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APPENDIX D TO PART 171—GUIDELINES FOR THE IMPOSITION AND MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1593A

AUTHORITY: 18 U.S.C. 983; 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.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614; 21 U.S.C. 881 note.

SOURCE: T.D. 70-249, 35 FR 18265, Dec. 1, 1970, unless otherwise noted.

§ 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).

[T.D. 00-57, 65 FR 53576, Sept. 5, 2000]

Subpart A—Application for Relief

SOURCE: T.D. 00-57, 65 FR 53576, Sept. 5, 2000, unless otherwise noted.

§ 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.

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(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

SOURCE: T.D. 00-57, 65 FR 53576, Sept. 5, 2000, unless otherwise noted.

§ 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