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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 171 and 172

CBP Dec. 12-07

Changes in the Statutory Authority for Petitions for Relief

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical corrections.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations by making technical corrections to reflect the repeal of one of the underlying statutory authorities regarding petitions for relief from a fine, penalty, forfeiture, or liquidated damages under a law administered by CBP. Administrative petitioning rights are not affected by removal of this authority because CBP has other existing statutory authority for these provisions. This document also amends regulations to reflect changes in delegation authority as effected by the transfer of CBP to the Department of Homeland Security (DHS), and makes non-substantive editorial and nomenclature changes.

DATES: The final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Todd Schneider, Penalties Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, Tel. (202) 325-0261.

SUPPLEMENTARY INFORMATION:

Background

This document amends title 19 of the Code of Federal Regulations (19 CFR) by making technical corrections to 19 CFR Parts 171 and 172, specifically, sections 171.11, 171.12, 172.11, and 172.12.

These regulations delegate to the Fines, Penalties, and Forfeitures Officer or the Chief, Penalties Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection (CBP) Headquarters the authority to remit or mitigate fines, penalties, or forfeitures, or cancel claims for liquidated damages.

The purpose of the technical corrections is to conform the statutory authority sections listed for 19 CFR parts 171 and 172 and the text of the relevant regulatory provisions to reflect the repeal of title 46, United States Code (U.S.C.) Appendix section 320 (24 Stat. 81), enacted June 19, 1886, which is currently cited as one of the underlying statutory authorities. Title 46 U.S.C. Appendix section 320 was repealed as part of the recodification of the appendix to title 46 of the United States Code, by Public Law 109-304, section 19 (120 Stat. 1711), which was enacted October 6, 2006, and this document removes the repealed statutory citation from the CBP regulations.

Please note that CBP has existing statutory authority to continue accepting administrative petitions under 19 U.S.C. 1618, 1623, and 31 U.S.C. 5321, as appropriate. Therefore, this rule does not alter the rights of a person alleged to have committed a violation, or a breach of a bond condition, to petition for relief.

This document also amends 19 CFR 171.12 to reflect the transfer of authority from the Treasury Department to the U.S. Department of Homeland Security (DHS) and the delegation of authority from DHS to the Commissioner of CBP.

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. Accordingly, as of March 1, 2003, the former U.S. Customs Service of the Department of the Treasury was transferred to DHS and reorganized to become CBP.

On May 15, 2003, the Treasury Department issued Treasury Department Order Number No. 100-16 delegating to DHS its authority related to the customs revenue functions, with certain delineated exceptions in which the Treasury Department retained its authority. See Appendix to 19 CFR Part 0. The Treasury Department transferred to DHS its authority over fines, penalties, and forfeitures and the Secretary of DHS further delegated this authority to the Commissioner of CBP. Accordingly, this document amends 19 CFR 171.12 to reflect these changes.

Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document are necessary to conform 19 CFR parts 171 and 172 to reflect the repeal of 46 U.S.C. Appendix section 320, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary. For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12866

As these amendments are technical corrections to the regulations to reflect statutory changes, these amendments do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

Signing Authority

This document is limited to technical corrections of the CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

List of Subjects

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 CBP Regulations

For the reasons stated in the preamble, parts 171 and 172 of title 19 of the Code of Federal Regulations (19 CFR parts 171 and 172) are amended as set forth below.

PART 171 – FINES, PENALTIES, AND FORFEITURES

1. The authority citation for part 171 is revised to read as follows:

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.

§ 171.11 [Amended]

2. Section 171.11(a) is amended by removing the phrase “, or section 320 of title

46, United States Code App. (46 U.S.C. App. 320),”.

§ 171.12 [Amended]

3. Section 171.12 is amended by:

a. Adding the word, “or”, before the phrase “section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c))”;

b. Removing the phrase “, or section 320 of title 46, United States Code App. (46 U.S.C. App. 320),”;

c. Removing the words “, unless there has been no delegation to act by the Secretary of the Treasury or his designee”;

d. Removing the last sentence of the paragraph; and

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

4. The authority citation for part 172 is revised to read as follows:

AUTHORITY: 19 U.S.C. 66, 1618, 1623, 1624.

§ 172.11 [Amended]

5. Section 172.11(a) is amended by removing the phrase “, or section 320 of title 46, United States Code App. (46 U.S.C. App. 320),”, and by removing the word “shall” and adding in its place the word “will”.

§ 172.12 [Amended]

6. Section 172.12 is amended by:

a. Removing the phrase “, or section 320 of title 46, United States Code App. (46 U.S.C. App. 320),”;

b. Adding the words “International Trade, ” after the words, “Office of”;
and

c. Removing the word “Customs” and adding in its place the term
“CBP”.

Dated: March 28, 2012

David V. Aguilar
Acting Commissioner
U.S. Customs and Border Protection

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