

§ 122.153

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§ 122.153 Limitations on airport of entry or departure.

The owner or person in command of any aircraft clearing the U.S. for, or entering the U.S. from, Cuba, whether the aircraft is departing on a temporary sojourn, or for export, must clear or obtain permission to depart from, or enter at, the Miami International Airport, Miami, Florida; the John F. Kennedy International Airport, Jamaica, New York; or the Los Angeles International Airport, Los Angeles, California, and comply with the requirements in this part unless otherwise authorized by the Assistant Commissioner, Office of Field Operations, Customs Headquarters.

[T.D. 99-71, 64 FR 53628, Oct. 4, 1999]

§ 122.154 Notice of arrival.

(a) *Application.* All aircraft entering the U.S. from Cuba shall give advance notice of arrival.

(b) *Procedure for giving advance notice of arrival.* The commander of an aircraft covered by this section shall give the advance notice of arrival not less than one (1) hour before crossing the U.S. coast or border. Notice shall be given either:

(1) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration); or

(2) Directly to the Customs officer in charge at the Miami International Airport, Miami, Florida; the John F. Kennedy International Airport, Jamaica, New York; or the Los Angeles International Airport, Los Angeles, California, whichever is applicable.

(c) *Contents of notice.* The advance notice of arrival shall state:

- (1) Type of aircraft and registration number;
- (2) Name of aircraft commander;
- (3) Number of U.S. citizen passengers;
- (4) Number of alien passengers;
- (5) Place of last foreign departure;
- (6) Estimated time and location of crossing the U.S. coast or border; and
- (7) Estimated time of arrival.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 99-71, 64 FR 53628, Oct. 4, 1999]

§ 122.155 Document to be presented upon arrival.

Upon arrival, the aircraft commander shall present:

(a) A manifest of all passengers on board, as required by the U.S. Immigration and Naturalization Service pursuant to 8 CFR 231.1(b), to an officer of the U.S. Immigration and Naturalization Service or to a Customs officer acting as an Immigration officer;

(b) The documents required by subpart E of this part.

§ 122.156 Release of passengers.

No passengers arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart before the passengers are released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of that agency.

§ 122.157 Documents required for clearance.

As a condition precedent to clearance, the aircraft commander shall present to Customs:

(a) The documents required by Subpart H of this part; and

(b) A validated license issued by the Department of Commerce, as provided for in 15 CFR 371.19 or a license issued by the Department of State, as provided in 22 CFR part 123.

§ 122.158 Other entry and clearance requirements.

All other provisions of this part relating to entry and clearance of aircraft are applicable to aircraft subject to this subpart.

**Subpart P—Public Aircraft
[Reserved]**

Subpart Q—Penalties

§ 122.161 In general.

Except as provided in subpart S of this part, any person who violates any Customs requirements stated in this part, or any regulation that applies to aircraft under § 122.2, is, in addition to any other applicable penalty, subject to civil penalty of \$5,000 as provided by 19 U.S.C. 1644 and 1644a, except for

overages, and failure to manifest narcotics or marihuana, in which cases the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply, or for failure to report arrival or to present the documents required by §122.27(c) of this part in which cases the penalties set forth in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under part 171 of this chapter.

[T.D. 91-61, 56 FR 32086, July 15, 1991, as amended by T.D. 98-74, 63 FR 51289, Sept. 25, 1998]

§122.162 Failure to notify and explain differences in air cargo manifest.

(a) *Application.* Penalties shall be assessed if differences in an air cargo manifest (overages or shortages) are discovered and:

- (1) The required notice and explanation are not made in time;
- (2) The port director is not satisfied that the differences were caused by clerical error or other mistake;
- (3) There has been a loss of revenue to the U.S.; or
- (4) The port director is not satisfied that there was a valid reason for delay in reporting any differences.

(b) *Definition.* Under this section, “clerical error or other mistake” means a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest.

(c) *Repeated differences.* If repeated differences are found in manifests filed by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge.* A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

§122.163 Transit air cargo traveling to U.S. ports.

(a) *Application.* If transit air cargo is traveling from the port of arrival to another U.S. port under §122.119, a liability shall be assessed, as set out in §18.8 of this chapter if there has been:

- (1) Shortage in delivery;
- (2) Irregular delivery; or
- (3) Non-delivery.

(b) *Liabilities assessed.* The liabilities assessed under this section are imposed as liquidated damages under a carrier’s bond.

(c) *Value of merchandise.* The port director shall determine the value of merchandise for assessment purposes based on the following factors:

- (1) Any data or documents available to the airline which presented a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and
- (2) Other information available to the port director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the port director shall determine value on the basis of other available information. The transit air cargo manifest does not reflect value.

§122.164 Transportation to another port for exportation.

If transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated damages for shortages or irregular delivery shall be assessed as provided in §122.163.

§122.165 Air cabotage.

(a) The air cabotage law (49 U.S.C. 41703) prohibits the transportation of persons, property, or mail for compensation or hire between points of the U.S. in a foreign civil aircraft. The term “foreign civil aircraft” includes all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, as provided for in 14 CFR 121.153, and those aircraft used exclusively in the service of any government.