (Fed. Cir. 1989); *Halperin Shipping Co., Inc. v. United States*, 14 CIT 438, 742 F. Supp. 1163 (1990). In light of these decisions, it was proposed to amend the regulations to indicate that claims for liquidated damages and decisions on petitions are not properly the subject of a protest filed pursuant to 19 U.S.C. 1514.

15. In *Trayco, Inc. v. United States*, 994 F.2d 832 (Fed. Cir. 1993), the Court permitted a company that had petitioned for relief, received a decision on the petition and, although unhappy with the mitigation offered, paid that mitigated amount "under protest," to file suit to recover the amount paid. The Court noted that as " * * * nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty and filing a second supplemental petition, we decline to hold that Trayco is estopped where it accompanied its payment with a statement expressly reserving its rights to judicial review." *Id.* at 839. Customs proposed to amend the regulations to eliminate this regulatory gap and provide that any payment made in compliance with a mitigation decision will act as an accord and satisfaction where the paying party has elected to resolve the case through the administrative process and has waived the right to sue for a refund. It was proposed that this express statement be included in all mitigation decisions offered to petitioners in order to provide full disclosure as to their administrative or judicial rights. According to the proposal, Customs will not accept payments "under protest."

16. It was proposed to eliminate second supplemental petitions. As proposed, payment of a mitigated amount would never be necessary to receive original or appellate administrative review. If a petitioner believes the underlying penalty was incorrectly assessed or the claim improperly mitigated, he would not be required to pay and then later sue for a refund of monies paid.

17. The proposed regulations included a provision allowing the deciding Customs official to reserve the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case if less than one year remains before the statute of limitations may be asserted as a defense to all or part of that

case. Upon receipt of such a waiver, any reduced time period for acceptance of a petition would not be necessary.

18. Under current § 111.95, Customs Regulations, a final determination of \$1,000 or less in response to a petition for relief in a case involving assessment of a penalty for violation of the provisions of 19 U.S.C. 1641 could not be the subject of a supplemental petition. As there is no basis to single out this particular violation as not being worthy of a supplemental petition for relief, and as Customs believes all parties should have the same administrative rights, it was proposed to remove this restriction on the filing of supplemental petitions in broker penalty cases.

19. Sections 10.39(e) and (f) of the regulations, relating to the filing of petitions in cases involving breaches of the terms and conditions of temporary importation bonds (TIBs), provide for different standards of review if there has been a default with respect to all of the articles entered under bond or if there has been a default with respect to part, but not all, of the articles entered under bond. Because this bifurcation is unnecessary, it was proposed to combine the provisions of §§ 10.39(e) and (f) to provide a single standard for review of TIB petitions without regard to whether all or part of the merchandise entered under the TIB are in breach.

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

21. Finally, the provisions of Part 162 were proposed to be amended to specifically authorize Fines, Penalties, and Forfeitures Officers to accept waivers of the statute of limitations with regard to actual or potential violations arising within their respective ports. It was proposed that the Office of Regulations and Rulings would retain authority to accept waivers in

established actual cases over which it has jurisdiction and a petition for relief has been filed.

Proposed conforming amendments to Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, and 162 were also set forth in the Notice of Proposed Rulemaking.

Discussion of Comments

The February 2, 1998, Notice of Proposed Rulemaking made provision for the submission of public comments on the proposed regulatory changes for consideration before adoption of those changes as a final rule. The prescribed comment period closed on April 3, 1998. A total of 18 responses to the solicitation of comments was received by Customs. The comments submitted are summarized and responded to below.

Comment

Five commenters are opposed to the combination of §§ 10.39(e) and 10.39(f). The commenters state that current § 10.39(e) provides for relief from liquidated damages involving breach of the terms and conditions of the TIB when partial exportation or destruction of such merchandise occurs. The commenters are of the view that the proposed recrafted regulation would unfairly penalize importers on entire shipments when only a small portion may not have been exported or destroyed in the prescribed manner. Section 10.39(f) currently indicates that the amount to be tendered is determined by the value of the goods involved in the breach of the bond. The commenters assert that the proposed new regulation would not do this and it is unclear as to the level of liability for the importer when a partial exportation or destruction occurs.

Customs Response

The commenters' fears are misplaced. First, the proposed amendment in no way would change the provisions of § 10.39(d)(1), which governs assessment of liquidated damages for failure to export or destroy TIB merchandise in the time period prescribed by regulation. Claims will still be assessed at two times or 110 percent of the estimated duties applicable to the entry, depending on the HTSUS provision under which entry is made. The proposed regulatory text would eliminate unnecessary differences in the authority of the Fines, Penalties, and Forfeitures Officer to act on a petition for relief with regard to those cases where all of the merchandise covered under the TIB was not exported or destroyed as opposed to those cases where partial exportation or destruction

occurred. The provisions of § 10.39(e)(1) through (e)(4), relating to the standards to be considered when canceling the claim upon payment of a lesser amount, are not being changed. Those standards will be applied to partial breaches as well as breaches involving all merchandise covered by a TIB entry. In accordance with this response, Customs is proceeding with combining § 10.39(e) and § 10.39(f) in the final regulatory text.

Comment

Numerous commenters express the view that oral presentations should be granted as a matter of right in all cases.

Customs Response

Customs does not agree that oral presentations should be granted as a matter of right in all cases, but does concede that reference to 19 U.S.C. 1593a(b)(2) regarding petitioning of penalties assessed for false drawback claims was inadvertently excluded from this proposed regulation. The provisions of 19 U.S.C. 1592(b)(2) and 19 U.S.C. 1593a(b)(2) specifically state that a person charged with a penalty thereunder shall have reasonable opportunity under 19 U.S.C. 1618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. For the most part, other statutes enforced by Customs do not provide for such an opportunity. It would be administratively burdensome to require Customs to hear oral presentations in all violations for which cases are developed. Accordingly, the regulations provide Customs with discretion to allow oral conferences in other cases. However, the final regulatory text is amended to include reference to 19 U.S.C. 1593a(b)(2).

Comment

One commenter indicates that the regulations should be amended in a manner to require Customs to act on petitions within 120 days. The commenter states that when a petition is received, not much else has to be done by Customs and there is no basis for continued delays.

Customs Response

Customs does not agree. When a petition is received, an investigation often must be undertaken in order to determine the veracity of statements made in that petition. This can be a time consuming process, particularly if information from foreign sources must be obtained. Additionally, there are instances when a claimant to seized property or a charged party asks that

Customs delay a decision on a petition for relief. If Customs is required to adhere to a rigid decision schedule, it could work to the disadvantage of such a party. While Customs makes every effort to decide petitions for relief as expeditiously as possible, Customs sees no reason to amend the regulations to place a strict time frame on the processing of petitions.

Comment

A comment was received from the Food and Drug Administration (FDA), indicating its concern that the provisions of proposed §§ 172.11 and 172.12 would authorize Fines, Penalties, and Forfeitures Officers to decide petitions for relief in cases involving the failure to redeliver FDA-regulated merchandise which has been refused admission. There is a concern that the Customs officers will not have the technical expertise to make such a determination.

Customs Response

Customs appreciates FDA's concern, but notes that the provisions of 21 CFR 1.97(b), which require FDA and Customs to be in agreement with regard to the terms and conditions of cancellation of any bond charge arising from the failure to comply with FDA admissibility requirements, have not been overridden by these regulations. Fines, Penalties, and Forfeitures Officers will still be required to forward all petitions for relief in FDA cases to FDA and will follow the recommendation of FDA with regard to the disposition of those cases consistent with the regulations.

Comment

Numerous commenters object to proposed § 171.2(e), which allows Customs to reduce the time for filing a petition for relief to no less than seven working days when fewer than 180 days remain from the date of penalty notice or seizure before the statute of limitations may be available as a defense. One commenter asks that the new regulations commit Customs to making every effort to issue notices of penalty and seizure within sufficient time so as to allow importers 30 days to file petitions for relief. Another commenter claims that this provision would interfere with a surety's right to investigate and raise appropriate defenses, if any, before deciding to extend the statute of limitations. The same commenter states that the surety should receive notice at the same time the claim is made against the principal on the bond. If at least 90 days remained before expiration of the statute of

limitations, the surety should receive the full 60 days to investigate the claim and file a petition. In the alternative, the commenter suggests that Customs accept limited waivers of the statute of limitations to enlarge the time remaining to the full 180-day period. Finally, another commenter states that Customs is now proposing to extend the 7-day petitioning period to other types of cases when the running of the statute of limitations is "imminent." The commenter suggests that Customs define the term "imminent."

Customs Response

Customs does not agree that this provision is onerous and should be changed. It is noted that this provision is not a newly promulgated exception from the usual 30 or 60-day time periods for the filing of petitions for relief. This provision is basically unchanged from the current regulations. Under current 19 CFR 171.12(e), Customs may shorten the petitioning period to 7 days if less than 180 days remains before the statute of limitations is to run. Because the current regulation does not distinguish between calendar or working days so as to determine the appropriate length of that 7-day period, Customs has clarified the length of this shortened petitioning period by expressly indicating that 7 working days is the minimum time period for providing a petition for relief.

Also, it should be noted that sureties have received and will continue to receive courtesy copies of notices to principals of claims for liquidated damages which are issued against any bond the sureties have written. The proposed regulations, by combining liquidated damages case processing with processing of penalties secured by bonds, insure that sureties will also receive courtesy copies of penalty notices issued against their bond principals when the sureties have written the underlying International Carrier's Bond. If anything, notification to sureties of potential liabilities has expanded.

There is no regulatory proscription against execution of waivers of the statute of limitations which would enlarge the time to 180 days from the date of issuance of the claim for liquidated damages in order to allow for the full 60-day petitioning period.

While Customs certainly aspires to avoid having to curtail the time a petitioner has to file a petition for relief and Customs attempts to issue notices of penalty, seizure or claims for liquidated damages more than 180 days prior to the running of the statute of limitations, Customs concedes that on occasion

these notices do not meet that time frame. While Customs continues to strive to issue notices so as to provide the claimant with full regulatory petitioning times, such notice issuance is not always possible. Customs is of the view that continuation of the current regulatory scheme provides a reasonable method to allow for maximum administrative petitioning rights.

Further, the proposed regulatory text in § 171.2(e) includes language indicating that if a penalty is assessed or a seizure is made and less than 180 days remain from the date of the penalty notice or seizure before the statute of limitations is available as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. For the sake of clarity, Customs is removing the phrase "from the date of penalty notice or seizure" and is rephrasing the final regulatory text to indicate that the Fines, Penalties, and Forfeitures Officer may specify in the seizure or penalty notice a reasonable period of time for the filing of a petition for relief.

Finally, the regulatory text does not include any reference to the running of the statute of limitations being "imminent." Rather, a time certain of 180 days prior to the availability of the statute as an affirmative defense is referenced. Customs sees no reason to define the term "imminent" because it does not appear in the proposed regulation.

Comment

Many commenters disagree with the proposal to eliminate second supplemental petitions. They consistently claim that second supplemental petitions serve an important function and provide a necessary level of review. One commenter notes that the second supplemental petition is particularly useful in vessel repair cases established for violation of 19 U.S.C. 1466, particularly when a protest decision on the vessel entry liquidation reduces the loss of revenue to be collected on that entry. As currently configured in 19 CFR 171.33(c)(2)(ii), the regulation allows for the filing of a second supplemental petition within 30 days following an administrative or judicial decision with respect to entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based. The second supplemental petition affords the petitioner the ability to obtain the proper mitigated penalty amount. In vessel repair cases, the duty

involved can often be substantial. That same commenter goes on to argue that elimination of the second supplemental petition would substantially reduce the petitioner's ability to receive full mitigation. The only avenue for further relief would be litigation, the least desirable alternative.

Customs Response

Customs agrees that an avenue for relief should be available to the party who must rely on an administrative or judicial decision which would reduce the amount of administrative penalties; however, the second supplemental petition, which requires full payment from that party prior to Customs acceptance of that second supplemental petition, places a substantial burden on that party when those same large sums are at issue.

Accordingly, in acknowledgment of the need to provide an administrative alternative to the party who would be affected by an administrative or judicial decision, Customs has decided to amend the provisions of proposed §§ 171.61 and 172.41 (relating to the filing of supplemental petitions) to allow for the filing of a supplemental petition within 60 days from an administrative or judicial decision with respect to entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based. This amendment would save petitioning rights for the party who awaits another administrative decision that would influence the outcome of its penalty case.

Notwithstanding the above, Customs remains of the view that the second supplemental petition should be eliminated. Currently, the petitioner is afforded up to two years after a decision on a supplemental petition for relief to file a second supplemental petition. That is simply too long a time to keep administrative matters open. Additionally, the *Trayco* court viewed with disfavor the regulatory requirement of payment in compliance with the decision on the supplemental petition for relief in order to obtain the third level of administrative review. Rather than prolong the process, Customs is of the view that two administrative opportunities provide sufficient levels of review for the charged party or claimant to seized property.

Comment

Numerous comments were received with regard to Customs' proposal to allow any Customs officer or alleged violator to initiate a request for Headquarters advice with a Fines,

Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. This advice request, as proposed, must relate to any novel or complex issue arising concerning Customs policy regarding Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or case assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. The Fines, Penalties, and Forfeitures Officer would retain authority to refuse to forward any request that fails to raise a qualifying issue and to seek advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Reaction to this proposed regulation ranged from strongly negative (with one commenter stating "the field office is typically the source of the problem which the petitioner would like Headquarters to review, and therefore is far too interested and biased a party to determine whether that review is warranted"; and referring to this as "asking the fox to guard the chicken coop") to positively disposed, but cautious. The latter group seeks the establishment of criteria for the referral to Headquarters, seeing those criteria as being key to the effectiveness of the change. Several commenters suggest that the regulations provide for a right of appeal from the decision of the Fines, Penalties, and Forfeitures Officer to refuse referral.

Customs Response

Customs is of the view that sufficient safeguards and guarantees have been written into the regulation to allay the fears that deserving claimants will be barred from being heard. Concomitantly, the regulation is drawn narrowly enough to prevent frivolous claims that Headquarters review is required. The Fines, Penalties, and Forfeitures Officer is and must be afforded discretion to refuse to forward a request that fails to raise a qualifying issue, but he or she is also encouraged to seek legal advice from Associate or Assistant Chief Counsel as to whether a request does raise such a qualifying issue. The regulation was not designed to permit Headquarters review of all petitions, nor is it necessary to provide for appeal rights of a decision to disallow Headquarters review of novel and complex issues. That would impose yet another administrative layer to decide whether a claim should be heard at a

Headquarters level. That would clearly not promote administrative efficiency.

Customs is also of the view that establishment in regulation of criteria to be followed for the granting of Headquarters review would be difficult. It is impossible to predict what issues might arise from Customs policies. Unlike Applications for Further Review in the protest process, mitigation decisions are acts of administrative discretion and do not have precedential value. Facts underlying the issuance of claims or the making of seizures can be very different yet involve the same statutory violation. Decisions are made within published guideline ranges. To allow further review of any act of administrative discretion would involve Headquarters review of every decision. This is not the intent of this regulatory change.

Comment

Numerous commenters express objection to the proposal to eliminate Customs Headquarters authorization of broker penalties when such penalties are proposed for issuance in amounts in excess of \$10,000.

Customs Response

When the Tariff and Trade Act of 1984 (Pub.L. 98-573) amended 19 U.S.C. 1641 to provide for civil monetary penalties against brokers, Customs agreed with the brokerage community that the novelty of these penalties was such that Headquarters review of all proposed 19 U.S.C. 1641 penalties was necessary so as to provide guidance to the field and to identify those situations for which a penalty response was appropriate. In Treasury Decision 86-161 (T.D. 86-161, 51 FR 30345, August 26, 1986; corrected 51 FR 31760, September 5, 1986), Customs first published broker penalty assessment and mitigation guidelines by adding Appendix C to Part 171 to provide further guidance for field offices. A revision to Appendix C was published in Treasury Decision 90-20 (T.D. 90-20, 55 FR 10056, March 19, 1990.) After approximately five years of experience in assessing these penalties, Customs published Treasury Decision 91-77 (T.D. 91-77, 56 FR 46115, September 10, 1991), in which field offices were empowered to issue broker penalties without Headquarters review when the amount to be assessed did not exceed \$10,000. At that point, it was believed that the agency had sufficient experience with these penalties that Headquarters review was only necessary when the most serious assessments were contemplated.

Customs is now of the view that Headquarters review of broker penalty cases is unnecessary. Headquarters does not by regulation review the issuance of any other type of penalty. There is no compelling reason to continue to approve broker penalties of any size. The Penalties Branch, Office of Regulations and Rulings, will review and decide supplemental petitions for relief in broker penalty cases when the amount assessed exceeds \$10,000, so Headquarters review will still be afforded in the more serious cases.

Comment

Some commenters indicate that it is unnecessary for Customs, by regulation, to require proof of representation. One commenter suggests that standards of local bar associations provide adequate protections.

Customs Response

As Customs brokers may also represent parties that have been charged with penalties or claims for liquidated damages or seek return of seized property, standards of local bar associations do not provide adequate protection. The local bar association would not have jurisdiction to discipline a Customs broker. Because Customs concedes that not every petition for relief need be accompanied by a statement of representation, the proposed regulation left this requirement to the discretion of the Fines, Penalties, and Forfeitures Officer. Accordingly, no change is made to the proposed regulations based on these comments.

Comment

One commenter is extremely concerned about unauthorized filing of petitions and believes that petitions should be signed only by an attorney or a Customs broker. The commenter suggests that proposed § 171.1(b), which would allow a corporation's petition to be signed by "an officer or responsible supervisory official or a representative of the corporation," would allow anyone claiming to be a representative to sign a petition. In the view of the commenter, virtually every significant commercial penalty claim involves a corporation and the proposed regulatory text would eliminate any and all restrictions with regard to individuals signing on behalf of corporations.

Customs Response

Customs disagrees with the commenter that signing of petitions by corporations should be limited to attorneys or Customs brokers because a principal can always act on its own

behalf. Customs believes that when a corporation is the petitioner, it clearly can have a petition signed by an officer. Customs also believes that a large corporation may not want to require that a petition be signed by an officer in all cases and may want the flexibility to allow a responsible individual in a supervisory position or other responsible employee (such as a claims examiner) to be able to act on its behalf. Customs does agree, however, with the commenter that the proposed language may be too broad in seeming to allow any individual claiming to be a "representative" of the corporation to sign a petition for the corporation. Because the language as proposed may be read too broadly, Customs is modifying the proposed "representative of the corporation" language in the final rule to provide that a "responsible employee representative" as well as an officer or responsible individual in a supervisory position may sign a petition for a corporation.

Comment

Proposed § 172.43 states that Customs may require a waiver of the statute of limitations as a condition precedent prior to consideration of a supplemental petition for relief if the statute will be available as a defense to all or part of a case within one year from the date of decision on an original petition for relief. One commenter suggests that this proposed language only relieves Customs from its duty to issue demands timely. It is averred that unless Customs is held accountable for issuing timely decisions on the original petition, there is no impetus for Customs to decide claims promptly.

Customs Response

Customs does not agree with this analysis. The statute of limitations may loom as a defense for many reasons, not just because Customs did not issue a demand timely. Customs seeks the statute of limitations waiver to encourage the orderly processing of the case so as to avoid litigation. It is not now, nor has it ever been, Customs policy to delay without good cause issuance of any claim. The claimant can always refuse to provide the statute of limitations waiver and the matter can be referred for commencement of a judicial action.

Comment

One commenter suggests that proposed § 172.22(b), relating to the payment of mitigation amounts acting as an accord and satisfaction, could compromise the rights of a surety in that it would force the surety to settle a

claim because, being threatened with sanction, the surety would have to choose between obtaining a preliminary injunction or protesting the payment.

Customs Response

Customs does not agree with the commenter. A surety is provided with courtesy copies of original demands on bond principals. When the bond principal either fails to respond or exhausts its administrative rights and does not comply with decisions on any petitions for relief, a demand on surety is issued and the surety is afforded all petitioning rights. Once the surety is provided with a mitigation decision, if the surety refuses to pay and has raised a justiciable issue, Customs will commence a collection action and the surety may have its day in court. Customs is not of the view that application of the principles of accord and satisfaction to any single payment in compliance with a mitigation decision is an event that will force the surety either to comply or go to court to avoid sanction. Accordingly, Customs believes that the regulation should be adopted as proposed.

Comment

Another commenter strongly opposes the provisions of proposed § 171.23. The commenter states that the government will exercise greater care when it knows that its decision may be reviewed by the courts. The commenter believes that the court will only review the question of whether a violation occurred, not the mitigation. The commenter indicates that the government should welcome rather than oppose the court's view of whether a violation occurred.

Customs Response

Customs does not intend to deny a charged party its day in court. After Customs determines that a violation has occurred and assesses and mitigates a penalty, effects a seizure and remits a forfeiture, or assesses a claim for liquidated damages and cancels the claim upon payment of a lesser amount, all in accordance with the administrative procedure, there will be no coercion to pay. If a party wishes to have its day in court it can inform Customs that it will not pay and can wait for judicial action to be commenced.

However, Customs believes that once a party agrees to pay an administratively determined mitigation, remission or cancellation amount, the party should not be permitted also to pursue the matter in the courts. This has always been Customs view—a party can choose between administrative proceedings and

judicial proceedings. This view was not, however, reflected in the regulations. Section 171.23 was proposed in reaction to the court's statement in *Trayco, supra.*, that “nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty.” The proposed regulation, once adopted, will serve to give the notice that the court stated was missing, in that payment of a penalty will act as an accord and satisfaction and bar judicial review.

It is noted that if a party chooses to pay the mitigated penalty, forfeiture remission amount or bond claim cancellation amount, one still has the right to pursue the administrative proceeding by filing a supplemental petition for relief.

Comment

One commenter representing sureties objects to proposed § 172.13(c), which states that no action shall be taken on any petition from a principal or surety if received after issuance of a notice to show cause is issued to a surety.

Customs Response

Customs will soon be issuing procedures with regard to the nonacceptance of bonds from delinquent sureties. Those procedures include the issuance of notices to show cause. They are being formulated with considerable consultation with the surety community. At the time a notice to show cause is issued to a surety, the surety will have already received at least six notifications of the existence of the claim. Customs does not agree that failure to accept a petition at that late a juncture in the administrative proceedings will place a chilling effect on meaningful exchanges.

Comment

One commenter suggests that in proposed § 171.1(c)(4), Customs should not require proof of a petitionable interest in seized property from an importer of record. The commenter suggests that this provision be amended to allow any party who may act as importer of record to file a petition for remission of a forfeiture without additional proof of a petitionable interest in the property.

Customs Response

Customs does not agree. While Customs concedes that in the overwhelming number of cases, the importer of record will have a petitionable interest in any seized merchandise, there are situations where a Customs broker filing an entry as a nominal importer of record will have no

petitionable interest in the merchandise being entered. As such, it would not be appropriate to include regulatory text that would automatically confer upon an importer of record a petitionable interest in seized property.

Comment

One commenter suggests that the provisions of proposed § 171.21 should require a written decision with regard to a petition submitted in response to an alleged violation of 19 U.S.C. 1595a.

Customs Response

Sections 19 U.S.C. 1592, 1593a and 1641 all specifically provide that a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based must be issued. Customs is of the view that the agency should not identify through rulemaking other violations for which written decisions will or will not be given as a matter of right. However, Customs endeavors to issue written decisions in response to all petitions, regardless of the underlying violation.

Customs notes that the proposed rule inadvertently omitted a reference to 19 U.S.C. 1593a in this section. The regulatory text has been amended to so include that statute in this provision.

Comment

One commenter disagrees with the certification by Customs pursuant to the Regulatory Flexibility Act that the provisions of the proposed regulatory amendments, if adopted, will not have a substantial impact on a number of small entities. The commenter states that there is no credible support for the statement that small business entities are rarely repeat violators of Customs laws and, therefore, will seldom need to avail themselves of these regulatory provisions and file petitions for relief on a regular basis. The commenter provides anecdotal evidence that it had a bond principal that was a small entity that had seven delinquent liquidated damages claims. The commenter goes on to state that common sense suggests that small companies are frequent violators of the customs laws and are substantially and directly affected by the proposed regulations.

Customs Response

Customs does not deny that some small businesses will be affected by these regulations. The statement included in the Notice of Proposed Rulemaking did not state that small companies would never be impacted, but that there would not be a significant impact on a substantial number of small

entities. Prompted by the commenter's concern, Customs, to verify its certification statement, reviewed all claims for liquidated damages (the most common sort of violation that would be incurred by a small entity) in a large port for Fiscal Year 1998. Some 830 violators were identified. Those 830 violators incurred 1,690 claims for liquidated damages, an average of two per entity. Only 34 entities incurred more than 5 claims for liquidated damages and of those 34 entities more than two-thirds were large transportation companies and retailers, clearly not small businesses. Of those 830 identified violators, (which is an unknown percentage of all businesses that deal with Customs in some form or fashion, many of whom incur no liabilities whatsoever and don't appear in any list of violators), only 11 could be identified as small businesses—slightly over one percent. In light of this sampling, Customs remains of the view that these amendments will not have a significant impact on a substantial number of small entities.

Comment

One commenter indicates that it would be opposed to the provisions of proposed § 172.33 (which permits Customs, as a condition to accepting an offer in compromise, to require that the offeror enter into any collateral agreement or post security which is deemed necessary for the protection of the interest of the United States), if such a provision is intended to extend the period in which the surety would be liable, either by request for extension of the statute of limitations or other means.

Customs Response

The commenter should be assured that Customs does not intend, through promulgation of this section, to extend the statute of limitations or to otherwise compromise any rights that a party may have to raise any defenses with regard to any claim brought against it.

Comment

One commenting surety representative indicates that Customs had recently adopted a policy whereby any mitigation offered to a bond principal (and not acted on by it) would be described in the first demand on surety, and made available to the surety as a basis for settlement. The commenter urges that the revised regulation provide that this information be included in the first demand on surety and that the surety be offered a reasonable opportunity to accept the mitigation offered. In that same vein, other commenters suggest that the proposed

regulatory text of §§ 171.62(a) and 172.42(a) be amended to add the following language: "In no event can the reviewing official grant less relief than contained in the decision on the original petition for relief." It is averred that this protects petitioners from the risk of having to pay a higher penalty merely by exercising the due process right of an administrative review of the original decision.

Customs Response

Customs does not agree with either of these comments. As to the comment of the surety, Customs offers mitigation as a matter of administrative discretion. While in the vast majority of cases the mitigation offered to the bond principal will be offered to the principal's surety, Customs does not want its mitigation policies to be dictated by regulation.

The same logic applies to Customs rejection of the proposed language limiting mitigation authority when considering a supplemental petition for relief. Facts may arise that were not available when considering the original petition for relief that would call for less generous mitigation when considering a supplemental petition for relief. As a matter of policy, Customs does not grant less generous mitigation upon review of a supplemental petition for relief than was afforded on the original petition without an articulable reason for doing so. The filing of a supplemental petition for relief questioning the decision on the original petition is never, in and of itself, an adequate reason to grant less generous relief than was afforded on the original petition. A petitioner should never be penalized for the mere act of filing a supplemental petition for relief. In order to safeguard against abuses of this type, Customs affords review of supplemental petitions for relief by officials other than those deciding the original petition. Customs cannot agree to the proposed regulatory language barring the granting of less generous mitigation in all situations inasmuch as such language would interfere with the exercise of administrative discretion.

Comment

Finally, numerous commenters object to Customs elimination of specifically enumerated delegations of authority within the language of the regulations. One commenter states that the Notice of Proposed Rulemaking stated that additional authority is to be delegated to the Customs ports to render decisions on petitions and supplemental petitions. The commenter suggests that such further delegation will only magnify a problem of lack of uniformity between ports.

Customs Response

Customs notes that the Notice of Proposed Rulemaking proposed to remove specific delegations of mitigation authority from the body of the regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions through delegation orders without the necessity of amending the regulations. The Notice also stated that a separate document would be published in the **Federal Register** detailing new delegations. It is unclear how any further delegations of authority will only magnify a problem of lack of uniformity between ports, as the commenter suggests. All ports function under the same delegations. Rather than causing a lack of uniformity, those delegations promote uniformity. Accordingly, Customs disagrees with the comments and will publish this proposed regulatory text without change.

Conclusion and Other Changes

After analysis of the comments and further review of the matter, Customs has determined to adopt the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (63 FR 5329) on February 2, 1998, with the changes mentioned in the comment discussion and with the following additional changes that are necessary to bring consistency to the regulations or to remove unnecessary language:

1. Customs has removed § 113.46 from the regulatory text. As Customs is not setting forth guidelines relating to cancellation of bond charges resulting from failure to produce documents in the regulations and is not directing the reader to the location of these guidelines, this language is unnecessary.

2. Customs has reviewed the last sentence of proposed § 171.3(a) and has determined that said sentence is unnecessary. Proposed § 171.3(a) discusses the arrangement of oral presentations in cases involving alleged violations of 19 U.S.C. 1592. In the current regulation, it was necessary to define when a proceeding was commenced because of the change in the underlying statute promulgated in 1978. Therefore, through the passage of time the sentence has become obsolete and has been eliminated.

3. The provisions of proposed § 171.64 contain an error. The language of the regulation indicates that the deciding official reserves the right to require a waiver as a condition

precedent before accepting a petition for relief or supplemental petition for relief in any case where the statute of limitations will be available as a defense within one year from the date of the decision on the original petition for relief. Requirement of a waiver cannot be a condition precedent to the acceptance of an original petition for relief, provided the statute will be available as a defense within one year from the date of the decision on that petition. The regulation has been amended to eliminate the reference to petitions. The regulation is now consistent with the provisions of § 172.43.

4. In reviewing the provisions of proposed § 162.81, Customs is of the view that the ministerial acts involving the processing of statute of limitations waivers are operational in nature and need not be the subject of regulation. Accordingly, that proposed section has been removed from the final document.

5. In the regulatory text of proposed §§ 171.13(a) and 172.13(a), Customs indicated that late petitions could be accepted if the deciding official, in his or her discretion, believed the efficient administration of justice would be met. Upon further review of this proposed regulation, Customs has decided that codification of the acceptance of untimely petitions in penalty, seizure and liquidated damages cases could be construed by claimants to seized property and alleged violators as bestowing a right to file a late petition. While Customs concededly, as a matter of policy, has accepted late petitions in claims for liquidated damages cases and merely afforded less generous mitigation, Customs has decided that such a decision should remain a matter of policy and should not be included in regulation. Accordingly, in the final regulatory text, proposed §§ 171.13(a) and 172.13(a) have been removed. Paragraphs (b) and (c) of proposed § 171.13 have been redesignated in the final text as paragraphs (a) and (b). Paragraphs (b) and (c) in proposed § 172.13 have been redesignated in the final text as paragraphs (a) and (b).

6. Customs has also removed proposed § 171.32 from the final regulatory text and redesignated proposed § 171.33 as § 171.32. Customs Headquarters will retain all offer acceptance authority, still subject to the approval of the General Counsel of the Treasury or his delegee, in cases administered under Part 171. The proposed regulatory text regarding authority to accept offers in cases administered under Part 172 has not been changed in the final document.

7. The proposed regulatory texts in §§ 171.1 and 172.2 did not make it clear that Customs can require that petitions and any documents submitted in support of petitions be in English or have English translations provided. Accordingly, language has been added to both of the noted regulations to clarify this requirement.

8. The proposed regulatory texts in §§ 171.14 and 172.14 have been amended to reflect the fact that Headquarters advice regarding actual duty loss tenders determined by Customs pursuant to § 162.74(c) of the Customs Regulations relating to prior disclosure and actual duty loss demands made under § 162.79b of the Customs Regulations are outside the scope of those particular regulations. The last sentence of § 162.79b will be retained. This section will continue to provide for Headquarters review of any determination of actual loss of duties in which a § 1592(d) demand has been made and there is no penalty assessment, the assessed penalty is remitted in full or the penalty amount (or mitigated penalty) has been paid.

9. The proposed regulatory text in § 10.39(e) has been amended to indicate that the Fines, Penalties, and Forfeitures Officer may cancel Temporary Importation Bond liquidated damages liability upon payment of a lesser amount in accordance with delegated authority. The proposed version of this section did not include this limiting language and apparently gave unintended full claim cancellation authority to Fines, Penalties, and Forfeiture Officers in these situations.

10. The proposed rule overlooked the provisions of § 12.8 of the Customs Regulations regarding claims for liquidated damages for failure to comply with meat inspection requirements. Customs is amending § 12.8 to conform with the provisions of Part 172.

11. In the fourth sentence of § 162.74(c) the word "demanded" is removed and replaced with the word "determined". In prior disclosure, Customs does not "demand" the actual loss of revenue. Rather, the disclosing party tenders the duty to perfect the prior disclosure.

12. Consistent with the current practice of removing unnecessary footnotes, Part 18 of the Customs Regulations has been amended by removing footnote 9 which relates to § 18.24(a).

13. On Wednesday, March 15, 2000, Customs published Treasury Decision 00-17 (T.D. 00-17) in the **Federal Register** (65 FR 13880), amending the regulations relating to Customs brokers. In that document, the provisions of 19

CFR 111.92 and 111.93 explain the process involving issuance of monetary penalties for violations of the laws and regulations relating to Customs brokers. For purposes of clarity, this document has redesignated the existing text of § 111.92 as paragraph (a) with minor changes and added a new paragraph (b) to distinguish between pre-penalty and penalty notices. Also, provisions of Appendix C to Part 171 of the Customs Regulations which announce guidelines for the imposition and mitigation of penalties for violation of 19 U.S.C. 1641 have been amended to remove sections which are not consistent with regulatory changes promulgated in T.D. 00-17.

It is also noted that Customs is publishing in this issue of the **Federal Register** a separate document that details delegations of authority to decide petitions and supplemental petitions submitted pursuant to Part 171 and Part 172 of the Customs Regulations.

Regulatory Flexibility Act

Inasmuch as small business entities are infrequently repeat violators of Customs laws, and, therefore, will seldom need to avail themselves of these regulatory provisions and file petitions for relief on a regular basis, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" under E.O. 12866.

List of Subjects

19 CFR Part 10

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

19 CFR Part 12

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

19 CFR Part 18

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

19 CFR Part 24

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

19 CFR Part 111

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

19 CFR Part 113

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

19 CFR Part 114

Carnets, Customs duties and inspection.

19 CFR Part 125

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

19 CFR Part 134

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

19 CFR Part 145

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

19 CFR Part 162

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

19 CFR Part 171

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

19 CFR Part 172

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

Amendments to the Regulations

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

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

1. The general authority citation for Part 10, Customs Regulations (19 CFR Part 10) continues to read as follows:

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

* * * * *

2. Section 10.39 is amended by removing paragraph (f) and redesignating current paragraph (g) and (h), respectively, as paragraphs (f) and (g) and by revising the introductory paragraph of § 10.39(e) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

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

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation and relevant specific authority citations for Part 12, Customs Regulations (19 CFR Part 12) continue to read as follows:

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

* * * * *

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

* * * * *

2. Section 12.8(b) is amended by removing the number “\$100,000” and by replacing it with the phrase “the Fines, Penalties, and Forfeitures Officer’s delegated authority”.

§ 12.102 [Amended]

3. Section 12.102 is amended by removing the number “60” and adding in its place the number “30”.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for Part 18, Customs Regulations (19 CFR Part 18) is revised to read as follows and the specific authority for § 18.8 is removed:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

* * * * *

2. Section 18.8(d) is revised to read as follows:

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

* * * * *

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

* * * * *

§ 18.24 [Amended]

3. Section 18.24 is amended by removing footnote 9.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24, Customs Regulations (19 CFR Part 24) continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701;

* * * * *

§ 24.24 [Amended]

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

PART 111—CUSTOMS BROKERS

1. The general authority citation for Part 111, Customs Regulations (19 CFR Part 111) continues to read as follows:

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

* * * * *

2. Section 111.92 is revised to read as follows:

§ 111.92 Notice of monetary penalty.

(a) *Pre-penalty notice.* If assessment of a monetary penalty under § 111.91 is contemplated, Customs will issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the broker or other person has a right to respond to the allegations or complaints in writing within 30 days of the date of mailing of the notice. The Fines, Penalties, and Forfeitures Officer has discretion to provide additional time for good cause.

(b) *Penalty notice.* If the broker or other person files a timely response to the written notice of the allegations or complaints, the Fines, Penalties, and Forfeiture Officer will review this response and will either cancel the case, issue a notice of penalty in an amount which is lower than that provided for in the written notice of allegations or complaints or issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints. If no response is received from the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints.

§ 111.93 [Amended]

3. Section 111.93 is amended by removing the reference to “111.92” and adding in its place, “111.92(b)”.

PART 113—CUSTOMS BONDS

1. The general authority citation and relevant specific authority citation for Part 113, Customs Regulations (19 CFR Part 113) continue to read as follows:

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

§ 113.46 [Removed]

2. Section 113.46 is removed.

§ 113.52 [Amended]

3. Section 113.52 is amended by removing the words “and 172.22(c)” from the parenthetical phrase contained therein.

§ 113.54 [Amended]

4. Section 113.54(a) is amended by removing “172.31” and adding in its place “172.11(b)”.

PART 114—CARNETS

1. The general authority citation for Part 114, Customs Regulations (19 CFR Part 114) continues to read as follows:

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

§ 114.34 [Amended]

2. Section 114.34(c) is amended by removing the final non-parenthetical sentence and the final parenthetical sentence.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. The general authority citation and relevant specific authority citation for Part 125, Customs Regulations (19 CFR Part 125) continue to read as follows:

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

* * * * *

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

2. Section 125.42 is revised to read as follows:

§ 125.42 Cancellation of liability.

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

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for Part 134, Customs Regulations (19 CFR Part 134) continues to read as follows:

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

§ 134.54 [Amended]

2. Section 134.54 is amended by removing in paragraph (a) the phrase “, plus any estimated duty thereon as determined at the time of entry”; and by

removing the second sentence in paragraph (b).

PART 145—MAIL IMPORTATIONS

1. The general authority citation and relevant specific authority citation for Part 145, Customs Regulations (19 CFR Part 145) continue to read as follows:

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

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

* * * * *

2. Section 145.4(b) is revised to read as follows:

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

* * * * *

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

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation and relevant specific authority citation for Part 162, Customs Regulations (19 CFR Part 162) continue to read as follows:

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

* * * * *

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

* * * * *

2. Section 162.48 is amended by revising the section heading and the heading of paragraph (b) to read as follows and by removing from the first sentence in paragraph (b) the phrase “and such value is less than \$1,000,”:

§ 162.48 Disposition of perishable and other seized property.

* * * * *

(b) *Disposition of other seized property.*

* * * * *

§ 162.74 [Amended]

3. The fourth sentence of § 162.74(c) is amended by removing the word “demanded” and replacing it with the word “determined”.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The general authority citation for Part 171, Customs Regulations (19 CFR Part 171) is revised to read as follows:

Authority: 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. 320.

* * * * *

2. Section 171.0 is revised to read as follows:

§ 171.0 Scope.

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

3. Subparts A through E of Part 171 are revised to read as follows:

Subpart A—Application for Relief

Sec.

171.1 Petition for relief.

171.2 Filing a petition.

171.3 Oral presentations seeking relief.

Subpart B—Action on Petitions

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

171.12 Petitions acted on at Customs Headquarters.

171.13 Limitations on consideration of petitions.

171.14 Headquarters advice.

Subpart C—Disposition of Petitions

171.21 Written decisions.

171.22 Decisions effective for limited time.

171.23 Decisions not protestable.

Subpart D—Offers in Compromise

171.31 Form of offers.

171.32 Acceptance of offers in compromise.

Subpart E—Restoration of Proceeds of Sale

171.41 Application of provisions for petitions for relief.

171.42 Time limit for filing petition for restoration.

171.43 Evidence required.

171.44 Forfeited property authorized for official use.

Subpart A—Application for Relief**§ 171.1 Petition for relief.**

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

(b) *Signature.* For commercial violations, the petition for remission or

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

(c) *Form.* The petition for remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

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

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

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

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

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

§ 171.2 Filing a petition.

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

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

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

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

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

(e) *Exception for certain cases.* If a penalty is assessed or a seizure is made and less than 180 days remain before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the seizure or penalty notice

a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 171.3 Oral presentations seeking relief.

(a) *For violation of section 592 or section 593A.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or section 593A, Tariff Act of 1930, as added (19 U.S.C. 1593a), the person named in the notice, in addition to filing a petition, may make an oral presentation seeking relief in accordance with this paragraph.

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

Subpart B—Action on Petitions**§ 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.**

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

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

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

§ 171.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), section

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

§ 171.13 Limitations on consideration of petitions.

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

(b) *Conveyance awarded for official use.* No petition for remission of forfeiture of a seized conveyance which has been forfeited and retained for official use will be considered unless it is filed before final disposition of the property is made. This does not affect petitions for restoration of proceeds of sale filed pursuant to the provisions of section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613).

§ 171.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to seizures and forfeitures, penalties, or mitigating or remitting any claim. This section does not apply to actual duty loss tenders determined by Customs pursuant to § 162.74(c) of this Chapter relating to prior disclosure and to actual duty loss demands made under § 162.79b of this Chapter. The request for advice may be initiated by the alleged violator or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority

to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

Subpart C—Disposition of Petitions

§ 171.21 Written decisions.

If a petition for relief relates to a violation of sections 592, 593A or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592, 19 U.S.C. 1593a, or 19 U.S.C. 1641), the petitioner will be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

§ 171.22 Decisions effective for limited time.

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

§ 171.23 Decisions not protestable.

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

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

Subpart D—Offers in Compromise

§ 171.31 Form of offers.

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

§ 171.32 Acceptance of offers in compromise.

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

Subpart E—Restoration of Proceeds of Sale

§ 171.41 Application of provisions for petitions for relief.

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

§ 171.42 Time limit for filing petition for restoration.

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

§ 171.43 Evidence required.

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

§ 171.44 Forfeited property authorized for official use.

If forfeited property which is the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) has been authorized for official use, retention or delivery will be regarded as the sale thereof for the purposes of section 613. The

appropriation available to the receiving agency for the purchase, hire, operation, maintenance and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contributions in general average that may have been filed.

4. Subpart G is added to part 171 to read as follows:

Subpart G—Supplemental Petitions for Relief

Sec.

- 171.61 Time and place of filing.
- 171.62 Supplemental petition decision authority.
- 171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.
- 171.64 Waiver of statute of limitations.

Subpart G—Supplemental Petitions for Relief

§ 171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition must be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to the entries involved in a penalty case which reduces the loss of duties upon which the mitigated penalty amount was based (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. The filing of a supplemental petition may be subject to the conditions prescribed in § 171.64 of this part. A supplemental petition may be filed whether or not the mitigated penalty or forfeiture remission amount designated in the decision on the original petition is paid.

§ 171.62 Supplemental petition decision authority.

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

will be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds \$10,000 will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings.

(b) *Decisions of Customs*

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

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

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

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

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

§ 171.64 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will

be available as a defense to all or part of that case.

Appendix C to Part 171

5. Appendix C to Part 171 is amended by removing the NOTE following section I.D., removing section I.E., redesignating section I.F. as section I.E., removing section I.G. and redesignating section I.H. as section I.F.

PART 172—[REVISED]

1. Part 172 is revised to read as follows:

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

Sec.

- 172.0 Scope.

Subpart A—Notice of Claim and Application for Relief

- 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.
- 172.2 Petition for relief.
- 172.3 Filing a petition.
- 172.4 Demand on surety.

Subpart B—Action on Petitions

- 172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.
- 172.12 Petitions acted at Customs Headquarters.
- 172.13 Limitations on consideration of petitions.
- 172.14 Headquarters advice.

Subpart C—Disposition of Petitions

- 172.21 Decisions effective for limited time.
- 172.22 Decisions not protestable.

Subpart D—Offers in Compromise

- 172.31 Form of offers.
- 172.32 Authority to accept offers.
- 172.33 Acceptance of offers in compromise.

Subpart E—Supplemental Petitions for Relief

- 172.41 Time and place of filing.
- 172.42 Supplemental petition decision authority.
- 172.43 Waiver of statute of limitations.

Authority: 19 U.S.C. 66, 1618, 1623, 1624; 46 U.S.C. App. 320.

§ 172.0 Scope.

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

Subpart A—Notice of Claim and Application for Relief

§ 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.

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

(b) *Notice of right to petition for relief.* The notice will inform the principal that application may be made for relief from payment of liquidated damages or penalty.

§ 172.2 Petition for relief.

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

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

(c) *Form.* The petition for cancellation, remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

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

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

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

§ 172.3 Filing a petition.

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

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

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

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

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

172.4 Demand on surety.

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

Subpart B—Action on Petitions

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

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

(b) *When violation did not occur.* Notwithstanding any other delegation of

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

§ 172.12 Petitions acted on at Customs Headquarters.

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

§ 172.13 Limitations on consideration of petitions.

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

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

§ 172.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to penalties secured by bonds (including penalty-based determinations of duty except as provided in this section), claims for liquidated damages or mitigating any claim. This section does not apply to actual duty loss tenders determined by Customs pursuant to § 162.74(c) of this chapter relating to prior disclosure. The

request for advice may be initiated by the bond principal, surety or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

Subpart C—Disposition of Petitions

§ 172.21 Decisions effective for limited time.

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages will be deemed applicable and will be enforced by promptly transmitting the matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this chapter.

§ 172.22 Decisions not protestable.

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

(b) *Payment of mitigated or cancellation amount as accord and satisfaction.* Payment of a mitigated or cancellation amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated or cancellation amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated or cancellation amount will

never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 172.31 Form of offers.

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

§ 172.32 Authority to accept offers.

The authority to accept offers in compromise, subject to the recommendation of the General Counsel of the Treasury or his delegate, resides with the official having authority to decide a petition for relief, except that authority to accept offers in compromise submitted with regard to penalties secured by a bond or claims for liquidated damages which are the subject of a letter to show cause issued to a surety in anticipation of possible action involving nonacceptance of bonds authorized under the provisions of part 113 of this chapter will reside with the designated Headquarters official who issued the show cause letter.

§ 172.33 Acceptance of offers in compromise.

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

Subpart E—Supplemental Petitions for Relief

§ 172.41 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. The petitioner must file such a supplemental petition within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to issues serving as the basis for the claim for liquidated damages (whichever is later) unless another time to file such a supplemental petition is

prescribed in the decision. A supplemental petition may be filed whether or not the mitigated amount designated in the decision on the original petition is paid.

§ 172.42 Supplemental petition decision authority.

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

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

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

§ 172.43 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

Raymond W. Kelly,
Commissioner of Customs.

Approved: July 25, 2000.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
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