

**§ 151.16 Detention of merchandise.**

(a) *Exemptions from applicability.* The provisions of this section are not applicable to detentions effected by Customs on behalf of other agencies of the U.S. Government in whom the determination of admissibility is vested and to detentions arising from possibly piratical copies (see part 133, subpart E, of this chapter) or import of goods bearing marks which are confusingly similar to recorded trademarks or restricted gray market merchandise (see part 133, subpart C, of this chapter.)

(b) *Decision to detain or release.* Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for Customs examination, Customs shall decide whether to release or detain merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise. For purposes of this section, merchandise shall be considered to be presented for Customs examination when it is in a condition to be viewed and examined by a Customs officer. Mere presentation to the examining officer of a cargo van, container or instrument of international traffic in which the merchandise to be examined is contained will not be considered to be presentation of merchandise for Customs examination for purposes of this section. Except when merchandise is examined at the public stores, the importer shall pay all costs relating to the preparation and transportation of merchandise for examination.

(c) *Notice of detention.* If a decision to detain merchandise is made, or the merchandise is not released within the 5-day period, Customs shall issue a notice to the importer or other party having an interest in such merchandise no later than 5 days (excluding weekends and holidays) after such decision or failure to release (see paragraph (b) of this section). Issuance of a notice of detention is not to be construed as a final determination as to admissibility of the merchandise. The notice shall be prepared by the Customs officer detaining the merchandise and shall advise the importer or other interested party of the:

(1) Initiation of the detention, including the date the merchandise was presented for examination;

(2) Specific reason for the detention;

(3) Anticipated length of the detention;

(4) Nature of the tests or inquiries to be conducted; and

(5) Nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(d) *Providing testing results.* Upon written request by the importer or other party having an interest in detained merchandise, Customs shall provide copies of the results of any testing conducted on the merchandise together with a description of the testing procedures and methodologies used (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by Customs for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(e) *Final determinations.* A final determination with respect to admissibility of detained merchandise will be made within 30 days from the date the merchandise is presented for Customs examination. Such a determination may be the subject of a protest.

(f) *Effect of failure to make a determination.* The failure by Customs to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for Customs examination, or such longer period if specifically authorized by law, shall be treated as a decision by Customs to exclude the merchandise for purposes of section 514(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(4)). Such a deemed exclusion may be the subject of a protest.

(g) *Failure to decide protest.* If a protest which is filed as a result of a final determination or a deemed exclusion of detained merchandise is not allowed or denied in whole or in part before the 30th day after the day on which the protest was filed, it shall be treated as having been denied on such 30th day for purposes of 28 U.S.C. 1581.

(h) *Decision before commencement of court action.* Customs may at any time after a deemed denial of a protest as provided in paragraph (g) of this section, but before commencement of a court action as provided in paragraph (i) of this section, grant a protest and permit release of detained merchandise, or deny a protest in accordance with § 174.30 of this chapter.

(i) *Commencement of court action; burden of proof and decisions of the court.* Once a court action respecting a detention is commenced, unless Customs establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

(j) *Seizure and forfeiture; denial of entry or exportation.* If otherwise provided by law, detained merchandise may be seized and forfeited. In lieu of seizure and forfeiture, where authorized by law, Customs may deny entry and permit the merchandise to be exported, with the importer responsible for paying all expenses of exportation.

[T.D. 99-65, 64 FR 43611, Aug. 11, 1999]

### Subpart B—Sugars, Sirups, and Molasses

#### § 151.21 Definitions.

The following are general definitions for the purposes of this subpart in applying the provisions of Chapters 17 and 18, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202):

(a) *Degree.* “Degree” or “sugar degree” means an International Sugar Degree as determined by polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis. This test discloses the percentage of sucrose contained in the sugar.

(b) *Total sugars.* “Total sugars” means the sum of the sucrose, the raffinose, and the reducing sugars.

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 89-1, 53 FR 51268, Dec. 21, 1988]

#### § 151.22 Estimated duties on raw sugar.

Estimated duties shall be taken on raw sugar, as defined in Subheading Note 1 to Chapter 17, Harmonized Tariff Schedule of the United States, on the basis of not less than 96° polariscopic test unless the invoice shows that the sugar is of a lower grade than that of the ordinary commercial shipment.

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 89-1, 53 FR 51268, Dec. 21, 1988]

#### § 151.23 Allowance for moisture in raw sugar.

Inasmuch as the absorption of sea water or moisture reduces the polariscopic test of sugar, there shall be no allowance on account of increased weight of raw sugar importations due to unusual absorption of sea water or other moisture while on the voyage of importation. Any portion of the cargo claimed by the importer to have absorbed sea water or moisture on the voyage of importation shall be weighed, sampled, and tested separately. No such claim shall be considered if made after the sugar claimed to have been damaged has been weighed.

#### § 151.24 Unlading facilities for bulk sugar.

When dutiable sugar is to be imported in bulk, a full description of the facilities to be used in unlading the sugar shall be submitted to the Commissioner of Customs as far as possible in advance of the date of importation, and special instructions will be issued as to the methods to be applied in weighing and sampling such sugar.

#### § 151.25 Mixing classes of sugar.

No regulations relative to the weighing, taring, sampling, classifying, and testing of imported sugar shall be so construed as to permit mixing together sugar of different classes, such as centrifugal, beet, molasses, or any sugar different in character from those mentioned, for the purpose of weighing, taring, sampling, or testing.