

(ii) *Proposed suspension, revocation, or assessment of monetary penalty.*

(A) *Preliminary notice.* Where the suspension or revocation of approval, and/or the assessment of a monetary penalty is proposed, the Executive Director will issue a preliminary notice of proposed action. The preliminary notice of proposed action will state the specific grounds for the proposed action, inform the gauger that it may continue to perform those functions requiring Customs-approval until the Executive Director's final notice is issued, and advise the gauger that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of proposed action was received by the gauger. The gauger may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The gauger also may ask for a meeting with the Executive Director or his designee to discuss the proposed action.

(B) *Final notice.*

(1) *Based on nonresponse.* If the gauger does not respond to the preliminary notice of proposed action, the Executive Director will issue a final notice of adverse determination within 60 calendar days of the date the preliminary notice of proposed action was received by the gauger. The final notice of adverse determination will state the specific grounds for the adverse determination, direct the gauger to cease performing any Customs-approved functions, and advise the gauger that it may choose to pursue one of the two options provided at paragraphs (i)(2)(i)(A) and (B) of this section.

(2) *Based on response.* If the gauger files a timely response, the Executive Director will issue a final determination regarding the status of the gauger's approval within 30 calendar days of the date the gauger's response is received by the Executive Director. If this final determination is adverse to the gauger, then the final notice of adverse determination will state the specific grounds for the adverse action, advise the gauger to cease performing any functions requiring Customs approval, and advise the gauger that it

may choose to pursue one of the two options provided at paragraphs (i)(2)(i)(A) and (B) of this section.

(3) *Publication of final notices of adverse determination.*

Any final notices of adverse determination issued by the Executive Director resulting in a gauger being directed to cease performing Customs-approved functions will be published in the FEDERAL REGISTER and Customs Bulletin and the notice published will include the effective date, duration, and scope of the determination.

(4) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the gauger, then the decision notice will advise the gauger that it may choose to pursue one of the following two options:

(i) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 120 days after the date of the appeal decision; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 calendar days of the date of the appeal decision.

[T.D. 99-67, 64 FR 48539, Sept. 7, 1999; T.D. 99-67, 65 FR 10011, Feb. 25, 2000]

§ 151.14 Use of commercial laboratory tests in liquidation.

The analysis method for crude petroleum contained in ASTM D96 or other approved analysis method and as determined by a Customs-accredited commercial laboratory shall be used for Customs purposes if the difference between the value found by the commercial laboratory and the value found by the Customs laboratory does not exceed 0.11 percent. If the difference exceeds this limit and the Customs-accredited commercial laboratory cannot establish that Customs is in error, then the Customs results shall be used.

[T.D. 90-78, 55 FR 40167, Oct. 2, 1990, as amended by T.D. 99-67, 64 FR 48543, Sept. 7, 1999]