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**U.S. Customs and
Border Protection**

DIS2:OT:FD LJP
2012F04935

April 5, 2012

This letter is a final response to your Freedom of Information Act (FOIA) request for copies of 61 CBP directives in electronic format.

A search for CBP documents responsive to your request produced a total of 410 pages of directives. CBP has determined that 132 pages are exempt from release pursuant to Title 5 U.S.C. § 552 (b)(7)(E). Of the remaining 278 pages, some are partially releasable pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E). Enclosed are 278 pages of directives with some pages partially redacted with exemptions described below.

FOIA Exemption (b)(6) exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

FOIA Exemption (b)(7)(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

You have the right to appeal the above determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 799 Ninth Street, NW, Mint Annex, Washington, DC 20229-1179, following the procedures outlined in the DHS regulations at Title 6 CFR § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call (877) 684-6448.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

Please notate file number 2012F04935 on any future correspondence regarding this request. If you have any questions, this office can be reached at (202) 325-0150.

Sincerely,



Millie Gleason
Acting Director, FOIA Division
Office of International Trade

Enclosures

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: FO:P

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO: 1450-018

DATE: SEPTEMBER 7, 2000

SUPERSEDES:

REVIEW DATE: SEPTEMBER 2002

SUBJECT: MODIFYING AND REMOVING RECORDS FROM ACTIVE FILES IN THE
TREASURY ENFORCEMENT COMMUNICATIONS SYSTEM

1 **PURPOSE.** This directive revises policy to limit the authority to modify and remove records from active files in the Treasury Enforcement Communications System (TECS) to (b) (7)(E) [REDACTED]

2 **POLICY.** (b) (7)(E) [REDACTED]

2.1 Periodic reviews of the list of personnel who have this access are to be conducted at least annually, and the list is to be kept to the minimum required to effectively maintain the record database.

2.2 The Office of Information Technology has made programming changes that will notify the record owner, that officer's supervisor, and the supervisor of the officer making the change.

2.2.1 There is also a mandatory field to give the reason for the change or deletion; this information will remain with the stored record.

3 **AUTHORITIES/REFERENCES.** The Privacy Act of 1974 (5 U.S.C. 552a); The Computer Security Act of 1987 (Public Law 100-235); Responsibilities for Telecommunications and Information Systems Security (T.D. 85-09); Treasury National Security Information Handbook (HB 622-1120); Automated Information System Security Policy Manual (HB 1400-05).

4 **RESPONSIBILITIES.**




4.1 Directors, Field Operations and Special Agents in Charge (SAIC), are responsible for ensuring proper implementation of this Directive.

4.2 Supervisors will ensure that all personnel with access to TECS are familiar with

the procedures outlined in this directive and that all guidelines are followed.

5 PROCEDURES.

(b)
(7)(E)



5.4 Annual reviews of user profiles and access authority will be made by local System Control Officers to ensure that only those officers who actually need the capability to modify or remove records of personnel outside their direct chain-of-command have it. These reviews should be documented and available for certification as part of the Self-Inspection Program.

5.5 The control procedures for the creation of records remain unchanged.

6 MEASUREMENT.

6.1 Periodic reviews of the list of individuals with this authority are to be conducted at least annually and reported as part of the Self-Inspection Program.

Commissioner of Customs

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 4410-001A, 2-03-00)**

ORIGINATING OFFICE: IC:P

DISTRIBUTION: P-44

CUSTOMS DIRECTIVE NO: 4410-001

DATE: APRIL 3, 1986

SUBJECT: GUIDELINES FOR DETENTION AND SEIZURES OF PORNOGRAPHIC MATERIALS

1. Purpose

The purpose of this directive is to establish guidelines for the seizure and referral of obscene materials to the U.S. Attorney for forfeiture proceedings pursuant to 19 U.S.C. 1305. Criminal matters arising under the Child Protection Act of 1984, 18 USC 2251 et seq., are not covered by this directive except to the extent seized child pornography is referred to the U.S. Attorney for civil forfeiture proceedings under 19 U.S.C. 1305.

2. Background

In accordance with 19 U.S.C. 1305, persons are prohibited from importing obscene materials into the United States. Such material is to be seized and referred immediately to the U.S. Attorney who shall institute proceedings within 14 days of seizure in district court for the forfeiture and destruction of the seized material.

Seizures and referrals of this material to U.S. attorneys have recently declined. This may be the result of Customs officers interpreting previous decisions of the U.S. attorney not to pursue forfeiture on similar materials as establishing a standard. It is Customs policy that all obscene materials be referred to the U.S. Attorney and absent assent to forfeiture, civil forfeiture proceedings be commenced in district court pursuant to 19 U.S.C. 1305.

3. Action

Customs officers involved in the inspection of baggage, cargo, and mail are to seize and refer to the U.S. attorney all material which may be considered obscene. This includes but is not limited to

- a. material depicting persons appearing to be under the age of 18 engaged in sexual intercourse, masturbation, sexual violence, or lascivious exhibition of the genitals or pubic area;

- b. material depicting persons of any age engaged in sexual conduct with animals (bestiality);
- c. material depicting persons engaged in sado-masochism or other forms of sexual violence;
- d. material depicting persons engaged in sexual activity involving excrement or excretory functions;
- e. material depicting explicit sexual activity between adults (both homosexual and heterosexual);
- f. material depicting nudity where, to arouse prurient interest, the models are shown in unnatural or exaggerated positions.

Material of a type that is widely available throughout the community (i.e., PLAYBOY and PENTHOUSE magazines) should not be seized or detained. Availability in geographically defined areas commonly referred to as "red light districts" does not necessarily indicate community tolerance or acceptance and does not provide an adequate basis by which to judge community standards.

If, over time, a pattern develops indicative of a court's refusal to grant forfeiture or the U.S. Attorney's refusal to refer materials for forfeiture, the Office of the Regional Counsel is to be notified.

The Regional Counsel should contact the U.S. attorney to coordinate action in support of this enforcement program. Further problems should be referred to the Office of Chief Counsel for discussion with the Department of Justice.

4. Responsibility

It is the responsibility of Regional Commissioners and District and Area Directors to ensure that all materials suspected of being obscene are seized and referred for judicial action as prescribed in 19 USC 1305. The referral procedures should be worked out between the Area/District Directors and Regional Counsels. Regional Counsels will coordinate with the U.S. attorney to ensure aggressive support of this program. The Office of Chief Counsel will consult with the Department of Justice, if necessary, to resolve further problems.

5. Effective Date

This directive becomes effective on the date of issuance.

Commissioner of Customs

U.S. CUSTOMS AND BORDER PROTECTION

CBP DIRECTIVE NO. 5290-017

DATE: May 18, 2010

ORIGINATING OFFICE: OFO: CCS

SUPERSEDES: Municipal Solid Waste
Examination Methodology Implementation
Memorandum, 8/30/2006

REVIEW DATE: May 2013

SUBJECT: Municipal Solid Waste (MSW) Examination Policy

1 PURPOSE. To establish policy and procedures that shall be followed for MSW shipments entering at land border ports.

2 POLICY. It is the policy of U.S. Customs and Border Protection (CBP) that all MSW shipments will be evaluated (b) (7)(E)

3 AUTHORITIES/REFERENCES. (b) (7)(E)

4 RESPONSIBILITIES.

4.1 Directors, Field Operations (DFOs) shall ensure that all affected land border ports under their jurisdiction implement the requirements outlined in this directive.

4.2 Port Directors are responsible for ensuring that their ports comply with the requirements in this directive, that all procedures are followed, and that statistical data is captured and reported in accordance with this directive.

4.2.1 Port Directors will develop standard operating procedures for their ports to include both risk management and U.S. Customs and Border Protection Officer (CBPO) safety including the wearing of personal protective equipment during the examinations.

4.3 (b) (7)(E)

5 PROCEDURES.

5.1 (b) (7)(E)

5.2 The physical examination of MSW is primarily defined as a full unloading of the container (devan) at a transfer station or dump with CBPOs examining 100 percent of the contents after the MSW has been spread out on the ground.

5.3 CBPOs shall escort all shipments destined to a facility for examination.

5.4 (b) (7)(E)

5.5 In order to promote efficiency, MSW shipments designated for examination on a given day should be coordinated to ensure that all trucks are escorted at once.

5.6 If port workload or staffing temporarily prevents full devan examinations, the DFO may grant a 1-day waiver, or delegate waiver authority to the Port Director, which will allow the port to perform an onsite examination in lieu of escorting to a dump. Ports shall report all 1-day waivers to their respective Field Office on a monthly basis. (These reports are no longer required to be sent to CBP Headquarters).

5.7 (b) (7)(E)

6 **NO PRIVATE RIGHT CREATED.** This Directive is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or

benefits on any person or party.

Assistant Commissioner
Office of Field Operations

**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

CBP DIRECTIVE NO.

DATE: July 22, 2010

**ORIGINATING OFFICE: FO: CCS
REVIEW DATE:**

SUBJECT: Processing of Diplomatic Shipments

1. PURPOSE.

The purpose of this directive is to provide clear and uniform guidelines for processing the importation of accompanied and unaccompanied articles, which are entitled to any of the diplomatic privileges specified in 19 CFR Pt.148, Subpart I, and for which a "Request for Customs Clearance of Merchandise" (DS-1504) is required.

2. POLICY.

2.1 The Department of State, Office of Foreign Missions must authorize the release of all merchandise, which is entitled to diplomatic privileges on a DS-1504, and must do so prior to the release of any such merchandise from the custody of U.S. Customs and Border Protection (CBP).

2.2 Articles released under diplomatic privileges may include office equipment, construction materials, vehicles, and household goods.

3. SCOPE.

3.1 Once the DS-1504 has been approved by the Office of Foreign Missions, it will be signed, seal stamped, and delivered via facsimile and express mail to the Port Director of the port in which the shipment is to be entered. The Office of Foreign Missions may take up to 10 working days to process the DS-1504.

3.2 If the Office of Foreign Missions has authorized the release of a diplomatic shipment, and a copy of the approved DS-1504 is on file at the port of entry, the shipment may be released from CBP custody.

3.3 In instances when an approved DS-1504 is not on file at the time of importation, the merchandise may either be sent in-bond to its final destination or placed into a bonded warehouse until such time that an approved DS-1504 is received from the Office of Foreign Missions. Imported merchandise may not be released from CBP custody without a copy of an approved DS-1504 on file at the port of entry.

4. AUTHORITY. 19 CFR 148.81 through 148.90.

5. RESPONSIBILITIES.

5.1 Directors, Field Operations, CBP Field Offices, are responsible for ensuring that the provisions of this Directive are carried out effectively and uniformly throughout their areas of responsibility.

5.2 Port Directors are responsible for assuring that the provisions of this Directive are followed and uniformly applied. They are also responsible for disseminating this Directive to personnel within their jurisdiction.

6. DISCLAIMER. This Directive is an internal CBP document and does not create or confer any right or benefit on any person, public or private.

Assistant Commissioner
Office of Field Operations

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: FO:P

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 3340-006A

DATE: FEBRUARY 4, 2000

SUPERSEDES: 3340-006, 6/12/86

REVIEW DATE: FEBRUARY 2002

SUBJECT: PROCEDURES FOR EXAMINING DOCUMENTS AND PAPERS

1 **PURPOSE.** This directive provides guidelines and procedures for examining documents and papers during all Customs operations at the border, functional equivalent of the border, and extended border.

2 POLICY.

2.1 The U.S. Customs Service will protect the rights of individuals against unreasonable search and seizure while still accomplishing its enforcement mission.

3 **AUTHORITIES/REFERENCES.** 19 C.F.R. 145.3; Ref. 3.740 LCCO; 19 U.S.C. 1305; National Stolen Property Act, 18 U.S.C. 2314; 18 U.S.C. 1426(h).

4 **EFFECTS ON OTHER DOCUMENTS.** The guidelines and procedures contained within this directive are currently contained within the Personal Search Handbook dated March 1997. These procedures will no longer be incorporated in the revised Personal Search Handbook HB #3300-04A dated November 1999.

5 RESPONSIBILITIES.

5.1 The Assistant Commissioner, Office of Field Operations, shall have policy oversight, which will include the formulation and implementation of guidelines and procedures.

5.2 The Assistant Commissioner, Office of Investigations, shall have oversight for investigative operations, which will include the implementation of guidelines and procedures set forth in this directive.

5.3 Special Agents in Charge (SAIC's) are responsible for ensuring that their subordinates get a copy of this directive and are familiar with its contents.

5.4 Directors, Field Operations, at Customs Management Centers are responsible for conducting ongoing reviews to evaluate procedures used for examining documents and papers.

5.5 Port Directors are required to update any necessary additional port-specific procedures for examining documents and papers and to ensure strict adherence to national policy.

5.6 Each Customs officer must know the limits of Customs authority, and must use this authority judiciously, conscientiously, and courteously.

6 PROCEDURES.

6.1 All Customs officers shall comply with the following procedures.

6.2 Customs Officers Should Not Read Personal Correspondence.

6.2.1 The U.S. Customs Service must guard the rights of individuals being inspected to ensure that their personal privacy is protected. Therefore, as a general rule, Customs officers should not read personal correspondence contained in passengers' privately owned conveyances, baggage, or on their person, **except**, as specified in 6.4.1.

6.3 Letter Class Mail.

6.3.1 Customs officers may not read or permit others to read correspondence contained in sealed "LC" mail (the international equivalent of First Class) without an appropriate search warrant or consent.

6.3.2 Only articles presently in the postal system are deemed "mail." Letters carried by individuals, for example, are not considered to be mail, even if they are stamped (see *19 C.F.R. 145.3*). [*Ref. 3.740 LCCO*].

6.4 Customs Officers May Glance at Documents and Papers.

6.4.1 As opposed to reading content, Customs officers may glance at documents and papers to see if they appear to be merchandise. This may include:

- Books, pamphlets, printed/manuscript material
- Monetary instruments.
- Prohibited materials such as, copyright violations, obscene, treasonous or seditious material (i.e., inciting or producing imminent lawless action).
- Prohibited matter being imported in violation of 19 U.S.C. 1305, stolen property under the National Stolen Property Act, 18 U.S.C. 2314, or evidence of embargo violations.
- Materials related to the importation or exportation of merchandise including documents required to be filed to import or export merchandise.

6.5 Reasonable Suspicion Required for Reading and Continued Detention.

6.5.1 If, after glancing at the documents or papers, an officer reasonably suspects that they relate to any of the categories listed in section 6.4.1 of this directive, the officer may read the documents. He/she may continue to detain such documents for such further inquiry as may be reasonably necessary to make the determination whether to seize the documents.

6.5.2 This may include referral to another agency necessary to assist in that determination.

6.6 Probable Cause Required for Seizures.

6.6.1 If an officer has probable cause to believe that a document or paper is subject to seizure because it is prohibited, a fruit, instrumentality or evidence of a crime, or otherwise subject to forfeiture, it may be seized.

6.7 Probable Cause or Consent Required to Copy.

6.7.1 An officer must have probable cause to believe a document or paper is subject to seizure, to copy it. Documents and papers may be copied without probable cause when consent to do so is obtained from the person from whom the documents were seized, or if copying is incident to a lawful arrest.

6.7.2 In circumstances when the inspecting Customs officer is uncertain whether probable cause exists, the officer may contact the Associate/Assistant Chief Counsel.

6.8 Identification Documents can be Photocopied.

6.8.1 Passports (United States or foreign), Seaman's Papers, Airman Certificates, drivers licenses, state identification cards and similar governmental identification documents can be photocopied for legitimate, good-faith government purposes without any suspicion of illegality.

6.8.2 Certificates of Naturalization may never be copied (18 U.S.C. 1426(h)).

6.9 Attorney-Client Privilege.

6.9.1 As part of a border search, an attorney's files can be examined for the presence of drugs, currency or other monetary instruments, sales slips, invoices, or other documents evidencing foreign purchases.

6.9.2 Occasionally, an attorney will claim that the attorney-client privilege prevents the search of his documents and papers at the border. Files and papers being brought into the country by an attorney are subject to a routine search for merchandise. Implicit in the authority to search for merchandise is the authority to search for papers that indicate or establish that a current importation of merchandise might be occurring. Records of an importation are not privileged. However, correspondence, court papers, and other legal documents may be privileged. If an officer has probable cause to believe a document may be evidence of a crime, seek advice from the Associate/Assistant Chief Counsel or the U.S. Attorney's office.

6.10 Chain of Custody Required for Copies.

6.10.1 Whenever copies of documents are made, transfer of the copies should be accomplished through a chain of custody form (CF-6051) or other documentation that will show each individual who has had custody and access to such copies.

6.11 Foreign Language Documents or Documents Requiring Special Expertise.

6.11.1 If an officer reasonably suspects that a document or paper in a foreign language falls into a category that would allow it to be read, the document can be detained and forwarded to an appropriate translator, provided that such translations can be accomplished within a reasonable time.

6.11.2 The use of a facsimile (FAX) machine, when appropriate, is authorized. This same principle would apply to documents that need special expertise to determine their nature, such as documents relating to complex technology cases.

6.11.3 If after translation or review, probable cause to seize develops, the documents should be seized and/or copies retained. If not, the originals must be returned and all copies (e.g., fax) must be destroyed. The destruction must be appropriately documented.

6.11.4 Factors that a court might consider in determining the reasonableness of the time the documents are detained could be such things as the nature of the documents, whether the officer explained to the person the reason for the detention, and whether the person was given the option of continuing his journey with the understanding that Customs would return the documents if it is not in violation of law.

7 **MEASUREMENT.** Directors, Field Operations, at Customs Management Centers, SAIC's, and Port Directors will ensure that all TECS reports pertaining to the examinations of documents and papers are reviewed periodically to determine the effectiveness of the procedures contained within this directive, including whether there may be any improprieties in the conduct of these examinations.

8 **NO PRIVATE RIGHT CREATED.** This document is an internal policy statement of the U.S. Customs Service and does not create any rights, privileges, or benefits for any person or party.

Commissioner of Customs

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 3290-016, 10/11/95)**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: P-32

CUSTOMS DIRECTIVE NO. 3340-004

DATE: August 5, 1985

SUBJECT: INSPECTION AND CONTROL INVOLVEMENT IN OUTBOUND
CURRENCY INTERDICTORY INSPECTIONS

1. Purpose

To establish the role of the Office of Inspection and Control in outbound currency interdictory inspections.

2. Background

The Office of Inspection and Control, with the cooperation of the Office of Enforcement, (b) (7)(E)

The success of that program, coupled with prior successful efforts, has established the need to formalize the role of the Office of Inspection and Control regarding outbound currency interdictory inspections.

3. Action

Effective immediately, the office of Inspection and Control has the authority, as it deems necessary and with existing manpower, to conduct outbound currency inspections. The procedures for these inspections are contained in a memorandum from the Assistant Commissioner, Office of Inspection and Control, dated April 23, 1985, File: ENF-5-07-IC:I JH/VJD.

It must be stated that these inspectional operations be closely coordinated with the local Office of Investigations at the regional, district, and port level.

4. Responsibilities

Regional Commissioners, District Directors, Area Directors, and Port Directors are responsible for ensuring the establishment and the implementation of procedures outlined in this directive.

signed
Commissioner of Customs

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE HAS BEEN CANCELLED BY FIELD OPERATIONS (CARGO) 8/19/96)**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: See Signature Page
CUSTOMS DIRECTIVE NO. 3340-002
DATE: June 7, 1991

SUBJECT: SPECIAL OUTBOUND MANIFEST EXCEPTIONS; DIPLOMATIC
POUCHES OF THE DEPARTMENT OF STATE

1. PURPOSE

To provide instructions for the processing of outbound unaccompanied diplomatic pouches which bear the official State Department seal on a certificate that the contents are only official communications and documents sent by the Department of State from the United States to United States embassies and consulates in foreign countries.

2. BACKGROUND

On occasion diplomatic pouches are held by the airlines until they can be added to a manifest for Customs purposes. Diplomatic pouches and their contents are not commercial cargo for Customs purposes. Regulations issued by the Department of Commerce explicitly exempt diplomatic pouches from the Shipper's Export Declaration requirements (15 CFR 30.55). Consequently, diplomatic pouches need not be listed on the outbound air cargo manifest.

3. ACTION

Unaccompanied diplomatic pouches under certification and seal of the State Department should not be treated as air cargo for Customs purposes. The contents of diplomatic pouches are excepted from shipper's export declaration and manifest requirements, however the airline must maintain a record of the shipment under its contract with the State Department, and for such purposes records the pouches on the airline company shipping records.

4. RESPONSIBILITY

Regional commissioners are responsible for ensuring that provisions are carried out uniformly throughout their respective regions.

District, area and port directors are responsible for carrying out the provisions of this directive and for disseminating its contents to all air carriers in their jurisdiction.

5. SUPERSEDED MATERIAL

Circular BAG-5-EV dated April 18, 1962.

signed
Assistant Commissioner
Office of Inspection and Control

DISTRIBUTION:

R-01 Regional Commissioners
F-01 District/Area Directors
F-02 Port Directors
G-19 All Customs Inspectors

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

CBP DIRECTIVE NO. 3310-011

DATE: January 19, 2010

ORIGINATING OFFICE: FO: APTL

REVIEW DATE: January 2013

SUBJECT: Returning Remains of U.S. Citizens

1. PURPOSE.

1.1 The purpose of this directive is to establish a uniform process and provide Field Offices guidelines for entry and release of remains of U.S. citizens arriving from foreign countries as a result of a natural disaster or other causes.

2. BACKGROUND.


2.1 One of the most essential tasks of Customs and Border Protection (CBP) is to assist the Department of State (DOS) and U.S. embassies and consulates abroad to provide assistance to families of U.S. citizens who die abroad. The U.S. consular officer abroad in the foreign country assists the family with making arrangements with local authorities for preparation and disposition of the remains, following the family's instructions in accordance with local law. The authority and responsibilities of a U.S. consular officer concerning return of remains of a deceased U.S. citizen abroad are based on U.S. laws (22 U.S.C. § 4196; 22 CFR Part 72), treaties, and international practice. Options available to a family depend upon local law and practice in the foreign country. Certain documents are required by U.S. and foreign law before remains can be sent from one country to another. These requirements may vary depending on the circumstances of the death.

3. RESPONSIBILITIES.

3.1 Directors, Field Operations (DFO) are responsible for ensuring the policies set forth in this Directive are implemented.

4. POLICY.

4.1 A U.S. consular mortuary certificate is required to ensure the orderly shipment of remains and to facilitate CBP clearance. (b) (7)(E)



4.2 (b) (7)(E)

4.3 (b) (7)(E)

4.4 (b) (7)(E)

4.5 (b) (7)(E)

This statement generally is required even if the exact cause of death is unknown in order for remains that are not embalmed to enter the United States.

4.6 If the foreign Death Certificate is not available at the time that the remains are returned, (b) (7)(E)

4.7 Consular Affairs is to (b) (7)(E)

4.8 Consular Affairs will notify (b) (7)(E)

4.9 If a casket bearing human remains is entered at a facility where (b) (7)(E)

4.10 Persons accompanying the remains may be required to present a copy of the official Death Certificate and / or supporting documentation regarding the deceased person.

4.11 If a casket bearing human remains is entered at a facility where a (b) (7)(E)

4.12 The Transportation Security Administration (TSA) recommends that ashes intended to be carried onto an aircraft as part of carry-on luggage be transported in a (b) (7)(E)

5. PROCESSING REQUIREMENTS.

5.1 CBP may admit the remains (b) (7)(E)

5.2 If the casket (b) (7)(E)

5.3 If the casket is not (b) (7)(E)

5.4 (b) (7)(E)

5.5 In the event of a catastrophic incident, the Centers for Disease Control and Prevention (CDC) may exercise enforcement discretion with respect to the requirements of § 71.55 of Title 42 of the Code of Federal Regulations (CFR). Notification of the exercise of enforcement discretion will be transmitted by OFO to CBP Field Offices upon official receipt and verification from CDC.

5.6 (b) (7)(E)

6. EXAMINATION.

6.1 (b) (7)(E)

6.2 All remains will be treated with dignity and respect at all times.

7. IMPORTATION AND RELEASE.

7.1 Documentation:

- Foreign Government transit permit
- U.S. Consular Mortuary Certificate
- Transport Document (bill of lading, airway bill, or electronic equivalent)

7.2 The U.S. Consular officer is (b) (7)(E)

7.3 The transit permit identifies the deceased by sex, race, age, and cause of death. CBP may use this information to verify information provided.

7.4 Upon arrival, the shipment will be released without entry, as corpses, together with their coffins and accompanying flowers, are exempted from the HTSUS under General Note 3(e)(i).

7.5 (b) (7)(E) [REDACTED]

8. ADDITIONAL INFORMATION.

8.1 For additional information concerning return of remains of a deceased U.S. Citizen, CBP Field Offices may contact the Director, Ag/Bio Terror Counter Measures at 202-344-3825.

8.2 Additional information regarding Consular Mortuary Services can be obtained by contacting the appropriate geographic division of the Office of American Citizens Services, Department of State, Room 4817 N.S., 2201 C. Street, N.W., Washington, D.C. 20520, at (b)(6) [REDACTED]

9. REFERENCES

- 42 CFR § 71.55
- 22 U.S.C. § 4196
- 22 CFR Part 72

10. NO PRIVATE RIGHT OF ACTION

10.1 The statements made herein are not intended to create or confer any rights, privileges, or benefits for any private person but are intended merely for internal guidance.

DISCLOSURE OF INFORMATION – This Directive contains information which may be exempt from public disclosure under the Freedom of Information Act (5 U.S.C. § 552) or 19 CFR § 103.12 (b), (g).

(b)(6), (b)(7)(C) [REDACTED]

Assistant Commissioner
Office of Field Operations

CUSTOMS AND BORDER PROTECTION DIRECTIVE

**CANCELLED BY OFFICE OF FIELD OPERATIONS, PROGRAMS AND POLICY,
JUNE 1, 2010**

ORIGINATING OFFICE: FO:P

DISTRIBUTION: S-01

CBP DIRECTIVE NO. 3310-010A

DATE: August 27, 2003

SUPERSEDES: 3310-010, 12/13/01

REVIEW DATE: AUGUST 2006

SUBJECT: NONCOMMERCIAL IMPORTATION OF PRODUCTS FROM CUBA

1 **PURPOSE.** This Directive establishes national policy and provides uniform procedures for the enforcement of the Cuban Assets Control Regulations concerning noncommercial importation of products from Cuba.

2 **POLICY.**

2.1 The U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), administers a series of laws that impose economic sanctions against certain countries to further U.S. foreign policy and national security objectives. Economic sanctions are powerful foreign policy tools, the success of which requires the active participation and support of the Federal Inspection Service agencies. The Bureau of Customs and Border Protection (CBP) is America's front line in the effort to implement the restrictions outlined in the Cuban Assets Control Regulations. It is therefore imperative that all inspectional personnel enforce the economic sanctions laws and regulations as specified in this Directive.

2.2 In accordance with the Cuban Assets Control Regulations, 31 CFR Part 515, issued under the Trading With The Enemy Act, goods or services of Cuban origin may not be imported into the United States either directly or through third countries. The only exceptions are: (1) \$100 worth (foreign market value) of Cuban merchandise purchased in Cuba, for personal use, may be brought into the United States in accompanied baggage by authorized U.S. citizens and permanent resident travelers arriving, directly or indirectly, from Cuba on a licensed trip (authorized only valid once every six consecutive months); (2) publications, artwork, or other informational materials (31 CFR 515.332, 515.560); (3) merchandise other than tobacco or alcohol and not in commercial quantities in accompanied baggage of foreign persons entering the United States; and (4) merchandise for which a specific license has been granted by OFAC.

2.3 This Directive applies to all U.S. citizens and permanent residents wherever they are located, all people and organizations physically in the United States (except certified foreign diplomats), and all branches and subsidiaries of U.S organizations throughout the world.

3 **AUTHORITIES/REFERENCES.** Trading with the Enemy Act of 1917, 50 U.S.C., App.

1-44; The Cuban Democracy Act of 1992, 22 U.S.C. 6001-10; The Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. 6021-91; 18 U.S.C. 1001; Cuban Assets Control Regulations, 31 CFR Part 515; Executive Order 12854, Volume 29 Weekly Compilation of Presidential Documents page 1269 (July 4, 1993), Implementation of the Cuban Democracy Act.

4 DEFINITIONS.

4.1 The term “authorized U.S. citizens and permanent resident travelers” as used in this Directive, includes travelers who are authorized, under the OFAC general license or a specific license, to engage in travel transactions while in Cuba.

4.2 The term “Office of Foreign Assets Control general license” includes particular categories of U.S. citizens and permanent resident travelers to include:

4.2.1 Journalists and support broadcasting or technical personnel (regularly employed in that capacity by a news reporting organization and traveling for journalistic activities);

4.2.2 Official U.S. or foreign government travelers (traveling on official business);

4.2.3 Members of intergovernmental or international organizations of which the United States is also a member (traveling on official business);

4.2.4 Persons traveling once a year to visit, close relatives in circumstances of humanitarian need (additional trips within 1 year will need an OFAC specific license);

4.2.5 Full-time professionals whose travel transactions are directly related to professional research in their professional areas, provided that their research is of a noncommercial, academic nature, comprises a full work schedule in Cuba, and has a substantial likelihood of public dissemination;

4.2.6 Full-time professionals whose travel transactions are directly related to attendance at professional meetings or conferences in Cuba organized by an international professional organization, institution, or association that regularly sponsors such meetings or conferences in other countries. The organization, institution, or association sponsoring the meeting or conference may not be headquartered in the United States unless it is specifically licensed to sponsor the meeting in Cuba. The purpose of the meeting or conference cannot be the promotion of tourism in Cuba or other commercial activities involving Cuba, or to foster production of any biotechnological products; and,

4.2.7 Amateur or semiprofessional athletes or teams traveling to Cuba to participate in an athletic competition held under the auspices of the relevant international sports federation. The athletes must have been selected for the competition by the relevant U.S. sports federation, and the competition must be one that is open for attendance, and in relevant situations participation, by the Cuban public.

4.3 The term “Office of Foreign Assets Control specific licenses for educational institutions” includes only U.S academic institutions accredited by an appropriate national or regional accrediting association, which have applied for and received a specific license issued under 31 CFR 515.565(a), generally valid for up to 2 years. Once an academic institution has applied for and received such a specific license, the following categories of travelers affiliated with that institution are authorized to engage in travel-related transactions incident to the following activities without seeking further authorization from the OFAC:

4.3.1 Undergraduate or graduate students participating in a structured educational program as part of a course at an accredited U.S. college or university. Students planning to engage in such transactions must carry a letter from the licensed institution stating: (1) the institution’s license number, (2) that the student is enrolled in an undergraduate or a graduate degree program at the institution, and (3) that the travel is part of a structured educational program at the institution;

4.3.2 Persons doing noncommercial Cuba-related academic research in Cuba for the purpose of qualifying academically as a professional (e.g., research towards a graduate degree). A student planning to engage in such transactions must carry a letter from the licensed institution stating: (1) the institution’s license number, (2) that the student is enrolled in a graduate degree program at the institution, and (3) that the Cuba research will be accepted for credit toward that graduate degree;

4.3.3 Undergraduate or graduate students participating in a formal course of study at a Cuban academic institution, provided the Cuban study will be accepted for credit toward a degree at the licensed U.S. institution. A student planning to engage in such transactions must carry a letter from the licensed institution stating: (1) the institution’s license number, (2) that the student is currently enrolled in an undergraduate or graduate degree program at the institution, and (3) that the Cuban study will be accepted for credit toward that degree;

4.3.4 Persons regularly employed in a teaching capacity at a licensed college or university who plan to teach part or all of an academic program at a Cuban academic institution. An individual planning to engage in such transactions must carry a letter from the licensed institution stating: (1) the institution’s license number, and (2) that the individual is regularly employed by the licensed institution in a teaching capacity;

4.3.5 Cuban scholars teaching or engaging in other scholarly activities at a licensed college or university in the United States. Licensed institutions may sponsor such Cuban scholars, including payment of a stipend or salary;

4.3.6 Secondary school students participating in educational exchanges sponsored by Cuban or U.S. secondary schools and involving the student’s participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official. A reasonable number of adult chaperones may accompany the students to Cuba. A

secondary school group planning to engage in such transactions in Cuba must carry a letter from the licensed secondary school sponsoring the trip stating: (1) the school's license number, and (2) the list of the names of all persons traveling with the group; and

4.3.7 Full-time employees of a licensed institution organizing or preparing for the educational activities described above. An individual engaging in such transactions must carry a letter from the licensed institution stating: (1) the institution's license number, and (2) that the individual is regularly employed by their institution.

4.4 The term "Office of Foreign Assets Control specific licenses for religious organizations" includes only religious organizations, which have applied for and received a specific license issued under 31 CFR 515.566(a) and generally valid for up to 2 years. Once a religious organization has applied for and received a specific license, travelers affiliated with that religious organization are authorized to engage in travel-related transactions incident to a full-time program of religious activities in Cuba under the auspices of the licensed religious organization without seeking further authorization from the OFAC. Individuals planning to engage in such transactions must carry a letter from the licensed religious organization stating: (1) the organization's license number, (2) that they are affiliated with the licensed organization, and (3) that they are traveling to Cuba to engage in religious activities under the auspices of the licensed organization.

4.5 The term "fully hosted travelers" are travelers whose expenses are covered by a person not subject to United States jurisdiction (See 31 CFR 515.420 for further explanation of what constitutes "fully hosted travel to Cuba"). Such persons are not authorized to bring back any Cuban-origin goods, except for informational materials.

4.6 The OFAC may specifically license importation of gifts received in Cuba by a U.S. citizen or permanent resident, provided the gift is of small value and represents no commercial benefit to Cuba.

5 RESPONSIBILITIES.

5.1 The Assistant Commissioner, Office of Field Operations, shall have policy oversight, which includes the formulation and implementation of guidelines and procedures related to noncommercial importation of products from Cuba.

5.2 Directors, Field Operations, are responsible for the overall policy implementation of this Directive.

5.3 Port directors are responsible for implementing, and updating standard operating procedures to ensure compliance with this Directive.

6 PROCEDURES.

6.1 The U.S. Department of the Treasury, Office of Foreign Assets Control, administers the Cuban Assets Control Regulations. Inspectional personnel requiring

additional information about the Cuban sanctions program shall contact the OFAC, Enforcement Division, at (202) 622-2430.

6.1.1 The OFAC has authorized certain U.S. citizens and permanent resident travelers under a general license to engage in travel transactions in Cuba (See section 4.2).

6.1.2 The OFAC has also issued specific licenses for certain travelers, including those affiliated with educational institutions (See section 4.3) and religious organizations (See section 4.4) that authorize them to engage in travel transactions in Cuba.

6.1.3 All other U.S. citizens and permanent resident travelers, who engage in travel-related transactions in Cuba, must have a specific license from the OFAC.

6.2 Importation of Cuban-origin goods from Cuba by authorized U.S. citizens and permanent resident travelers under either a general or specific OFAC license are subject to the limitations specified in section 2.2 and section 6.5 of this Directive, and Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS).

6.3 The exceptions specified in 2.2 may be used only once within a period of 6 consecutive months and not in addition to any exemption or restrictions of Chapter 98 of the HTSUS to which the traveler may be subject.

6.4 There are no limits on the importation of informational material, such as books, films, tapes and CDs. However, blank tapes and CDs are not considered informational materials. (See 31 CFR 515.332 for a full explanation of what constitutes “information and informational material”.)

6.5 Authorized U.S. citizens and permanent resident travelers who have acquired Cuban cigars and alcoholic products in Cuba, and do not have receipts, may import up to 25 cigars or 15 liters (20 750-ml) bottles of alcohol, or a combination of each, **within their \$100 limit**. These limits are based upon CBP assessment of the value of Cuban cigars (\$4 per cigar) and Cuban alcohol (\$6.66 per liter bottle or \$5 per 750-ml bottle).

6.6 An authorized traveler arriving in the United States with a protected trademark article for personal use may be granted an exemption to the import restrictions for **1 article** bearing a protected trademark that was purchased in Cuba if the value is under the \$100 limit. Bolivar, Cohiba, and Montecristo are licensed U.S. trademarks. Therefore, authorized U.S. citizens and permanent resident travelers may import only one box of Cuban cigars bearing a protected trademark valued at \$100 or less. If the authorized traveler arriving in the United States with a protected trademark box of Cuban cigars for personal use does not have a receipt, the box must contain no more than 25 cigars to qualify under the \$100 limit (See section 6.5). (See 19 U.S.C. 1526(d)(1).)

6.7 Alcohol exceeding the 1 liter quantity exemption specified in HTSUS 9804.00.65 for returning residents, who have attained the age of 21 is subject to duty and Internal

Revenue Tax.

6.8 Products of Cuban origin imported from Cuba which exceed the \$100 value for authorized U.S. citizens and permanent resident travelers, or are of commercial quantities, are prohibited and subject to seizure. The authorized traveler shall be allowed to select the \$100 worth of merchandise to be admitted under the general license, subject to the restriction specified in sections 6.3, 6.4, 6.5, 6.6, and 6.7 of this Directive and Chapter 98 of the HTSUS.

6.9 Importation of products from Cuba by U.S. citizens and permanent residents acquired on a non-licensed trip, or in a third country, is prohibited and the product is subject to seizure.

6.10 Importation of tobacco and/or alcohol products from Cuba by foreign (non-U.S. citizens and permanent residents) travelers into the United States is prohibited and the product is subject to seizure.

6.11 Importation of products from Cuba by foreign (non-U.S. citizens and permanent residents) travelers is authorized providing that the importation is not: (1) a tobacco or alcohol product, (2) for resale, or (3) in commercial quantities. All importations of products by foreign (non-U.S. citizens and permanent residents) travelers which exceed the nonresident personal exemptions (HTSUS 9804.00.20, 9804.00.30, or 9804.00.40) are subject to duty.

6.12 Fully hosted travelers (See section 4.5) are not authorized to bring back any Cuban origin goods, except for informational materials, unless the OFAC has issued a specific license authorizing the importation of gifts received in Cuba by a fully hosted traveler. The specific license will only be issued by OFAC to fully hosted travelers provided the gift is of small value and represents no commercial benefit to Cuba. The CBP will detain all gifts of Cuban origin goods imported by a fully hosted traveler without a specific OFAC license, pending the outcome of an OFAC decision on a license application.

6.13 Crewmembers, who are U.S. citizens or permanent residents, but are not otherwise authorized to travel to Cuba, may not import products of Cuban origin. Importation of Cuban products by such crewmembers is prohibited and the products are subject to seizure. Foreign crewmembers are subject to the same limitations as foreign travelers. (See section 6.10, 6.11.)

7 **NO PRIVATE RIGHTS CREATED.** This document is an internal policy statement of the Bureau of Customs and Border Protection and does not create or confer any rights, privileges, or benefits upon any person or entity. United States v. Caceres, 440 U.S. 741 (1979).

8 **MEASURES.** The number of seizures of noncommercial merchandise of Cuban origin imported by passengers returning to the United States.

Assistant Commissioner
Office of Field Operations

U.S. CUSTOMS AND BORDER PROTECTION DIRECTIVE

ORIGINATING OFFICE: FO:IS

DISTRIBUTION: S-01

CBP DIRECTIVE NO. 3310-007A

DATE: FEBRUARY 7, 2005

SUPERSEDES: CD 3310-007, 4/17/00

REVIEW DATE: FEBRUARY 2008

SUBJECT: FLIGHTS TO AND FROM CUBA

1 **Purpose.** The purpose of this Directive is to establish and delineate the policies and procedures governing direct charter flights between the United States and Cuba departing from, or entering at, any one of the three prescribed international airports: Miami International Airport (MIA) in Miami, Florida, John F. Kennedy International Airport (JFK), in Jamaica, New York, and Los Angeles International Airport (LAX) in Los Angeles, California. In addition, this Directive will also address the procedures for the processing of departure and/or overflight exemptions not originating at one of the three aforementioned airports.

2 **Background.** In a statement issued on January 5, 1999, President Clinton announced a series of humanitarian measures designed to ease the plight of the Cuban people and help them prepare for a democratic future. One of these measures included the restoration of direct charter flights between Cuba and several cities in the United States other than Miami. Consequently, the Department of State and the National Security Council directed that passenger flights be permitted between Cuba and the United States through JFK and LAX.

On June 16, 2004, the Office of Foreign Assets Controls (OFAC) announced a number of changes to the Cuban Assets Control Regulations (CACR) related to general and specific licenses. These changes were designed to withhold support from the Cuban government and to promote regime change.

3 **Policy.**

3.1 Consistent with the terms of the regulatory program as outlined by the CACR, 31 Code of Federal Regulations (CFR) Part 515, as administered by the OFAC, persons that possess a valid OFAC Carrier Service Provider (CSP) authorization may conduct direct charter flights between the United States and Cuba. As a result of the amended regulations, direct charter flights arranged by a licensed CSP may now depart from, or enter at, MIA, JFK, and LAX.

3.2 The U.S. Customs and Border Protection (CBP) Regulations, 19 CFR Part 122, Subpart O, §§122.151 – 122.158, set forth special CBP procedures that apply to all aircraft except public aircraft that depart or enter into the United States to or from Cuba. Specifically, the owner or person in command of any aircraft clearing the United States

for, or entering the United States 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 MIA, JFK, or LAX, and comply with the requirements in this part unless otherwise authorized by the Assistant Commissioner (AC), Office of Field Operations (OFO), CBP. Section 122.154 requires, that the person in command of the aircraft furnish advance notice of arrival at least 1 hour before crossing the U.S. coast or border. The notice must be given either through the Federal Aviation Administration (FAA) flight notification procedure or directly to the CBP officer in charge at the designated airport.

4 **References.** 19 CFR Part 122, Subpart O, §§122.151 – 122.158, 31 CFR Part 515.

5 **Scope.** Even though national in scope, the amendment to the CBP Regulations will primarily affect the three designated airports: MIA, JFK, and LAX. The Headquarters program is managed by the Director, Interdiction and Security (Outbound) under the AC, OFO. The Port Directors of MIA, JFK, and LAX will manage the local area program. They will coordinate the local area program with their representative Field Offices and the Director, Interdiction and Security (Outbound).

6. **Action.**

6.1 Standard Operating Procedures.

6.1.1 In order to promote uniformity and consistency among the three designated airports, a Standard Operating Procedure (SOP) will be established (see attached), outlining the necessary steps which must be taken in order to clear an OFAC flight departing to and the returning flight from Cuba. The SOP will also address departure and/or overflight waivers and the manner in which the airports must process them.

6.2 Training.

6.2.1 An on-site training seminar will be conducted by MIA and OFAC on an as needed basis in order to train Inspection personnel from JFK and LAX. The training will be threefold. The first phase will encompass an overview of the OFAC embargo; i.e., the regulations, penalties, travel restrictions, humanitarian donations, and travel service providers. The second phase will focus on enforcement, as well as traveling methods, intelligence trends, passenger targeting, passenger examination, currency discovery, and seizure processing. It will also address the outbound and inbound portion of the flights to and from Cuba. The third phase of the training will consist of actual field inspections clearing flights departing from MIA, LAX or JFK to Cuba.

7 **Areas of Responsibility.** Each designated airport (JFK, LAX, MIA) will be responsible for processing requests for departure and/or overflight waivers generated from persons, businesses, or carriers located within the geographic boundaries of the following Field Offices:

7.1 Miami International Airport will process the departure requests originating within the areas covered by the following Field Offices:

7.1.1 Miami Field Office

7.1.2 Tampa Field Office

7.1.3 Atlanta Field Office

7.1.4 New Orleans Field Office

7.1.5 Houston Field Office

7.1.6 Laredo Field Office

7.1.7 San Juan Field Office

7.2 John F. Kennedy International Airport will process the departure requests originating within the areas covered by the following Field Offices:

7.2.1 New York City Field Office

7.2.2 Baltimore Field Office

7.2.3 Buffalo Field Office

7.2.4 Detroit Field Office

7.2.5 Boston Field Office

7.2.6 Chicago Field Office

7.3 Los Angeles International Airport will process the departure requests originating within the areas covered by the following Field Offices:

7.3.1 Los Angeles Field Office

7.3.2 San Diego Field Office

7.3.3 Tucson Field Office

7.3.4 San Francisco Field Office

7.3.5 Portland Field Office

7.3.6 Seattle Field Office

7.3.7 El Paso Field Office

8 Charter Flights.

8.1 OFAC has licensed numerous CSPs in each of the newly designated areas in order to provide charter flight services. OFAC defines “charter flights” as those direct flights operated by CSPs between the United States and Cuba from any of the three designated airports.

8.2 Authorized Travel Service Providers may ticket travel using any of the three airports for charter flights, provided that their travelers are authorized under the CACR to engage in travel-related transactions.

8.3 In order to fully implement these new changes, OFAC will be working closely with the CBP, as well as with other Federal, State, and local law enforcement agencies.

9 Departure and/or Overflight Waivers.

9.1 In the past, CBP Regulations mandated that all flights departing to, and arriving from Cuba go through MIA. The regulations have been expanded to also include JFK and LAX. However, under certain circumstances, departure and/or overflight waivers may be granted by CBP to those persons, businesses, or carriers that meet specific thresholds and requirements.

9.2 Departure and/or overflight waivers are not granted solely on the basis of economic or financial hardship to the shipper, carrier, or consignee. Rather, they are granted on the basis of exigent circumstances or operational need. Specific examples include: medical emergencies, the transportation of humanitarian goods or equipment, and prisoner flights for the U.S. Marshals Service. Both the aircraft and any cargo must be authorized by a specific license from the Department of Commerce/Bureau of Industry and Security (DOC/BIS).

9.3 Processing of Inquiries.

9.3.1 When processing inquiries requesting departure and/or overflight waivers, it is critical to ascertain all the circumstances and commodities which will be associated with the specific flight and/or shipment. Some of the questions that need to be posed are as follows:

9.3.1.1 What type of flight are you attempting to schedule and arrange?

9.3.1.2 What type of commodity are you seeking to export?

9.3.1.3 Have you attempted to export the commodities or shipment through one of the OFAC licensed CSPs? If not, why not?

9.3.1.4 Are there exigent circumstances surrounding this particular shipment which necessitate that a separate flight must be arranged outside of the prescribed existing mechanisms?

9.3.1.5 What are the exigent circumstances?

9.3.1.6 Do the commodities that you are shipping require a specific license from OFAC, DOC/BIS, or the Department of State (DOS)?

9.3.1.7 Are you aware of the licensing requirements that are mandated by regulations for the exportation of certain dual-use and military application commodities like medical x-ray equipment?

9.4 Examples for the granting of waiver authorizations.

9.4.1 Medical circumstances.

9.4.1.1 Ambulance service

9.4.2 Emergency medical equipment.

9.4.2.1 May need a specific license from DOC/BIS or DOS.

9.4.3 Humanitarian.

9.4.3.1 Religious donations.

9.4.3.2 Foodstuffs, medicines, clothing.

9.4.3.3 Authorized by specific license from OFAC and/or DOC/BIS.

9.4.4 Specific license.

9.4.4.1 License granted by OFAC, DOC/BIS, and/or DOS.

9.5 Submission of departure waiver packages.

9.5.1 It will be the responsibility of each of the three designated airports to aggregate and submit completed departure and/or overflight waiver packages to the Director, Interdiction and Security (Outbound), Office of Field Operations, CBP Headquarters, for final authorization and approval.

9.5.2 Each waiver package submitted to the Director, Interdiction and Security (Outbound), must contain the following documentation:

9.5.2.1 Letter from the requestor outlining the necessity to grant a departure and/or overflight waiver.

9.5.2.2 Copies of any applicable licenses that may govern the export of the commodities or the temporary sojourn of the aircraft from OFAC, DOC/BIS, and/or DOS.

9.5.2.3 Copies of the proposed flight itinerary for both the departure and return portions of the trip.

9.5.2.4 Copies of any other documentation to provide further information on the waiver request, the requestor, the carrier, or the entity requesting the special authorization.

9.5.2.5 A statement as to any known political involvement on the part of any current or former members of Congress, State officials and/or the DOS. A list of the current and/or former members of Congress should be provided.

9.5.3 Once Interdiction and Security (Outbound) receives the package in CBP Headquarters, it will be reviewed for final approval and coordination with the impacted airport and Field Office. The authorization will be directly faxed to the requestor with a copy to the Field Office that processed the original request.

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Assistant Commissioner
Office of Field Operations

Attachments

NOTE:

Attachment 1 – (REDACTED – Not an agency record. Document belongs to Office of Foreign Asset Control) “Standard Operating Procedures, Office of Foreign Asset Control (OFAC) Direct Charter Flights, and Departure and/or Overflight Waivers”

Attachment 2 – (REDACTED – Not an agency record. Document belongs to OFAC) “Office of Foreign Assets Control Instructions for Suspected Cuba Travel Violations”

Attachment 1

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NOTE:

Attachment 1 – (REDACTED – Not an agency record. Document belongs to Office of Foreign Asset Control) “Standard Operating Procedures, Office of Foreign Asset Control (OFAC) Direct Charter Flights, and Departure and/or Overflight Waivers”

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Attachment 2

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NOTE:

Attachment 2 – (REDACTED – Not an agency record. Document belongs to OFAC) “Office of Foreign Assets Control Instructions for Suspected Cuba Travel Violations”

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CUSTOMS DIRECTIVE

***(NOTE: THIS DIRECTIVE IS SUPERSEDED BY CD 3290-015, 9/7/95)**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: G-12

NUMBER: 099 3290-014

ISSUE DATE: MAY 13, 1993

SUBJECT: CURRENCY DETECTION TEAM GUIDELINES

This directive contains sensitive enforcement information and may not be disclosed to the public without Headquarters permission.

1. PURPOSE

The purpose of this directive is to establish the Canine Enforcement Program's (CEP) national policy on the use of currency detection canine teams. This policy is designed to provide maximum use of these teams while facilitating the movement of passengers, luggage, and cargo exiting the United States. These guidelines augment existing operating procedures outlined in Customs Directive #3290-012, dated July 23, 1993.

2. BACKGROUND

The U.S. Customs Service initiated the use of currency detection canine teams to enhance the Service's ability to interdict the movement of currency through air, sea, and land border ports of embarkation. The primary objective of the program is to detect currency concealed in luggage, cargo, and conveyances.

Currency detection canine teams are an integral part of the U.S. Customs outbound enforcement effort. The presence of these teams provides an effective method of detecting the movement of unreported currency.

Currency detection canines (b) (7)(E)



3. AUTHORITY

Reporting requirements for the exportation and importation of monetary instruments are outlined in 31 USC 5316. Customs search authority to ensure compliance with those requirements is contained in 31 USC 5317.

4. POLICY

The U.S. Customs Service has the responsibility for the enforcement of laws governing the exportation of goods and services. As a measure to deny profits from the sale of controlled substances to major drug trafficking organizations, the Assistant Commissioner, Inspection and Control (I&C), through the Director, Office of Canine Enforcement Programs (OCEP), has authorized the use of specially trained canines to detect shipments of currency in baggage, cargo, and vehicles exiting the territory of the United States.

5. SCOPE

This Directive provides guidance to field officers in the use of currency detector canines in enforcement operations.

6. REFERENCES

Canine Enforcement Program Directive #3290-012 dated July 23, 1993.

7. ACTION

a. Function and Primary Duties

The primary function of the currency detection canine program is to detect currency leaving the United States in cargo, luggage, and conveyances. Activities will include:

- (1) (b) (7)(E) [REDACTED]
- (2) Screening passenger luggage, cargo shipments, and conveyances leaving the United States.
- (3) (b) (7)(E) [REDACTED]
- (4) Use of TECS and other automated systems.
- (5) (b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED] In view of ongoing requests from Office of Enforcement (OE)

personnel to screen currency (b) (7)(E)

(b) (7)(E) Narcotic detector dogs will continue to be used to screen currency for narcotics. In those instances where a request for outside assistance has been received, the Regional Canine Program Manager or Area/District Supervisory Canine Enforcement Officer (SCEO) may authorize (b) (7)(E)

The currency detection teams will be used in all areas where passenger luggage, cargo, and conveyances (b) (7)(E) Teams are fully capable of supporting OE, Federal, state and local law enforcement agencies. Baggage, cargo, or conveyances that a detector dog (b) (7)(E)

When a (b) (7)(E) appropriate regional guidelines for the preparation of the CF 151 and the Significant Enforcement Activity Report (SEAR) will be adhered to. OE will be notified for a determination if further enforcement action is warranted.

b. Utilization

(1) (b) (7)(E)

When currency detector dog teams are employed in this area, they will be assisted by an Inspector, CEO, or other members of the outbound enforcement team. When operating in this environment, (b) (7)(E)

For the purpose of this Directive, (b) (7)(E)

Should currency detector dog teams be (b) (7)(E)

CEO's are reminded that while the search of (b) (7)(E) is legal, the requirement to file a currency report does not exist until a point is reached (b) (7)(E)

(2) Cargo

The enormous volume of cargo (b) (7)(E)

CEO's will share in the selective examination process by aiding in the review of the (b) (7)(E)

Individual CEO's are responsible to ensure that their dogs closely examine each carton/box, etc., and that caution is exercised when exposing the dog to palletized freight. (b) (7)(E)

(b) (7)(E)

In many cases, this may require access to inner walls, container floors, and structural supports.

Cargo examinations with a detector dog require the CEO (b) (7)(E)

(b) (7)(E)

CEO must take action to determine what (b) (7)(E)

(5) Vehicles

When employing currency canine teams to conduct vehicle searches (interior and exterior), (b) (7)(E)

Prior to a currency detector canine searching vehicle, all appropriate safety procedures will be taken, (b) (7)(E)

(6) (b) (7)(E)

Accordingly, high-risk areas which are targeted should receive close examination.

(7) (b) (7)(E)

(8) Mail

At the present time, the U.S Customs Service's authority (b) (7)(E)

(9) Other Areas and Outside Agency Assistance

Currency detection teams have the capability to conduct house and premise searches for OE, other Federal agencies, and state and local police departments. (b) (7)(E)

(b) (7)(E) An alert by a U.S. Customs currency detector dog will result in OE notification to assure Customs investigative interests are accommodated.

(10) Proficiency Training

Proficiency training for currency detector canine teams will conform with the guidelines established in (b) (7)(E)

[REDACTED]

the overall health, care, and safety of their assigned canines.

(11) Storage and Control of Training Material Management will provide storage space of sufficient size, and (b) (7)(E) currency training material and preconstructed currency training aids.

The Canine Enforcement Training Center (CETC) will ensure that currency training material is distributed in sufficient quantity and variety to maintain the capability of the currency detection teams.

(b) (7)(E)

The CETC will (b) (7)(E)

[REDACTED]

(12) Logistical Support

Logistical support is essential to mission accomplishment of the teams. This includes properly equipped vehicles and radios. SCEO's are responsible for the initiation of all procurement requests required for logistical support of assigned currency detector canine teams. This includes kenneling, dog food, veterinary care, and miscellaneous supplies and equipment.

7. RESPONSIBILITY

It is the responsibility of all regional canine program managers, district and port and supervisory canine enforcement officers, or other I&C personnel exercising

control over currency detector canine resources to ensure compliance with this directive. Managers are also responsible to ensure local operating procedures are in place to govern administration, use, and training of currency detector canine teams in accordance with Customs Directive #3290-012, dated July 23, 1993.

8. LIFE CYCLE

This Directive will be reviewed one year from the date of issuance.

9. SUPERSEDED MATERIAL

None

/signed/
Assistant Commissioner
Office of Inspection and Control

CUSTOMS DIRECTIVE

***(NOTE CANCELLED BY FIELD OPERATIONS, TRADE PROGRAMS, IMPORT OPERATIONS, MAY 3, 1999)**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: P-32

CUSTOMS DIRECTIVE NO: 3280-004

ISSUE DATE: August 5, 1985

SUBJECT: ILLEGAL IMPORTATION OF SHRIMP FROM MEXICO

References: 19 CFR 134.25 Lacey Act 16 USC 3371

1. PURPOSE

To provide operational guidelines governing the importation of shrimp from Mexico.

2. BACKGROUND

Recently, a meeting was held at Service Headquarters with representatives of the American Shrimping Industry and The Texas Shrimp Association concerning the illegal importation of Mexican fishery products. Of particular concern was that Mexican shrimp, which is licensed by a "Guia De Pesca Para Reembarques" Form GP-02 and required by Mexican law to remain in Mexico for consumption, is being illegally entered into the United States. Other problems have been encountered, such as boxes contain-trig shrimp are not legally marked, the quality of the shrimp do not meet U.S. standards, and the Mexican export licenses (i.e., Guia De Pesca Para Reembarques) are incomplete.

3. ACTION

(A) Customs will ensure that a complete and thorough review of the "Guia De Pesca Para Reembarques" export license is performed prior to authorizing the release of Mexican shrimp. This review will include the following:

1. A valid export license must accompany the Customs entry. Such licenses are valid for 72 hours from the date of issuance.
2. The export license must be properly completed and clearly reflect the intended U.S. destination.
3. The export license must be signed by a Mexican fishery official.
4. The export license must be legible and not include any deletions or show any other evidence of document tampering.

- (B) Mexican shrimp shipments should be inspected to ensure that all certifications pursuant to 19 CFR 134.25 have been filed and that the packages (i.e., bags, boxes, etc.) containing shrimp indicate "Mexico" as the proper country of origin, to the exclusion of any other marking which indicates that the shrimp is a U.S. product. If such a U.S. marking is present, the importer must obliterate this marking. If Mexico is not printed as the country of origin, the box must be reprinted. Adhesive "stick-on" labels are insufficient.
- (C) Shrimp products of U.S. origin that are intended to be exported only for processing purposes must be verified by Customs prior to exportation. Customs Form 4455 "Certificate of Registration" will be presented to Customs. When the shipment is imported, the importing carrier will present the CF 4455 to Customs for verification.
- (D) Any shipments which do not comply with the above requirements will be refused entry.

4. RESPONSIBILITIES

District Directors, Area Directors, and Port Directors will ensure that this Customs Directive is brought to the attention of all appropriate personnel.

Assistant Commissioner
Office of Inspection and Control

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE HAS BEEN CANCELLED BY FIELD OPERATIONS
(CARGO) 8/19/96)**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: P-32

CUSTOMS DIRECTIVE NO. 3260-038

DATE: JUNE 12, 1985

SUBJECT: CUSTOMS CARGO CLEARANCE PROCEDURES APPLICABLE TO
COURIER AND OVERNIGHT DELIVERY SERVICES

1. PURPOSE

The purpose of this Directive is to ensure uniform and consistent Customs treatment of courier services and overnight delivery services in accordance with the applicable Customs laws and regulations.

2. BACKGROUND

There has been a substantial and rapid increase in the quantity of shipments carried into the United States by the various courier and overnight delivery services:

1. The courier services usually use passengers traveling by air to bring in sacks of shipments.
2. The overnight delivery services in addition to using couriers often use their own aircraft.

These companies usually began by carrying low risk/low value items such as business papers and are now carrying a wide variety of commercial shipments from an increasing range of foreign countries.

Originally the bulk of the foreign shipments carried by the overnight delivery services came from Canada into various U.S. hub cities. Shipments from other countries were brought in by couriers and then were transported in-bond from the port of arrival to the hub cities for clearance. Recent information indicates that some of the companies are planning to expand their service to a large number of foreign locations. Therefore the ratio between low risk Canadian shipments and higher risk non-Canadian shipments will be changing in the future.

Due to the time sensitive nature of the overnight delivery service operation, Customs officers at hub cities have developed special Customs clearance procedures in order to expedite the movement of the shipments. However, with the expansion of these services and their movement into areas served by

traditional commercial air carriers, it is essential that they be required to comply with established operational and regulatory requirements. It is the responsibility of the companies concerned to provide Customs with the required documents and data as early as possible in order that the shipments may be cleared within the desired time periods.

3. ACTION

Customs officers stationed at overnight delivery service hub operations will require the presentation of a formal or informal entry prior to or at the time of the examination of the merchandise in accordance with 19 CFR 141.4. Included with the entry will be an invoice in accordance with 19 CFR 142.6 containing the required information including a seven digit TSUSA number.

The District Director is authorized to examine the packages and quantities of merchandise that he deems necessary for the determination of duties and for compliance with Customs laws and laws enforced by Customs. However, under 19 CFR 151.2(a)(1) minimum quantities for examination are specified unless a special regulation exists which permits the District Director to examine a lesser number. With the implementation of ACS/Selectivity, the Commissioner may specifically designate ports of entry at which the District Director may release cargo without examination (19 CFR 151.2(a)(2)).

Therefore, in order to ensure the rapid processing of shipments imported by overnight delivery services, it is essential for the company and their brokers to present the necessary entry data to Customs as soon as possible. (b)

(7)
(E)
)

[REDACTED]

In the absence of the necessary advance data, all entries will be examined in accordance with normal cargo procedures.

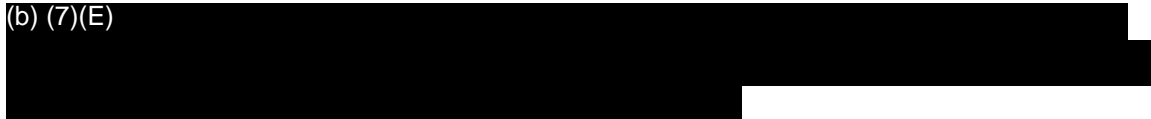
It will be the responsibility of the Regional Commissioner or District/Area Director to determine if informals are (b) (7)(E)

[REDACTED] The company will be responsible for delivering the proper package to Customs and opening it for examination.

District Directors also should use selectivity in determining the extent of the examination of the shipments which supposedly do not require entry ("intangibles"). (b) (7)(E)

[REDACTED]

(b) (7)(E)



All duty will be collected. There is no authority in effect for not collecting duty under a specified amount from cargo shipments. The brokers may elect to submit CF 3461's for informal entries.

Service provided to overnight delivery services on a regular and recurring basis outside of the normal working hours of the port will be provided on a reimbursable basis in accordance with the "user-charges statute" 31 USC 9701. The Chief Counsel has issued an opinion which states that Customs may accept reimbursement from a private party for service which solely benefits that private party. The formula for the cost of such service has been established and the CF-6082 will be used to bill the party in interest.

Overnight delivery services should be made aware of the various modules of the automated commercial system in order that they may be prepared to participate in ABI, automated manifest, or other ACS systems in the future. An interface with ACS may be of significant importance to the overnight delivery services in the near future.

4. RESPONSIBILITIES

Regional Commissioners and District Directors will ensure that these standards and operating procedures are applied to all courier and overnight delivery service operating within their areas of responsibility.

5. EFFECTIVE DATE

These procedures should be put into effect as soon as possible since they are essentially a repetition of existing laws and regulations. However, agreements have been previously reached with some of the companies concerned and timely notice should be given to them in cases in which a change in current operating procedures is required. In no case should the time period allowed for implementation of these procedures exceed 3 months.

6. FURTHER INFORMATION

If further explanation of this Directive is required, please contact the Office of Cargo Enforcement and Facilitation at FTS 566-8151.

signed
Assistant Commissioner
Office of Inspection and Control

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS CANCELLED BY FIELD OPERATIONS-TRADE PROGRAMS, 4/20/01)**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: P-32, O-02

CUSTOMS DIRECTIVE NO. 3250-005

DATE: JANUARY 24, 1985

SUBJECT: "RESTRICTED MERCHANDISE" AND "ALCOHOLIC BEVERAGES"
PROVISIONS OF CUSTOMS BONDS

REFERENCES: Sections 113.62(i), 113.63(g), 113.64(b), 113.67(b), and 113.73(a),
Customs Regulations, as amended by T.D. 84-213

1. PURPOSE

To define the scope of "restricted merchandise" and "alcoholic beverages" in determining the amount of liquidated damages to be assessed for defaults in the conditions of Customs bonds.

2. BACKGROUND

Treasury Decision 84-213 revised Customs bond structure. Among other changes, the liquidated damages amounts for defaults in bonds for importation and entry (Sec. 113.62), custodial (113.63), international carriers (113.64), licensed public gauger (113.67), and foreign trade zone operators (113.73) were set at the value of the merchandise involved in the default or 3 times the value of the merchandise if the merchandise is restricted merchandise or alcoholic beverages. Under the Treasury Decision, Customs is committed to issue instructions to District Directors before the effective date of the bond structure revision which define the scope of "restricted merchandise. "To assure uniformity it is also advisable to define "alcoholic beverages."

3. DEFINITIONS

- a. Authorized for delivery from Customs custody without a special permit, or a waiver thereof, by an agency of the U.S. Government. In the absence of the special permit, such merchandise is prohibited from delivery from Customs custody for consumption in the United States.

The term includes merchandise or articles subject to:

1. Quota, whether administered by Customs or another agency;
2. Visa restrictions;

3. Restrictions of the Food and Drug Administration;
4. Vehicle restrictions of the Environmental Protection Agency and the Department of Transportation;
5. Restrictions of the Department of Agriculture; and
6. Similar restrictions for other merchandise by the same or other agencies.

The term does not include:

1. Merchandise covered by permits or documentation required as a condition of a reduced rate of duty or duty-free treatment;
 2. Merchandise covered by other agency restrictions which apply without respect to Customs delivery authorization or apply only after delivery authorization; or
 3. Merchandise for which the only permit required for Customs delivery authorization is conditional upon meeting Customs administrative requirements, e.g., payment of duty, legibility, submission to a Customs officer for review, or satisfaction of a lien.
- b. Alcoholic Beverages means distilled spirits, wine, beer, or other beverages, mixtures, or articles containing spirits subject to taxation under the Internal Revenue Code (Title 26, United States Code) and/or subject to the regulations of the Bureau of Alcohol, Tobacco, and Firearms (Title 27, Code of Federal Regulations), upon authorization for delivery from Customs custody.

4. RESPONSIBILITIES

District and Area Directors are responsible for applying the above definitions to claims for payment of liquidated damages, and for notifying bond principals within their jurisdiction of the definitions. Regional Commissioners are responsible for seeing that the definitions are applied consistently within their respective regions.

Assistant Commissioner
Office of Commercial Operations

CUSTOMS DIRECTIVE

***(NOTE CANCELLED BY FIELD OPERATIONS, TRADE PROGRAMS, IMPORT OPERATIONS, MAY 3, 1999)**

ORIGINATING OFFICE: CO:TO:R:Q **DISTRIBUTION:** SEE SIGNATURE PAGE
CUSTOMS DIRECTIVE NO. 3230-027
DATE: JULY 24, 1991

SUBJECT: ABSOLUTE QUOTA ON AGED CHEDDAR CHEESE

1. Purpose

The purpose of this directive is to update existing information.

2. Background

Presidential Proclamation No. 3790 (T.D. 67-172), which became effective on July 1, 1967, established an import quota on natural Cheddar cheese made from unpasteurized milk and aged not less than 9 months which is produced in Canada and not subject to licensing requirements. This item is described in the Harmonized Tariff Schedules under the following subheadings: 0406.20.3020, 0406.90.1020, and 9904.10.30, with a quota quantity of 833,417 kilograms.

This merchandise may be authorized release on entry or ID in accordance with Customs Regulations (CR) 132.14(a)(1) and (2) and CR 142.21(e)(2) due to its perishable nature. If released on entry or ID this merchandise will not have quota status until formal presentation of the entry summary, and, if the quota is found to be filled at that time, a demand for redelivery will be made.

3. Action

In accordance with U.S. Notes to Subchapter IV, paragraph 3(a)(i) in the Harmonized Tariff Schedule, the exportation of natural Cheddar cheese, the product of Canada, made from unpasteurized milk and aged not less than 9 months, which prior to exportation has been certified to meet such requirements by an official of the Canadian Government may be entered without a license issued by or under the authority of the Secretary of Agriculture up to the quota quantity of 833,417 kilograms per quota year.

An acceptable certification must be an original certificate, dated prior to the date of exportation, designed for certifying that the cheese is made from unpasteurized milk which has been aged not less than 9 months (a grading or exporting form to which has been added these qualifications is not acceptable; see C.I.E. 721/67 for an approved format), and signed by an official of the

Canadian government. The production of this document for release on entry (including Temporary Import Bond), entry/entry summary, or warehouse withdrawal for consumption is required. If the entry or entry/entry summary is not accompanied by an acceptable certification, or is not licensed by the Department of Agriculture, the cheese may be entered for warehouse but shall not be entered or withdrawn for consumption or under the Temporary Import Bond provisions.

Reporting entered quantities to quota will be accomplished through the Automated Commercial System, using 9904.10.30, along with the applicable Chapter 4 number, when the entry summary is presented.

4. Responsibilities

Regional Commissioners, Area, District and Port Directors are responsible for seeing that the procedures in this directive are carried out. It is the District Directors responsibility to make this information available to the business community.

5. Superseded Material

This directive supersedes Directive Number 3230-26, dated June 20, 1991.

Assistant Commissioner
Office of Commercial Operations

Distribution:

R-01 Regional Commissioners
F-01 District/Area Directors
F-02 Port Directors
G-07 Entry Personnel
G-20 All Import Specialist

CUSTOMS AND BORDER PROTECTION DIRECTIVE

ORIGINATING OFFICE: FO

DISTRIBUTION: S-01

CBP DIRECTIVE NO. 3120-020

DATE: MAY 16, 2006

SUPERSEDES:

REVIEW DATE: MAY 2009

SUBJECT: PROCEDURES FOR RESPONDING TO STOWAWAYS ATTEMPTING ILLEGAL ENTRY INTO THE UNITED STATES

1 PURPOSE. To provide guidance and standard operating procedures for responding to stowaways attempting illegal entry into the United States.

2 POLICY. It is the policy of U.S. Customs and Border Protection (CBP) to process and remove stowaways by the most efficient means possible.

In general, and particularly in the case of coastwise travel, removal of the stowaway by means other than the vessel of arrival should be favorably considered when the removal may be accomplished expeditiously and the carrier has made, or will make, the necessary transportation arrangements, including obtaining any travel documents.

Although this directive is focused on seaport operations, these procedures can be applied in the air environment. Nothing in this directive is intended to change or amend existing guidance relating to claims of asylum or fear of return made by stowaways.

3 DEFINITIONS.

3.1.1 *Arrival of a vessel* means that time when the vessel first comes to rest, whether at anchor or at a dock, in any harbor within the CBP territory of the United States, or at a place and time determined by CBP.

3.1.2 *Asylum* refers to the process through which individuals may be allowed to live and work in the United States. These individuals may be already in the United States or arriving at the United States, and are unable or unwilling to return to their home country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

3.1.3 *Crewmember* is any person serving in any capacity onboard a vessel or aircraft, including the master or pilot, who are required for normal operation and service on board a vessel. Supernumeraries and other employees engaging in temporary duties are considered passengers.

3.1.4 *Immediate Patdown* is a search necessary to ensure officer safety. The scope of an immediate patdown shall be limited to those areas on a person where an officer suspects a weapon or dangerous object may be concealed.

3.1.5 *Vessel* includes every description of watercraft or conveyances used or capable of being used as a means of transportation on water, but does not include aircraft.

3.1.6 A *stowaway* is any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway. An alien stowaway is inadmissible to the United States and is not entitled to a removal hearing under section 240 of the Immigration and Nationality Act (INA) or review of an order to remove.

4 AUTHORITY/REFERENCES. 8 USC, Immigration and Nationality Act (INA), as amended, sections 101(a)(49), 208, 235(a)(2), 241(c), (d), 243(c), 287(a)(3); Title 8 Code of Federal Regulations §§ 208.5 (b), 208.30, 212.5, 235.1(d)(4), 241.11, 241.12; Title 19 Code of Federal Regulations § 4(a), (f); CBP Directive 3340-021A, Responding to Potential Terrorists Seeking Entry into the United States; CBP Directive 5290-014A National Policy for Safe Entry into Confined Spaces; Memorandum of Agreement Between the U.S. Coast Guard and U.S. Customs and Border Protection Regarding the Detection of Certain High Risk Crewmembers, dated December 22, 2004; CBP Directive 3340-030A, Secure Detention Procedures at Port of Entry; Customs Directive 3340-028, Physical Control of Suspects; and CIS HB 3300-04B, Personal Search Handbook.

5 RESPONSIBILITIES.

5.1 Directors, Field Operations shall ensure the Ports of Entry (POEs) under their supervision are responsible for policy oversight and implementation of the guidelines and procedures contained in this directive.

5.2 Port Directors shall ensure local procedures are developed consistent with this directive to ensure uniform application of policies and procedures contained herein. Port Directors are also responsible to ensure enforcement actions and procedures implemented under the auspices of this directive are properly coordinated with the CBP Office of Border Patrol, the Bureau of Immigration and Customs Enforcement (ICE), the United States Coast Guard (USCG), the Federal Bureau of Investigation (FBI), and other government agencies as appropriate.

5.3 CBP supervisors shall ensure that CBP officers under their supervision adhere to provisions in this directive and local procedures for implementation.

6 PROCEDURES.

(b)
(7)

(E)

(b) (7)
(E)

(b) (7)
(E)

(b) (7)
(E)

6.1.5 State and local authorities should be notified as appropriate.

(b) (7)
(E)

6.2 Procedures upon Vessel Arrival

6.2.1 The boarding officer will interview the master of the vessel and any crewmembers associated with the stowaway. A sworn statement may be taken from the master or crewmembers using Form I-877, Record of Sworn Statement In Administrative Proceedings.

(b) (7)
(E)

(b) (7)
(E)

(b) (7)
(E)

(b) (7)
(E)

(b) (7)
(E)

6.2.8 When warranted, a search of the vessel in accordance with Confined Space Entry Procedures should be conducted by CBP to identify additional stowaways and/or contraband.

(b) (7)
(E)

6.3 Removal Options

6.3.1 CBP will make all admissibility decisions. On joint boardings with other agencies, CBP is responsible for determining when and how a stowaway is removed from a vessel.

6.3.2 A stowaway may be ordered removed from the United States on the vessel of arrival, or by other means of transportation (e.g., air carriers).

6.3.3 In certain instances the stowaway will not be removed from the United States on the vessel of arrival. (b) (7)(E)

(b) (7)(E)

If the stowaway cannot be removed immediately, any detention pending removal, other than that incidental to the actual removal, must be in CBP custody at the expense of the owner of the vessel or aircraft of arrival. (b) (7)(E)

6.3.4 In other instances the carrier may request that the stowaway be removed via alternate transportation means (*i.e.* air carriers). In situations where the carrier has obtained, or will obtain in a timely manner any necessary travel documents, and has made or will make travel arrangements, CBP will favorably consider these requests. These include, but are not limited to, instances when:

- The vessel will engage in a coastwise itinerary;
- The safety and welfare of the crew is in jeopardy;
- Another agency requests such action (*e.g.*, ICE, USCG, FBI, etc.);
- The carrier is experiencing difficulty maintaining insurance coverage because of the stowaway's presence;
- The vessel's departure is delayed for repairs or the vessel goes into dry-dock;
- The vessel is discharging cargo and going off charter and cannot obtain a new charter because the new charterer will not assume a vessel with stowaways aboard;
- The vessel is of U.S. registry and is not departing the United States; and
- The vessel will not be returning in the near future to the port where the stowaway boarded the vessel;

6.3.5 All expenses relating to removal, including transportation, detention and security costs will be the responsibility of the vessel owner, except in accordance with INA section 241(c)(3).


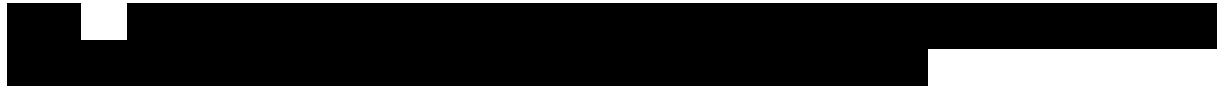
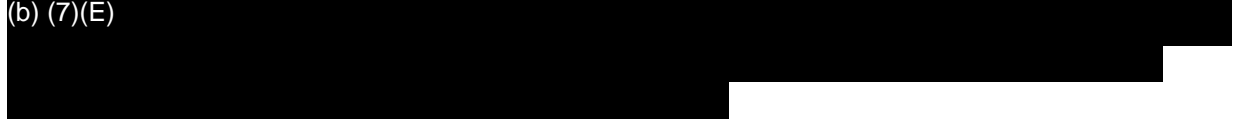
6.4 **Case Processing**

(b) (7)
(E)

(b) (7)
(E)



6.4.3 If the stowaway claims asylum or asserts a fear of persecution on return, refer
(b) (7)(E)



(b) (7)
(E)



6.4.7 Complete the top section of Form I-296, Notice to Alien Ordered Removed/Departure Verification. Check the second box indicating a 10- year bar.

6.4.8 Complete a Form I-259 and annotate appropriately to detain or remove the stowaway. Appropriate safeguards (guard service escort, letter from the shipping agent guaranteeing the stowaway will depart when required, etc.) must be in place and annotated on the Form I-259 to insure that the stowaway does depart the United States.

6.4.9 **If the stowaway is to be removed on the vessel of arrival departing from the same port of arrival,** (b) (7)(E)



(b) (7)(E)



(b) (7)(E)



6.4.12 If the stowaway is to be removed from another port other than the port of arrival, (b) (7)(E)

(b) (7)(E)

6.4.14 Upon confirmation, the port of departure will fingerprint the stowaway (b) (7)(E)

6.4.15 If the stowaway is removed **via an air carrier**, CBP Officers will verify the departure. The CBP Officers will escort the stowaway to the departure gate and ensure that the flight departs the United States.

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

7 PENALTIES.

7.1 If the owner fails to detain a stowaway onboard the vessel until the completion of the inspection by CBP, or fails to pay expenses of removal, the owner is subject to penalties of \$2,000 for each violation in accordance with section 241(d)(2) as made applicable by section 243(c)(1)(A) of the INA.

7.2 If the owner fails to remove an alien stowaway when ordered to do so, the owner is subject to penalties of \$5,000 for each violation in accordance with section 243(c)(1)(B) of the INA.

(b)

(7)

(E)

8 NO PRIVATE RIGHTS CREATED. This document is an internal policy statement of CBP and does not create or confer any rights, privileges, or benefits upon any person or party.

Assistant Commissioner
Office of Field Operations

CUSTOMS DIRECTIVE

**CANCELLED BY OFFICE OF FIELD OPERATIONS, CARGO AND CONVEYANCE
SECURITY, JANUARY 15, 2010**

ORIGINATING OFFICE: FO:TP

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 3120-019

DATE: AUGUST 15, 2001

SUPERSEDES:

REVIEW DATE: AUGUST 2003

**SUBJECT: REQUESTS BY OTHER GOVERNMENT AGENCIES TO DENY
CLEARANCE TO VESSELS**

1 PURPOSE. To provide national guidelines in handling requests by other government agencies to deny clearances to vessels.

2 POLICY. The procedures set forth in this directive shall be followed to prevent any liability on the part of Customs Officers involved.

3 AUTHORITIES/REFERENCES. 46 U.S.C. App. 91; 19 CFR 4.61

4 RESPONSIBILITIES.

4.1 The Directors, Field Operations, Customs Management Center are responsible for implementing this directive.

4.2 Port Directors will ensure local procedures accommodate these guidelines and will make the final decision with respect to this directive.

5 PROCEDURES.

5.1 Requests from other government agencies to deny clearance to a vessel must be in writing, printed on agency letterhead and must include the following:

5.1.1 Reason for the denial.

5.1.2 Specific statute used as the basis for the denial.

5.1.3 Name and phone number of the person requesting the denial.

5.1.4 Duration of the denial period stating the dates and/or conditions that must be met before clearance may be granted.

5.1.5 Signature of the person authorizing the request for the denial of

clearance.

5.1.6 Requests may be sent by mail or fax. If faxed, contents and signature of the letter must be legible.

5.2 Requests that are vague, open-ended and/or which do not cite a specific statutory authority are not acceptable.

5.3 The Port Director is the Customs official who will make the final decision with respect to denial of clearance.

5.4 Where the Port Director does not feel that the appropriate determination is clear, he or she should consult with the appropriate Associate Chief Counsel and/or the Entry Procedures and Carriers Branch.

6. MEASUREMENTS. When the request for the denial is accepted by Customs, the letter will be kept on file at the port for future reference and tracking purposes.

Assistant Commissioner
Office of Field Operations

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY HB 3300-02, OCTOBER 1995)**

ORIGINATING OFFICE: IC:P

DISTRIBUTION: See Signature Page
CUSTOMS DIRECTIVE NO: 3120-011
DATE: January 10, 1991

**SUBJECT: REPORTING GUIDELINES FOR THE DOMESTIC MILITARY
CUSTOMS PROGRAM**

1. PURPOSE

The purpose of this Directive is to supply Regional and District managers with guidelines for semiannual reports on the status of Domestic Military Customs Inspection Programs (DMCIP) at military facilities.

2. BACKGROUND

Manual Supplement 3000-17, dated July 24, 1981, provides guidance to field managers in the approval, monitoring, and withdrawal of approval of DMCIP'S, as well as recommendations concerning the training of Military Customs Inspectors (Excepted).

Reporting to Headquarters and the Regions under 3000-17 is limited to those instances where program extensions or withdrawals of program accreditation occur. The result of this limitation is that the Regions, as well as the Headquarters Office of Inspection and Control, which has overall responsibility for policies concerning DMCIP'S, can not maintain reliable information on the status of each DMCIP.

A centralized database of such information is needed, especially by Headquarters managers, to coordinate military exercise schedules with the U.S. Air Force's Military Airlift Command and with other service components. This Directive eliminates the reporting limitations by establishing semiannual reports.

3. ACTION

Regional Commissioners shall provide semiannual reports as described in the Reporting Requirement.

4. REPORTING REQUIREMENT

Regional Commissioners shall provide reports on March 1 and September 1 of each year that consolidate information from Districts which have

established DMCIP's within their area of jurisdiction. Reports will be submitted to the office of Inspection and Control, office of Passenger Enforcement and Facilitation, U.S. Customs Headquarters, Washington, D.C. Reports will be submitted in the following format.

Format: Controlling District/Port:
 District/Port Telephone:

Military Base:
Responsible Military Service:
Responsible Military Unit:
Responsible Unit Telephone:
Number of Certified MCI(E)'s:

Date of last training program:
Date of last reaccreditation:
Date of initial program approval: (new programs only)
Date of last unannounced inspection visit:

Brief narrative on results of last reaccreditation:

Brief narrative describing any limitations on MCI(E) duties, imposed by the District, which are over and above those exceptions listed in Section 3.A.2. of Manual Supplement 3000-17:

5. RESPONSIBILITIES

- A. The office of Inspection and Control has overall responsibility for maintaining current information on DMCIP's.
- B. Regional Commissioners are responsible for consolidating and forwarding DMCIP data to the Office of Inspection and Control.
- C. District Directors are responsible for collecting DMCIP data in the format outlined in paragraph 3, and submitting it to Regional Commissioners for consolidation.

Signed
Assistant Commissioner
Office of Inspection and Control

Distribution:
R-01 Regional Commissioners
F-01 District/Area Directors

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE HAS BEEN ABOLISHED BY FIELD OPERATIONS (CARGO), 8/19/96)**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: P-32(All District Directors)

CUSTOMS DIRECTIVE NO. 3110-011

DATE: June 16, 1986

SUBJECT: DOMESTIC STATUS MERCHANDISE IN FOREIGN TRADE ZONES

References: Section 146.43, Customs Regulations# as amended by Treasury Decision 86-16

1. PURPOSE

To provide Servicewide instructions on handling domestic status merchandise and on obtaining and administering an order by the Commissioner for requiring permits for domestic status merchandise in foreign trade zones and subzones.

2. BACKGROUND

Through Treasury Decision 86-16, Part 146 of the Customs Regulations was amended to change the way domestic merchandise is handled in foreign trade zones. "Non-privileged domestic" status and "privileged domestic" status were combined into domestic" status for all merchandise qualifying under Section 146.43(a), Customs Regulations. Also, domestic status merchandise which is not mixed or combined with merchandise of any other status, may be admitted to a zone; or manipulated, manufactured, exhibited, or destroyed in a zone; or transferred from a zone; without Customs permit, except upon order of the Commissioner.

Servicewide guidance is needed as to the treatment of domestic status merchandise under the Customs Regulations, as amended, and specifically as to how an order from the Commissioner requiring permits is obtained and administered by field offices.

3. ACTION

- A. Domestic status merchandise is defined in Section 146.43(a) C.R. Domestic or duty-paid merchandise for which zone-restricted status has been granted is not in domestic status and not covered by this Directive.
- B. Section 146.43(b) C.R. allows most domestic status merchandise to be admitted, processed, and transferred in a zone without a specific permit

from Customs. That is, no permit is required for such merchandise when not mixed or combined with merchandise in another status, except upon order of the Commissioner.

C. All domestic status merchandise C.R. must be accounted for in a zone under the procedures of Subpart B, Part 146, C.R. (See Section 146.21(a)(1) (C.R.).

D. Domestic status merchandise for which no permit is required will be deemed as having attained zone status when it is:

- (1) recorded in a receiving report or other document under Section 146.22(a), Customs Regulations; and
- (2) physically brought into the zone.

It will be deemed as having lost zone status when it is:

- (1) recorded as transferred from the zone under Section 146.24(a), C.R.; and
- (2) physically transferred from the zone.

E. Merchandise intended for domestic status which is mixed in the same shipment or conveyance with merchandise to be admitted in another status shall be physically segregated and excluded from the Application for Admission on Customs Form 214 of the other merchandise. If it is not so segregated and excluded, it will be treated upon admission as having the same zone status as the other merchandise.

F. "Mixed or combined with merchandise in another zone status" in Section 146.43(b) C.R. means manipulated or manufactured together with the other status merchandise. This provision applies only to domestic status merchandise which has already been admitted to a zone. Domestic status merchandise which is not "mixed or combined" according to this understanding may be included in the same shipment with other status merchandise being transferred from a zone, without a permit, so long as there is no order for a permit.

G. If there is reason to believe the Commissioner of Customs should order specific permits for any domestic status merchandise, written application shall be made by the District Director through the Regional Commissioner to the Assistant Commissioner, Office of Inspection and Control. The application shall include the following information:

- (1) Description of the merchandise for which permit should be required;

- (2) Zone number and name of zone user;
 - (3) Kind(s) of permits which should be required;
 - (4) Explanation of why the permit(s) should be required; and
 - (5) Recommendation as to what kinds of procedures and forms should be required to administer the permit requirement, and as to conditions and terms under which the permit should be granted.
- H. The Assistant Commissioner, Office of Inspection and Control, will issue the order, or send a written reply stating why an order will not be issued, on behalf of the Commissioner, through the Regional Commissioner to the District Director. The order will specify the permits to be required, the forms and procedures to administer the permit requirement, and the conditions and terms under which the permit will be required, including the effective date of the order. If an order is issued, a copy shall be furnished by the District Directors to the zone operator. Domestic status merchandise which is already in a zone and which becomes subject to such an order will be identified by the operator for Customs through its records, maintained as required under Subpart B, Customs Regulations.
- I. Headquarters, on its own initiative, may issue an order requiring permits whenever it believes such an order is justified.
- J. Permits will not be required for domestic status merchandise unless and until an order has been issued and placed in effect, and then only to the extent of the provisions of the order.

4. **RESPONSIBILITIES**

District Directors shall carry out the provisions of this Directive in their respective districts and shall inform all zone operators and importers of its contents. Regional Commissioners shall review applications for orders to require permits and shall see that the provisions of the Directive are uniformly carried out within their regions.

signed
Commissioner of Customs

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 2310-011A, 1-24-00)**

ORIGINATING OFFICE: CO:R:IT:I

DISTRIBUTION: SEE SIGNATURE PAGE

CUSTOMS DIRECTIVE NO. 2310-011

DATE: JULY 30, 1991

SUBJECT: PERSONAL USE EXEMPTION OF UNAUTHORIZED
TRADEMARKS

1. PURPOSE

The purpose of this directive is to clarify for all Customs officers that the proper application of the personal use exemption of section 148.55 of the Customs Regulations (19 CFR 148.55) requires the exemption to be granted to any person, including crewmembers.

2. BACKGROUND

There has been confusion over whether the personal use exemption in section 148.55 of the Customs Regulations applies only to passengers or to crewmembers as well. Customs Directive 2300-08 (Trademark and Trade Name Protection, January 16, 1990) and the Customs pamphlet "Trademark Information for Travelers" state that the personal use exemption is available to "travelers" arriving in the United States. Some Customs officers have interpreted the term "travelers" to mean passengers only and have refused to extend the exemption to crewmembers. However, the regulatory section, 148.55, and the governing statute, 19 USC 1526(d), state that the personal use exemption is available to "any person," which would include crewmembers.

3. LAWS AND REGULATIONS

Listed below are the statute and regulations which specifically address the personal use exemption. Based upon these provisions, an arriving person (including crewmembers) shall be permitted to import an article which bears a counterfeit, confusingly similar, or prohibited gray market trademark, provided that the item is not for sale and the exemption has not been used for the same type of article within the 30 days preceding arrival.

United States Code

Title 19 USC 1526(d)(1) - Merchandise bearing American trademarks - Exemptions.

Code of Federal Regulations

Title 19 CFR 133.21(c)(7) - Restrictions on importation of articles bearing recorded trademarks and trade names - Restrictions not applicable.

Title 19 CFR 148.55 - Exemption for articles bearing American trademark.

4. ACTION

Customs officers shall permit any person, including crewmembers, arriving in the United States to import an article, accompanying the person, bearing a counterfeit, confusingly similar, or prohibited gray market trademark, provided that the article is for personal use and not for sale.

Customs officers shall permit the arriving person to retain one article of each type accompanying the person. Customs officers should focus their inquiry on the type of article, not on the individual trademark. For example, an arriving person, including crewmembers, who has three purses, each bearing a different unauthorized trademark, is permitted one purse. The same arriving person may also retain one article of a different type bearing an unauthorized trademark. Thus, a person with a purse bearing an unauthorized trademark is also permitted one pair of shoes, one suitcase, one camera, etc., since each article is of a different type.

If a trademark owner has authorized the importation of a greater quantity of a specific trademark, Customs officers shall allow the greater quantity to be imported.

5. RESPONSIBILITIES

Regional Commissioners are responsible for ensuring that this information is disseminated to all Customs District/Area/Port Directors. All District/Area/Port Directors are responsible for ensuring that Customs officers having contact with the travelling public receive this information so that all persons are afforded this exemption. This directive should be read together with Customs Directive 2300-08.

Commissioner of Customs

Distribution:

- R-01 Regional Commissioners
- F-01 District/Port Directors
- F-02 Port Directors
- F-06 Assistant District Directors (I&C)
- F-07 Assistant District Directors (Commercial Operations)
- G-19 All Customs Inspectors

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 2310-010A, 12/11/00)**

ORIGINATING OFFICE: CO:R:P:IP

DISTRIBUTION: G-25

CUSTOMS DIRECTIVE NO: 2310-010

DATE: FEBRUARY 27, 1991

SUBJECT: SEIZURE AUTHORITIES FOR COPYRIGHT AND TRADEMARK VIOLATIONS

1. PURPOSE

The purpose of this notice is to outline the seizure authorities to be used for copyright and trademark violations. The attached outline provides a comprehensive list of authorities for the most common copyright and trademark infringements. It does not address patent matters, which are covered by Customs Directive number 2300-06 dated 11/21/89.

2. BACKGROUND

When seizing goods for copyright or trademark infringement, the seizure authority cited will depend on (1) what type of intellectual property right is infringed, (2) whether the right is recorded with Customs under Part 133 of the Customs regulations, and (3) what type of infringement of that right has occurred. Citation of one of the seizure authorities, 19 U.S.C. 1595a(c) for importations contrary to law, requires additional citation of an underlying violation.

The attached outline provides an effective method for identifying the appropriate seizure authority in most copyright and trademark situations. When the outline does not appear to cover a given situation, or whenever additional guidance is desired, questions should be addressed to the Intellectual Property Rights Branch at (b)(6).(b)(7)(C)

3. ACTION

Retain the attached outline as a reference for citation of seizure authority in copyright and trademark cases.

4. RESPONSIBILITIES

Regional Commissioners are responsible for ensuring that all managers and supervisors disseminate this information to personnel who draft seizure notices and other seizure related documents.

5. REFERENCES

- A. Customs Directive number 2300-08 dated 1/16/90; Subject: Trademark & Trade Name Protection
- B. Customs Directive number 2300-05 dated 9/28/89; Subject: Copyright Protection
- C. Customs Directive number 2300-06 dated 11/21/89; Subject: Patent Surveys, Process Patents and Exclusion Orders
- D. Customs Directive number 4400-10 dated 8/11/89; Subject: Policy Regarding Seizures Pursuant to 19 U.S.C. 1595a(c)
- E. Customs Directive number 4400-07 dated 1/26/88; Subject: Guidelines for Seizures and Penalties under 19 U.S.C. 1592 and 19 U.S.C. 1595a(b) & (c)

6. SUMMARY

This notice is designed to assist Customs personnel in the seizure of goods that infringe upon copyrights or trademarks by clarifying the use of seizure authorities. Customs personnel should utilize the appropriate citations listed on the attached outline when seizing goods that infringe upon copyrights and trademarks. The outline should be provided to U.S. Customs personnel only.

Commissioner of Customs

Attachment

Distribution:

G-25 All Managers/Supervisors

(b) (7)(E)



CUSTOMS DIRECTIVE

***(SUPERSEDED BY CD 2310-009A, 12/9/99)**

ORIGINATING OFFICE: CO:R:C:

DISTRIBUTION: See signature page
CUSTOMS DIRECTIVE NO. 2310-009
DATE: January 10, 1991

SUBJECT: PATENT IMPORT SURVEYS - STANDARD OPERATING
PROCEDURES

1. PURPOSE

The purpose of this Directive is to present information on Customs policies and procedures concerning Patent Import Surveys.

2. REGULATIONS:

19 CFR 12.39a and 24.12

3. DEFINITION:

A patent is a grant of a property right by the Government to the inventor to exclude others from making, using, or selling the invention.

Patent enforcement differs from trademarks and copyrights in that patents are not recorded with the Customs Service for enforcement. Customs conducts patent import surveys under 19 CFR 12.39a.

4. BACKGROUND

When the owner of a patent registered with the United States Patent Office believes that merchandise is being imported into the United States which infringes such patent, the owner may apply to Customs for a patent import survey. Those surveys are conducted under 19 CFR 12.39a for the information of the patent owner only. The purpose of the survey is to provide the patent owner with the names and addresses of importers of merchandise which appears to infringe the registered patent. These surveys are conducted for a period of 2, 4 or 6 months at the option of the patent owner. It is normal procedure to notify the ports of entry of the survey by Issuances from Headquarters and, recently, to transmit by EMail the text of the Issuances prior to their distribution.

5. ACTION

A. APPLICATION FOR PATENT SURVEY:

Application for a patent survey should be sent to U.S. Customs Service, Attn: Intellectual Property Rights Branch, Room 2137, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. The survey will be furnished for a 2-month period for a fee of \$1,000; a 11-month period for a fee of \$1,500; or a 6-month period for a fee of \$2,000 (19 CFR 24.12).

Customs fees payable to the U.S. Customs Service shall be submitted with the application. The Office of Regulations & Rulings transmits by Email the patent import survey and follows up this transmission by an Issuance to the field, both containing all the guidelines and information pertinent to carrying out the individual survey.

B. ACTION ON APPLICATION:

Upon receipt of an application for a survey, the Intellectual Property Rights Branch, Office of Regulations & Rulings, may contact the survey applicant to obtain additional information which will allow Customs to designate a Harmonized Tariff Schedule (HTS) number(s) for the patented article. Once the applicant's file is complete, the documents which make up the survey application shall be forwarded to either the Commercial Rulings Division, Office of Regulations and Rulings (for surveys of non-chemical articles), or to the Office of Laboratories and Scientific Services (for surveys of chemicals) in order to obtain HTS number(s). Files will not be forwarded to either the Commercial Rulings Division or the Office of Laboratories and Scientific Services unless the office processing the application obtains or has attempted to obtain the following information:

(1) Non-chemical articles:

- (a) What the applicant considers the appropriate HTS number to be;
- (b) If the product is being exported or imported by the applicant, what HTS number(s) is being used;
- (c) All names being used for the product, especially trade names;
- (d) A sample, if possible;
- (e) Name(s) of the final product;
- (f) How the product is used;
- (g) The name and telephone number of a technical specialist who may be contacted for further inquiries.

- (2) Chemical articles (in addition to the information above):
- (a) The Chemical Abstracts Service Registry (CAS) number(s) if assigned;
 - (b) All names being used for the chemical (i.e., proprietary and chemical), especially trade names;
 - (c) A chemical analysis, if possible;
 - (d) Whether the chemical product is an active ingredient;
 - (e) If the chemical is an active ingredient, in what type of final product will it be found and the names of the final product.

The HTS number(s) provided or confirmed by the Classification Branch or the Office of Laboratories and Scientific Services shall not be construed as a ruling on classification, but is to be used as a guide to Customs field officers in conducting the survey and should not be considered as a conclusive determination as to the correct HTS number(s) or as an exhaustive list of the applicable HTS number(s).

C. ACTION ON PATENT SURVEY:

(1) Transmittal

Upon approval of the application, the Office of Regulations and Rulings will transmit the survey by EMail to all districts and ports using ACS attributes which will insure that the survey reaches the Regional Intellectual Property Rights Coordinators and National Import Specialists (NIS). The Email transmission will be followed by the distribution of the Issuance.

(2) Selectivity

The NIS, upon receiving the patent import survey information via EMail, should relay the patent survey to the appropriate field import specialist teams for the given commodity. The NIS should establish criteria for cargo selectivity and entry summary selectivity for the survey period to avoid bypass and to alert teams as to what is expected of them under the survey commitment. Customs officers are not to hinder the release of merchandise despite the appearance of an infringement, but may take a sample for examination. The release of imported articles shall not be hindered solely for the conduct of the survey; however, imported

merchandise may remain in Customs custody to insure compliance with all Customs laws or regulations.

(3) Reporting

Customs ports of entry shall furnish to the patent owner the names and addresses of importers of merchandise appearing to infringe a registered patent. The report of each entry of merchandise believed to infringe the patent shall be rendered not less frequently than once a month (see Attachment A, sample response letter to survey applicant). Ports of entry at which no such importations are entered shall render a single negative report to the patent owner promptly at the close of the survey period. A copy of each such report shall be furnished to the Office of the General Counsel, International Trade Commission, Washington, D.C. 20436.

6. DISCLOSURE:

Customs officers shall not disclose information concerning the existence of a patent import survey as to any article. Information regarding the existence of a survey is subject to the Freedom of Information Act and any applicable exceptions.

7. RESPONSIBILITIES:

Customs laboratories may be able to provide technical assistance in the determination of relevancy of a patent survey. Field officers may contact the designated field laboratory servicing their geographic area or the Office of Laboratories and Scientific Services at Customs Headquarters for advice.

District Directors, FP&F officers, regional fraud coordinators, Regional/District Counsel, and headquarters OR&R employees may release copies of this document to the public upon request without a Freedom of Information Act Request.

District/Area directors, supervisory import specialists, and supervisory inspectors are responsible for insuring that their staffs adhere to these instructions.

Commissioner of Customs

Attachment

Distribution:

H-02 Assistant Commissioners
R-01 Regional Commissioners
F-01 District/Area Directors
F-10 FP&F Officers
G-19 All Customs Inspectors
G-20 All Import Specialists

Dear Sir/Madam:

This is in response to your patent survey request submitted in accordance with 19 CFR 12.39a.

We have attempted to identify importations of goods which appear to infringe your patent as described in the Patent Survey Issuance No. _____
This (port/district) (has/has not) found articles being imported which appear to infringe your patent.

Name of importer:

Address of importer:

Sincerely,

District Director of Customs

cc: U.S. International Trade Commission
Office of the General Counsel
Washington, D.C. 20436

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 2310-008A, 4/7/00)**

ORIGINATING OFFICE: CO

DISTRIBUTION: R-01, F-01, G-19, G-20

CUSTOMS DIRECTIVE NO: 2310-008

SUPERSEDES: 2300-08

DATE: JANUARY 16, 1990

SUBJECT: TRADEMARK AND TRADE NAME PROTECTION

1. PURPOSE

To provide relevant information and guidelines on Customs policies and procedures with respect to trademark and trade name protection and disposition of seized and restricted articles.

2. BACKGROUND

The recordation with Customs of trademarks registered with the U.S. Patent and Trademark Office and trade names gives the owner protection against unauthorized importation of merchandise bearing that trademark or trade name.

3. LAWS AND REGULATIONS

Below are listed laws and regulations which specifically address trademark and trade name protection. These citations should be reviewed for a comprehensive understanding of their intent and purpose.

UNITED STATES CODE

Title 19 U.S.C. 1526 -Prohibits the importation, with certain exceptions noted in section 133.21(c) of the Regulations, of foreign made merchandise, bearing a registered trademark or trade name owned by a U.S. citizen or corporation.:and recorded with U.S. Customs. Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture.

Title.15 U.S.C. 1124 -...no article of imported merchandise bearing confusingly similar marks which shall copy or simulate. a trade name or a trademark registered in accordance with provisions of this chapter...shall be admitted to entry at any Customhouse... (this covers both domestic and foreign-made articles).

Title 19 U.S.C. 1595a(a) -Provides for seizure and forfeiture of conveyances if used "in, to aid in, or to facilitate, the importation...of any article contrary to law..."

Title 19 U.S.C. 1595a(b) -Provides Customs with the authority to issue civil penalties equal to the value of the merchandise attempted to be introduced contrary to law. (See Customs Directive 4400-07)

Title 19 U.S.C. 1595a(c) -Provides seizure and forfeiture authority for articles introduced or attempted to be introduced contrary to law. (see Customs Directive 4400-07 and 4400-10)

Title 18 U.S.C. 2320 -Prohibits the intentional trafficking or attempts at trafficking in goods bearing counterfeit trademarks and provides criminal sanctions.

CODE OF FEDERAL REGULATIONS

Customs Regulations (19 CFR 133.1 - 133.7) -Recordation of trademarks with Customs.

Customs Regulations (19 CFR 133.11 - 133.15 -Recordation of trade names with Customs.

Customs Regulations (19 CFR 133.21) -Seizure or restriction of articles bearing recorded trademarks and trade names.

Customs Regulations (19 CFR 133.22, 133.23) - Detention of articles subject to restrictions.

Customs Regulations (19 CFR 133.23a) -Seizure of clearly counterfeit trademarks.

4. RECORDATIONS WITH CUSTOMS

Customs enforces trademarks and trade names that are recorded with the Value, Special Programs and Admissibility Branch Office of Regulations and Rulings in Customs Headquarters. These are published as Trademark Issuances which are sent out to all field offices. All importer notifications on seizures for trademark or trade name violations and other correspondence on those seizures should reference the applicable trademark issuance or trade name issuance and cite the trademark title and Trademark Office registration number (if registered with the Trademark Office).

5. TRADEMARKS NOT RECORDED WITH CUSTOMS

The criminal counterfeit trafficking statute (18 U.S.C. 2320) does not require that the counterfeited trademark be recorded with U.S. Customs as a prerequisite for the offense. The Office of Enforcement (OE) has the authority to investigate international trafficking in merchandise bearing counterfeit trademarks.

Pursuant to 19 U.S.C. 1499, Customs may detain goods to assure compliance

with all laws enforced by Customs. However, if there is probable cause to believe that the goods are evidence of a crime (e.g., 18 U.S.C. 2320), or subject to forfeiture under Customs laws, they may be seized. The goods may be subject to forfeiture under 19 U.S.C. 1595a(c) as introduced contrary to law.

6. GENUINE TRADEMARKED ARTICLES

Customs permits the unrestricted importation of articles bearing genuine trademarks or trade names applied abroad by firms under common ownership or control with the owner of the American trademark or trade name.

7. TRADEMARK VIOLATIONS

"Gray market" articles (19 CFR 133.21-133.23) Articles bearing the genuine trademark but not authorized for importation by the owner of the U.S. trademark.

"Genuine" (gray market) trademarked articles may be restricted in cases where an American firm buys the U.S. trademark rights from a foreign firm which does not own or control the American firm. Trademarks of U.S. origin may also receive import protection in some cases. Customs field officers should consult the notices issued by Customs Headquarters to determine whether "genuine" trademarked articles are restricted. Articles that arrive in the U.S. bearing restricted "genuine" trademarks as the term is defined in 19 CFR 133.21(b), are subject to seizure and forfeiture under 19 U.S.C. 1526(b). However, the trademark restrictions are not applicable if any of the following circumstances referred to in 19 CFR 1331(c) are present:

- 1) Both the foreign and the U.S. trademark or trade name are owned by the same person or business entity;
- 2) The foreign and domestic trademark or trade name owners are parent and subsidiary companies or are otherwise subject to common ownership or control (see 19 CFR 133.2(d)(1) and 19 CFR 133.2(d)(2))
- 3) The articles of foreign manufacture bear a recorded trademark or trade name applied under authorization of the U.S. owner. (This section was invalidated by the Supreme Court's decision in *K Mart Corp. v. Cartier, Inc., et al.*, 108 S. Ct. 1811 (1988) and is being removed from the Customs Regulations; it remains in effect until that is accomplished).
- 4) The objectionable mark is removed or obliterated prior to importation in such a manner as to be illegible and incapable of being reconstituted, for example by:
 - a) Grinding off imprinted trademarks wherever they appear,

- b) Removing and disposing of plates bearing a trademark or trade name;
- 5) The merchandise is imported by the recordant of the trademark or trade name or his designate;
- 6) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in 19 CFR 133.21(a) and (b), and such consent is furnished to appropriate Customs officials; or
- 7) The articles of foreign manufacture bear a recorded trademark and the personal exemption is claimed and allowed under section 148.55, Customs Regulations (19 CFR 148.55).

Notice of detention of articles found subject to the restrictions of 19 CFR 133.21 shall be given the importer in writing (Attachment 1).

Articles determined to be violative of gray market protection shall be seized and subject to forfeiture under 19 U.S.C. 1526(b).

Conveyances used to facilitate the importation of the infringing article may be seized and forfeited under 19 U.S.C. 1595a(a).

19 U.S.C. 1595a(b) provides Customs with the authority to issue a civil penalty equal to the value of the infringing merchandise.

B. CONFUSINGLY SIMILAR TRADEMARKS AND TRADE NAMES

Confusingly similar trademark (19 CFR 133.21 - 133.23) - A trademark which so resembles the genuine trademark as to be likely to cause the public to associate the copy or simulation with the recorded trademark. The likelihood of confusion test is governed by whether the questioned use is likely to cause confusion, or cause mistake or to deceive.

Confusingly similar trade names (19 CFR 133.21 - 133.23) A trade name which so resembles the genuine name as to be likely to cause the public to associate the copy or simulation with the recorded trade name.

Articles subject to the restrictions of 19 CFR 133.21 on importation of articles bearing recorded trademarks and trade names, shall be detained for 30 days from the date of notice to the importer that such restrictions apply to allow the importer to establish that any of the circumstances described in 19 CFR 133.21(c) are applicable.

Notice of detention of articles found subject to the restrictions of 19 CFR 133.21 shall be given the importer in writing (Attachment 1).

Articles detained in accordance with 19 CFR 133.22 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restrictions set forth in 19 CFR 133.21(c) are established.

Articles finally determined to be confusingly similar copies or simulations are subject to seizure and forfeiture as importations contrary to law, under 19 U.S.C. 1595a(c).

Conveyances used to facilitate the importation of the infringing articles may be seized and forfeited under 19 U.S.C. 1595a(a).

19 U.S.C. 1595a(b) provides Customs with the authority to issue a civil penalty equal to the value of the infringing merchandise.

C. COUNTERFEIT TRADEMARKS (19 CFR 133.23a)

A spurious (false, counterfeit, or non-genuine) trademark which is identical with, or substantially indistinguishable from a registered trademark.

Articles bearing "counterfeit" marks of trademarks recorded with Customs will be seized under 19 U.S.C. 1526(e). In addition to any seizure notice routinely provided to the importer, the owner of the trademark shall be notified of the seizure and the quantity of the articles seized in accordance with 19 CFR 133.23a(c) (Attachment 2). In those cases where seizure is not possible, the trademark owner will be notified after liquidated damages have been assessed (Attachment 2).

In the absence of the written consent of the trademark owner, who may consent to various dispositions such as exportation or entry after obliteration, the goods will be forfeited for violation of 19 U.S.C. 1516(e). After forfeiture, the trademarks will be obliterated where feasible, and the articles will be disposed of as follows:

- 1) Delivery to federal, state, or local government agencies which have established a need for the articles, or
- 2) Gift to charitable institutions which have a need for them, or
- 3) Sale at public auction, after 1 year from forfeiture, after first determining that no federal, state, or local government agency or charity has a need for them, or
- 4) Destruction, if they are unsafe or a health hazard.

To avoid conflict with the Trademark Counterfeiting Act of 1984, articles forfeited to the government bearing "counterfeit" marks may not be given away or sold unless the marks are removed or destroyed.

Whether the trademark is recorded with U.S. Customs or not, trademark protection may be afforded under the criminal sanctions of 18 U.S.C. 2320 (the Trademark Counterfeiting Act of 1984).

Conveyances used to facilitate the importation of the infringing article may be seized and forfeited .Under 19 U.S.C. 1595a(a).

19 U.S.C. 1595a(b) provides Customs with the authority to issue a civil penalty equal to the value of the infringing merchandise.

Title 19 U.S.C. 1595a(c) provides seizure authority for articles introduced or attempted to be introduced contrary to law.

8. MERCHANDISE NOT IN CUSTOMS CUSTODY

- A. The importer will be notified of the violation by issuing the appropriate letter as well as a Redelivery Notice (CF 4647) with the notation 'Trademark Violation..' The importer has 30 days in which to redeliver the merchandise into Customs custody. If the importer does not redeliver the merchandise, a claim for liquidated damages will be initiated.
- B. The local OE will be notified immediately of all shipments of counterfeit trademark merchandise which have been released from Customs custody-

9. EXEMPTION FROM TRADEMARK RESTRICTION

Under Public Law 95-410, effective October 3, 1978 (19 U.S.C. 1526(d)), a traveler arriving in the U.S. with a protected trademark article may be granted an exemption to the import restrictions. Under this exemption, a traveler may import one article of the type bearing a protected trademark. This exemption would-apply to an article bearing a counterfeit or confusingly similar trademark as well as an article bearing a genuine trademark (19 CFR 148.55). This exemption would apply if the article:

- A. accompanies a traveler to the U.S., and
- B. if it is for personal use and not for sale, and
- C. if the traveler has not been granted an exemption for the same type of article within 30 days preceding his or her arrival.

For trademarked articles that are not exempt under this provision, the importer may still secure a written release from the trademark holder. In the absence of a written release, those articles will be disposed of according to the procedures set forth in 19 CFR 133.52.

10. RESPONSIBILITIES

Customs field officers are responsible for following these guidelines.

District/Area/Port Directors, supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

11. ACTION

Each district should maintain, or have access to, a centralized file of trademark issuances and trade name issuances., (b) (7)(E)

[REDACTED]

A copy of the applicable issuances must be included in any subsequent seizure report.

The local OE should be notified prior to making any contact with the importer for his representative concerning a suspected violation of the Trademark Counterfeiting Act of 1984, whether the trademark is or is not recorded with U.S. Customs. Coordinate any further action with OE or proceed as directed below in the Case of a declination.

When there is a question as to whether a trademark was applied under circumstances of common ownership or control, or by authorization of the trademark owner, confirmation of those facts must be requested by the importer.

(b) (7)(E)

[REDACTED] If the importer claims that the merchandise is legitimately trademarked, and does not assent to verification by Customs with the registered owner, it becomes the importer's responsibility to provide proof of legitimate trademark use prior to release of the cargo. If the importer claims there is no violation, the procedures in 19 CFR 133.22 will be followed in those cases where Customs continues to believe a violation has occurred.

Should the importer admit to a violation, the shipment will be seized and the case forwarded to the Fines, Penalties and Forfeitures Office for appropriate action.

When it has been determined that there is a violation, the following initial action will be taken:

VIOLATION	REGULATIONS	INITIAL ACTION
(1) "Gray market" trademarks and trade names (except counterfeit trademarks)	19 CFR 133.21 through 133.23	Detain (may develop into a seizure under 19 U.S.C. 1526(b))
(2) Confusingly similar copies or simulations of trademarks and trade names (except counterfeit trademarks)	19 CFR 133.21 through 133.23	Detain (may develop into a seizure under 19 U.S.C. 1595a(c), as an importation contrary to law (15 U.S.C. 1124))
(3) Counterfeit trademarks	19 CFR 133.23a	Seize under 19 U.S.C. 1526(e)

Release of merchandise to premises designated by the importer shall only be used sparingly and upon filing of a single entry bond for three times the entered value of the merchandise and written agreement not to dispose of the merchandise without Customs permission. No other "constructive custody" release shall be allowed.

Conveyances used to facilitate the importation of the infringing article may be seized and forfeited under 19 U.S.C. 1595a (a) .

19 U.S.C. 1595a(b) provides Customs with the authority to issue a civil penalty equal to the value of the infringing merchandise.

This information and procedures will be distributed to all appropriate Customs officers and will be implemented upon receipt.

Commissioner of Customs

Attachments

Distribution:

R-01 Regional Commissioners
F-01 District/Area Directors
G-19 All Customs Inspectors
G-20 All Import Specialists

Attachment I - to importer

CONFUSINGLY SIMILAR MARKS

or

"GRAY MARKET" (PARALLEL IMPORTS) VIOLATIONS

Dear Sir or Madam:

In accordance with section 133.21, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 526 of the Tariff Act of 1930, as amended Title 19, United States Code, section 1526 (19 U.S.C. 1526), and section 41 of the Lanham Trademark Act (15 U.S.C. 1124), articles bearing unauthorized uses of an American trademark, or confusingly similar copies or simulations of U.S. trademarks recorded with Customs are prohibited importation or denied entry into the U.S.

You are hereby notified under section 133.22, Customs Regulations, that your importation of _____, entry number _____, is being detained for violation of the following checked statute:

- () Confusingly similar copy or simulation, violating 15 U.S.C. 1124, and subject to forfeiture under 19 U.S.C. 1595a(c).
- () Unauthorized "gray market" or parallel importation, violating 19 U.S.C. 1526(a), and subject to forfeiture under 19 U.S.C. 1526 (b).

Recorded Trademark:

U.S. Patent & Trademark Reg. No.

Customs Issuance No.

The imported articles shall be detained for a period of 30 days from the date of this notice. You may obtain release of the detained articles within the 30 day detention period if you can establish that an exemption under section 133.22(c) is applicable.

Sections 133.51 and 133.52, Customs Regulations, set forth petitioning and disposition procedures, as appropriate, for articles subject to seizure and forfeiture under the above-cited statutes.

Sincerely,

District Director of Customs

Attachment 2 - to trademark owner

COUNTERFEIT MARKS

Dear Sir or Madam:

In accordance with section 133.23a, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 526 of the Tariff Act of 1930, as amended, Title 19, United States Code, Section 1526 (19 U.S.C. 1526), articles bearing counterfeit trademarks are subject to seizure and forfeiture (19 U.S.C. 1526(e)).

You are hereby notified that an importation of _____ in the amount of _____ entry number _____ has been seized as it is considered to infringe the following trademark recorded with the U.S. Customs Service:

Title

U.S. Patent & Trademark Office Trademark Reg- No.

Customs Issuance Number

Sincerely,

District Director of Customs

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 2310-006A, 12-16-99)**

ORIGINATING OFFICE: CO

DISTRIBUTION: See signature page
CUSTOMS DIRECTIVE NO. 2310-006

DATE: November 21, 1989

SUBJECT: Patent Surveys, Process Patents and Exclusion Orders

1. **PURPOSE:**

The purpose of this Directive is to present information on Customs policies and procedures concerning Patent Surveys, Process Patents and Exclusion Orders.

2. **LAWS & REGULATIONS:**

Title 19 U.S.C. 1337

19 CFR 12.39, 12.39a, and 24.12

3. **DEFINITION:**

A patent is a legal monopoly securing to an inventor for a term of years the exclusive right to make, use or sell his invention. A process patent is a patent on the way an item is produced.

Patent enforcement differs from trademarks and copyrights in that patents are not recorded with U.S. Customs enforcement. We conduct patent surveys under 19 CFR 12.39a and enforce exclusion orders issued by the International Trade Commission (ITC) (which may cover a patent or process patent) under 19 CFR 12.39.

4. **BACKGROUND:**

A. **PATENT SURVEYS:**

When the owner of a patent registered in the United States believes that merchandise is being imported into the United State which infringes such patent, an application for a survey may be made. Patent surveys are conducted under 19 CFR 12.39a for the information of the patent owner only. The purpose of the survey is to provide the patent owner with the names and addresses of the importers of merchandise which appear to infringe the registered patent. These surveys are conducted for a period of 2, 4 or 6, months at the option of the patent owner. The ports of entry are notified of the survey by issuances from the Other Agency Enforcement Branch, Office of Trade Operations, Headquarters. In 1988,

21 Patent Surveys were conducted by USCS. See Attachment I for a complete I for a complete listing.

APPLICATION FOR PATENT SURVEY:

Application for a patent survey should be sent to U.S. Customs Service, Attn.: Other Agency Enforcement Branch Office of Trade Operations, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. The survey will be furnished for a 2-month period at the fee of \$1,000; a 4-month period at the fee of \$1,500; or a 6-month period at the fee of \$2,000. Customs fees payable to the U.S. Customs Service shall be submitted with the application.

The patent survey notification sent from the Office of Trade Operations to the field contains all the guidelines and information pertinent to carrying out the individual survey.

ACTION ON PATENT SURVEY:

Upon approval of the application, Customs ports of entry shall furnish the names and addresses of importers of merchandise appearing to infringe a registered patent to the patent owner. The report of each entry of merchandise believed to infringe the patent shall be rendered not less frequently than once a month. Ports of entry at which no such importations are entered shall render a single negative report to the patent owner promptly at the close of the six month survey period. In addition, a copy of each such report giving both the patent number and a brief description of the product shall be furnished to the Office of the General Counsel, International Trade Commissioner Washington, D.C. 20436.

B. PROCESS PATENTS:

The Process Patent Amendments Act of 1988 makes the unauthorized importer of a product which is made by a process patented in the United State liable as an infringer. The law gives the owner of a patented process a right of action in district court for injunction relief or monetary damages. It should be noted that the amendments specifically state that this right of action shall not deprive the patent owner of any remedies available under other provisions of law, i.e., 35 U.S.C. 271(a) through (f) and 19 U.S.C. 1337 or any other provision of law. In the event that you are presented with a court order issued under this new law, please contact your local Regional Counsel for legal advice.

C. EXCLUSION ORDERS:

Title 19 U.S.C. 1337 provides relief to U.S. industries which have established the existence of unfair trade practices in import trade. Most unfair trade practices involve patent, copyright or trademark infringement.

It is the policy of the Customs Service to enforce International Trade Commission (ITC) exclusion orders, seizure orders, and other determinations that are within the purview of the Customs Service (19 CFR 12.39). As of October 25, 1989, 55 outstanding exclusion orders are on file with USCS. See Attachment 2 for a complete listing.

NOTIFICATION TO FIELD:

Headquarters will notify regional commissioners, area, district, and port directors of exclusion orders and bonding requirements. Headquarters will also notify the field when an ITC exclusion order becomes final.

The National Operational Analysis Staff will update cargo and summary selectivity criteria to include ITC information.

Once exclusion orders become final, area/district directors will:

- (1) notify the local Office Of Enforcement of the discovery of a shipment containing products covered by an exclusion order, and;
- (2) provide written notification to the importer of denial of entry of an infringing product. Attachment 3 is a sample letter to be issued to the importer.
- (3) A copy of the notification will be transmitted to the ITC (format outlined in Attachment 4).
- (4) A copy of the denial letter (Attachment 3) and of the transmittal letter to ITC (Attachment 4) will be sent to:

U.S. Customs Service
Office of Trade Operations
Other Agency Enforcement Branch
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

If the denial letter is rescinded and the goods are allowed entry into the U.S., the area/district director shall immediately notify in writing the ITC and the other Agency Enforcement Branch.

Merchandise denied entry under an exclusion order must be exported or destroyed absent a Seizure and Forfeiture order issued by the ITC.

Headquarters will notify field officers and the National Import Specialists of the seizure and forfeiture order and its applicability as soon as possible after ITC's issuance.

REFERENCE OTHER ISSUANCES:

Other Agency Compliance Circular #210 dated January 10, 1989, entitled, "United States International Trade Commission Exclusion Orders".

5. RESPONSIBILITIES:

Customs laboratories may be able to provide technical assistance in the determination of relevancy of a patent survey or exclusion order to specific merchandise; field officers may contact the designated field laboratory servicing their geographic area or the Office of Laboratories and Scientific Services at Customs Headquarters for advice.

Customs field officers are responsible for following these instructions.

Assistant district/area directors, supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs adhere to these instructions.

Commissioner of Customs

Attachments

Distribution:

- F-01 District/Area Directors
- F-02 Port Directors
- F-03 Airport Directors
- F-04 Mail Branches
- F-09 Laboratory Directors
- H-02 Assistant Commissioners
- H-03 Office of the Chief Counsel
- H-05 Office Directors
- G-03 All SACs/RACs
- G-05 All Customs Attaches and Senior Customs

Representatives

G-10 USCS Academy

G-19 All Customs Inspectors

G-20 All Import Specialists

R-01 Regional Commissioners

R-03 Assistant Regional Commissioners (Enf)

R-04 Assistant Regional Commissioners (Ops)

ATTACHMENT I

1988 PATENT SURVEYS

IMPORT SURVEY NUMBER	ISSUE DATE	EXPIRES	PATENT NUMBER	PATENT HOLDER
88-001	010188	063088	2,747 "Plum Tree"	Superior Farming Co. 3501 Stockdale Hwy, Bakersfield, CA 93309
88-002	013088	123188	4,233,412 "Polymeric Light Stabilizers for Plastics"	CIBA-GEIGY Corp. Ardsley, N.Y. 10502
88-003	013088	063088	4,239,175 "Mold for forming Frozen Food Product & cap..."	Paul Straubinger 21-33 28th Street Astoria, N.Y. 11105
88-004	020888	123188	4,086,204 "Poly"....	CIBA-GEIGY Corp. Ardsley, N.Y. 10502
88-005	031888	123188	4,713,246 "Etoposide Oral Dosage Form"	Bristol-Myers Co. 345 Park Ave. New York, N.Y. 10154
88-006	051388	123188	3,106 "Grapevine"	Superior Farming Co. 16350 Driver Rd. Bakersfield, CA 93380
88-007	042588	123188	3,492,131 Peptine Sweetening Agent"	The Nutsweet Company 4711 Golf Rd. Skokie, ILL 60076
88-008	062988	063089	3,781,268 "Amikacin Sulfate"	Hiroshi Kawaguchi Bristol-Myers Co. 345 Park Ave. New York, N.Y. 10154
88-009	062788	123188	4,504,657 "Cafadroxil	Bristol-Myers Co. 345 Park Ave.

			Monohydrate"	New York, N.Y. 10154
88-010	062788	123188	3,660,578 "Mitomycin"	Toju Hata Bristol-Myers Co. 345 Park Ave. New York, N.Y. 10154
88-011	062788	123188	3,681,491 "Bleomycin Sulfate"	Hamao Umezawa Bristol-Myers Co. 345 Park Ave. New York, N.Y. 10154
88-012	063088	063089	4,310,515 "Pharmaceutical compositions of Cisplatin"	Bristol-Myers Co. 345 Park Ave. New York, N.Y. 10154
88-013	063088	063088	4,177,263 "Anti-Animal Tumor method"	Research Corp. New York, N.Y.
88-014	072688	123088	3,644,482 "(4-Hydroxy-5- Alkylphenyl)- Alkanoic..."	CIBA-GEIGY Corp. Ardsley, N.Y. 10502
88-015	092788	063089	4,385,421 "Poultry leg/back Processor"	Victor F. Weaver Holding Co. New Holland, PA
88-016	112688	063089	4,233,412 "Polymeric ... Plastics"	CIBA-GEIGY Corp. Ardsley, N.Y. 10502
88-017	102688	063089	4,713,246 "Etoposide Oral Dosage Form"	Bristol-Myers Co. 345 Park Ave. New York, N.Y. 10154
88-018	102788	063089	4,086,204 "Poly...."	CIBA-GEIGY Corp. Ardsley, N.Y. 10561
88-019	103188	063089	3,492,131 "Peptide Sweetening Agent"	The Nutrasweet Co. 1751 Lake Cook Rd. Deerfield, ILL
88-020	103188	063089	3,878,217	Merrell-Dow

			"Alpha-Aryl-4"	Pharmaceuticals Inc. P.O. Box 156300 Cincinnati, Ohio
88-021	111588	063089	3,106 "Grapevine"	Superior Farming Co. 16350 Driver Rd. Bakersfield, CA 93380

ATTACHMENT 2

OUTSTANDING EXCLUSION ORDERS

Investigation	Investigation Title	U.S. Patent Number (s)	Date Patent(s) Expires
337-TA-2	Certain Convertible Game Tables and Components Thereof:	3.711.099	1/16/90
337-TA-24	Certain Exercising Devices:	3,743.280	7/3/90
337-TA-30	Certain Display Devices for Photographs and the Like:	3.774.332	11/27/90
337-TA-39	Certain Luggage Products:	Des. 242.181	11/2/90
337-TA-42	Certain Electric Slow Cookers:	3.881.090	4/29/92
337-TA-44	Certain Roller Units:	4.024.600	5/24/94
337-TA-47	Certain Flexible Foam Sandals:	3,978,596	9/7/93
337-TA-55	Certain Novelty Glasses:	Nonpatent	-
337-TA-59	Certain Pump Top Insulated Containers:	4,113,147	9/12/95
337-TA-62	Certain Rotary Scraping Tools:	3.958,294	5/25/93
337-TA-69	Certain Airtight Cast-Iron Stoves:	Nonpatent	-
337-TA-74	Certain Rotatable Photographs and Card Display Units and Components Thereof:	3,791,059	2/12/91
337-TA-82A	Certain Headboxes and		

	Papermaking Machines Forming Sections for the Continuous Production of Paper, and Components Thereof:	RE. 28,269	12/10/91
337-TA-83	Certain Adjustable Window Shades and Components Thereof:	4,006,770	2/7/94
337-TA-87	Certain Coin-Operated Audio Visual Games and Components Thereof:	Nonpatent	-
337-TA-88	Certain Spring Assemblies and Components Thereof, and Methods of Their Manufacture:	3,782,708 3,866,287	1/19/91 2/19/92
337-TA-105	Certain Coin-Operated Audio Visual Games and Components Thereof:	Nonpatent	-
337-TA-112	Certain Cube Puzzles:	Nonpatent	-
337-TA-114	Certain Miniature Plug-In Blade Fuses:	3,909,767 4,040,175 4,056,884 4,131,869	9/30/92 8/9/94 11/8/94 12/26/95
337-TA-118	Certain Sneakers with Fabric Uppers and Rubber Soles:	Nonpatent	-
337-TA-137	Certain, Heavy Duty Staple Gun Tackers:	Nonpatent	-
337-TA-139	Certain Caulking Guns:	4,081,112	3/25/95
337-TA-140	Certain Personal Computers and Components Thereof:	4,136,359 4,278,972	1/23/96 7/14/98
337-TA-143	Certain Amorphous Metal Alloys and Amorphous		

	Metal Articles:	4,221,257	9/9/97
337-TA-146	Certain Canape Makers:	Det.. 268.318	3/22/97
337-TA-152	Certain Plastic Food Storage Containers:	Nonpatent	-
337-TA-161	Certain Trolley Wheel Assemblies:	4,109,343	8/29/95
337-TA-167	Certain Single Handle Faucets:	Nonpatent	-
337-TA-169	Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Products:	Nonpatent	-
337-TA-170	Certain Bag Closure Clips:	4,356,600 4,394,791	11/2/99 7/26/2000
337-TA-171	Certain Glass Tempering Systems:	3,994,711	11/30/93
337-TA-174	Certain Woodworking Machines:	3,754,496 4,174,100 4,436.126	8/28/90 11/13/96 3/13/2001
337-TA-184	Certain Foam Earplugs:	RE. 29,487	5/21/91
337-TA-194	Certain Aramid Fiber:	3,767,756	10/23/90
337-TA-195	Certain Cloisonne Jewelry:	Nonpatent	-
337-TA-196	Certain Apparatus for Installing Electrical Lines and Components Therefor:	3,697,188	10/10/89
337-TA-197	Certain Compound Action Metal Cutting Snips and Components Thereof:	Nonpatent	-
337-TA-225	Certain Multi-Level Touch Control Lighting		

	Switches:	3.715,623	2/6/90
337-TA-228	Certain Fans with Brushless DC Motors:	4.494.028	1/15/2002
337-TA-229	Certain Nut Jewelry and Parts Thereof:	Nonpatent	-
337-TA-231	Certain Soft Sculpture Dolls. Popularly Known as "Cabbage Patch Kids" Related Literature and Packaging Therefor:	Nonpatent	-
337-TA-237	Certain Miniature Hacksaws:	3.756,298	9/4/90
337-TA-240	Certain Laser Inscribed Diamonds and the Method of Inscription Thereof:	4.392,476	7/12/2000
337-TA-242	Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same:	4.081.701 4,543,500 4,533,843	8/6/2002
337-TA-260	Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof:	3,760,424	9/23/90
337-TA-266	Certain Reclosable Bags and Tubing:	3,945,872	3/23/93
337-TA-267	Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment:	4,136,619 4.596,812	2/13/96 2/13/96
337-TA-268	Certain, High Intensity Retroreflective Sheeting:	4,025,159	5/24i94
337-TA-275	Certain Nonwoven Gas Filter Elements:	4,056,375	1/20/2002
337-TA-276	Certain Erasable Programmable	4,223,394	9/16/97

Read only Memories,	4,519,050	5/21/2002
Components Thereof,	4,103,189	7/25/95
Products Containing	4,685,084	8/4/2004
Such Memories, and	4,392.,476	7/12/2000
Processes for Making		
Such Memories:		

337-TA-279	Certain Plastic Light Duty Screw Anchors:	Nonpatent	-
337-TA-297	Cellular Telephones	-	-
337-TA-287	Strip Light	-	-
337-TA-285	Chemiluminescent Compound	-	-
337-TA-254	Flashlight	-	-

ATTACHMENT 3

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
DISTRICT _____

(IMPORTER)

Dear:

This is to advise you that your shipment of _____ (quantity and article) which arrived on the _____ (vessel or airline), Bill of Lading No.: _____, on (date) has been denied entry into the United States under the provisions of 19 U.S.C. 1337 for infringement of (U.S. Patent No., Copyright, etc.) _____.

On _____ (date) the U.S. International Trade Commission in Case 3.17-TA- issued an exclusion order on _____ (article) which infringes the above patent (Copyright, etc). Your article is within the scope of this exclusion order.

You have 30 days to export the infringing merchandise from the United States. The merchandise may not be shipped in bond to another port for exportation. If the merchandise is not exported within 30 days, it will be disposed of under Customs supervision pursuant to 19 C.F.R. 127.

A copy of this notice is being furnished to the United States International Trade Commission. You are hereby warned that the Commission may issue a seizure and forfeiture order pursuant to 19 U.S.C. 1337, in which case further attempts to import the articles into the United States will result in their seizure and forfeiture.

District Director

By:

cc: ITC
HQ, Office of Trade Operations
HQ, Office of Trade Initiatives

Attachment 4

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
DISTRICT _____

Kenneth R. Mason
Secretary, U.S. International Trade Commission
500 E. Street, SW
Washington, DC 20436

RE: Commission Exclusion order issued in Investigation
No. 337-TA-

Dear Mr. Mason:

Please be advised that the Customs Service denied entry on (date of denial) to an attempted importation of (type of product), which the Customs Service has determined are articles subject to the above referenced commission exclusion order. The name and address of the importer of record is:

(name and address)

The following documentation is attached herewith
(Denial letter and other relevant documentation)

This information is submitted so that the commission may issue a seizure and forfeiture order with respect to any further attempted importations of the subject articles by this importer.

(further comments)

Sincerely,

District Director

enclosures: (denial letter)

CC: U.S. Customs, Office of Trade Operations

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 2310-005A, 4/7/00)**

ORIGINATING OFFICE: CO:TO

DISTRIBUTION: See Signature Page

CUSTOMS DIRECTIVE NO: 2310-005

SUPERSEDES: 2300-05

DATE: September 28, 1989

SUBJECT: COPYRIGHT PROTECTION

1. PURPOSE

The purpose of this Directive is to present in one document relevant information on Customs procedures and policies with respect to copyright protection. Two separate Directives cover "Trademark & Trade Name Protection" and "Patent Surveys, Process Patents and Exclusion Orders".

2. BACKGROUND

A copyright protects original works of authorship, including writing, music, computer programs, video games, toy designs and other intellectual creations against unauthorized reproductions, derivations, distribution or display. This protection is available to both published and unpublished works. It is actually the tangible expression which is copyrighted, not the concept.

The Copyright Office is merely the office to record the claim, it does not create or bestow copyright.

Some products are protected under both copyright and trademark laws. Examples of this are Apple Computers and Cabbage Patch Dolls where the names are trademarked and the programs and designs are copyrighted.

Piratical copies are actual or substantial copies of a recorded copyrighted work, produced and imported in contravention of the rights of the copyright owner.

3. APPLICABLE LAWS AND REGULATIONS

UNITED STATES CODE

Title 17 USC 602, 603 - Copyright Act of 1976

Title 18 USC 545- Prohibits importation of goods "contrary to law" and subjects

Title 19 USC 1595a(c) - merchandise to forfeiture.

CODE OF FEDERAL REGULATIONS

Customs Regulation (19 CFR 133.31) - Recordation of copyrights with Customs.

Customs Regulation (19 CFR 133.42) - Seizure of articles infringing copyrights.

Customs Regulation (19 CFR 133.43) - Detention of articles suspected of infringing copyrights.

4. RECORDATION WITH CUSTOMS

(b) (7)(E)

The fee is currently \$190 to record a copyright with Customs. Customs then distributes a copyright issuance to all of its field offices. All importer notifications on seizures for copyright violations and other correspondence on those seizures should reference the applicable copyright issuance and cite the copyright title and Copyright Office registration number.

5. CLEARLY PIRATICAL COPIES - 19 CFR 133.42 (17 USC 602(b), 17 USC 603(c))

The importation of piratical copies of works copyrighted in the United States is prohibited.

The district director shall seize and forfeit an imported article which he determines constitutes a piratical copy of a recorded copyrighted work. Clear-cut copies, or controlling decisions from Customs or a court may form the basis of this determination.

6. POSSIBLE PIRATICAL COPY - 19 CFR 133.43

Articles suspected of infringing, but not clearly determined to be such, shall be detained in accordance with 19 CFR 133.43, explained in detail in Section 7. "Constructive custody" releases should be avoided. However, in certain limited circumstances that are in the best interests of the Customs Service (such as lack of adequate or secure storage facilities) they may be allowed if the importer files a single entry bond for three times the transaction value of the merchandise and executes a written agreement not to dispose of the articles without Customs permission.

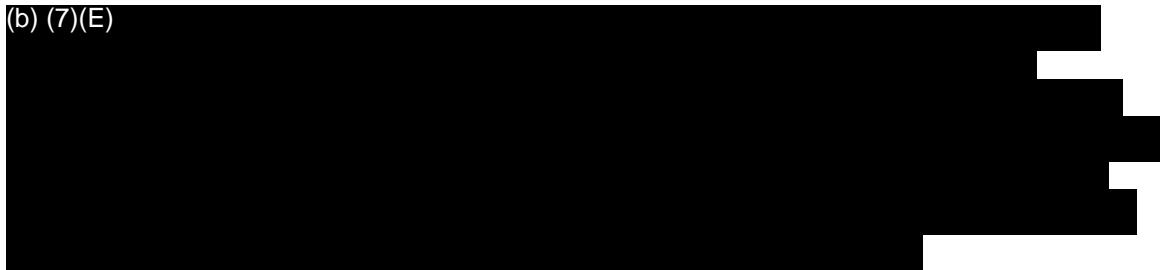
The test of whether a copyright protected design has been infringed is, "Whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same." Another way of stating the substantial similarity test is, "Whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work."

The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by employing the tactic of making deliberate, but trivial, variations of specific features of the copyright protected work. Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the

general ideas, but the expression of those ideas as well. Access to the copyrighted work may be presumed even without direct evidence in cases where it is apparent that the importer has ample opportunity to view the copyrighted work, and the substantial similarities between the works are so striking as to preclude the possibility that they were arrived at independently.

7. PROCEDURE ON SUSPICION OF INFRINGING COPIES - 19 CFR 133.43

(b) (7)(E)



A. NOTICE TO IMPORTER

If the district director has reason to believe that an imported article may be a piratical copy of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact a piratical copy. In the absence of receipt within 30 days of such a denial by the importer, the article in question shall be considered to be such a copy and shall be subject to seizure and forfeiture under 19 CFR 133.42. (See sample letter - Attachment 1).

B. NOTICE TO COPYRIGHT HOLDER

If the importer files a denial of piratical copying, the district director shall furnish the copyright owner with a representative sample of the imported article, together with a notice (see sample letter - Attachment 2) that the imported article will be released to the importer unless within 30 days the copyright owner files with the district director:

- (1) A written demand for the exclusion from entry of the detained imported articles; and
- (2) A bond on Customs Form 301 in an amount specified by the district director, conditioned to hold the district director and the importer or owner of such imported articles harmless from any loss or damage resulting from Customs detention in the event that the Commissioner of Customs or his designee determines that the articles are not piratical copies prohibited importation under Section 602 of the Copyright Act (17 USC 602). The amount of the bond is generally set at 120 percent of the value plus the duty (Attachment 7).

At this stage in the proceedings it is important that Customs exercise the utmost care not to divulge to the copyright holder any information about the importer except that which is mandated by law (see section 12 of this Directive).

C. EXCLUSION DEMAND BY COPYRIGHT OWNER

If the copyright owner files a written demand for exclusion of the suspected piratical copies together with a proper bond, the district director shall promptly notify the importer and the copyright owner that during a specified time limit of not more than 30 days, they may submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of piratical copying (see sample letters - Attachments 3 and 4). The burden of proof shall be upon the party claiming that any article is in fact a piratical copy. At the close of the period specified for submission of evidence, the district director shall forward the entire file in the case, together with a representative sample of the imported articles and his views or comments, to the Commissioner of Customs, Value, Special Programs & Admissibility Branch, Office of Regulations and Rulings, Washington, D.C. 20229.

D. EXCLUSION CONTENTION DISCLAIMED BY COPYRIGHT OWNER

If the copyright owner disclaims his contention or concedes that he possesses insufficient evidence or proof to substantiate a claim of piracy, the district director shall release the detained shipment to the importer, and shall release all further importations of the same article, by whomever imported, without further notice to the copyright owner.

E. FAILURE TO FILE EXCLUSION DEMAND

If the copyright owner fails to file a written demand for exclusion and an accompanying bond, the district director shall release the detained articles to the importer, and notify the copyright owner of the release. The district director shall not withhold delivery of all further importations of the same article by the same importer unless the copyright owner has provided a satisfactory explanation as to why he failed to file a written demand for exclusion and a bond.

F. WITHDRAWAL OF BOND

At any time prior to transmittal of the case to the Commissioner of Customs for a decision, the copyright owner may withdraw his bond. Prior to returning the bond to the copyright owner and release of the detained articles, the district director shall require the copyright owner and the importer to file written statements agreeing to hold the Customs Service and the district director harmless for any consequence from returning the bond and releasing the detained articles. After the withdrawal of the bond, the district director shall release subsequent importations of the same article by the same importer without further notice to the copyright owner.

8. CLAIM OF INFRINGEMENT SUSTAINED

If the Commissioner determines that the articles in question are piratical copies, the district director shall seize and forfeit them, and shall return the bond to the copyright owner. A petition for relief may still be filed (19 CFR 133.44(a); 19 CFR 133.51-133.53).

9. DENIAL OF INFRINGEMENT SUSTAINED

If the Commissioner determines that the articles are not piratical copies, the district director shall release all such detained merchandise and transmit the copyright owner's bond to the importer. Recovery of damages on the bond is to be arranged between the private parties (19 CFR 133.44(b)).

10. COMPETING COPYRIGHT REGISTRATIONS

Goods initially believed to be, or suspected of, infringing recorded copyrights have sometimes been released upon the importer's presentation of a certificate of registration of a claim to copyright issued by the United States Copyright office after their seizure (19 CFR 133.42) or detention (19 CFR 133.43). This action has sometimes been referred to as the "Ten Dollar Defense because that was the fee to register a claim to copyright with the Copyright Office.

When evidence clearly indicates piratical copying or reason to suspect piratical copying of a copyright recorded with Customs, and the imported article itself is the subject of a copyright registration certificate (whether obtained before or after importation), Customs officers shall still detain the merchandise and proceed as outlined above (19 CFR 133.42, 1133.43; Customs Service Decision 86-23 - Attachment 5).

11. DISPOSITION OF PIRATICAL COPIES

Generally, piratical copies seized and forfeited to the government are to be destroyed. However, section 603(c) of the Copyright Law also provides that imported articles 'forfeited' by Customs for violation of the importation prohibitions of Title 17, USC, may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury (U.S. Customs), that the importer had no reasonable grounds for believing that his acts constituted a

violation of law. Under 19 CFR 133.47, seized and detained articles may also be returned to the country of export whenever (i.e. at any stage in the proceedings) it is shown to the satisfaction of the district director that the importer had no reasonable grounds for believing that his acts constituted a violation of law.

If the district director is in doubt, he may forward the matter for decision to the Commissioner to the attention of the Value, Special Programs & Admissibility Branch, Office of Regulations and Rulings. Occasionally, the copyright owner may furnish a retroactive license which can be considered in the processing of a seizure case.

12. INFORMATION DISCLOSURE

Throughout all of these procedures, you should take extreme care to prevent the disclosure of confidential trade information (Attachment 6).

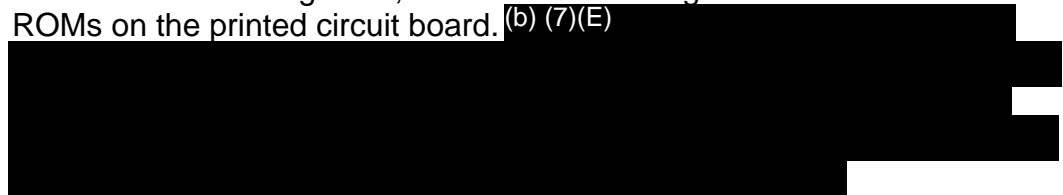
Where there is reason to believe that an imported article may be piratical and detention proceedings under 19 CFR 133.43 are followed, and the importer denies copying, a sample shall be sent to the copyright owner as provided by 19 CFR 133.43(b), but no additional information will be volunteered until the copyright owner decides to contest the importation. At that time he will be provided with only the information required by Bond Form 301 (Attachment 7).

Any preliminary "educational" information exchanged to ascertain relevant facts of origin and genuineness by cooperating with copyright owners should be furnished with caution and is not to disclose such particulars as the names of the importers or foreign shippers or manufacturers, pricing units or quantities. Other specific requests related to furnishing information in copyright matters should be made pursuant to the Freedom of Information Act.

13. VIDEO GAMES AND COMPUTERS

In recent years piratical copies of copyrighted video games and computer programs have been appearing in our import trade.

- A. In the case of video games, the essence of the game is contained in ROMs on the printed circuit board. (b) (7)(E)



The audio-visual works in ROMs on circuit boards may be damaged by static electricity (b) (7)(E)

Pack the board in a sturdy shipping container and mark "fragile" on the outside.

- B. Illegal computer programs may be on tapes, disks or cassettes, but most often are found fixed on semiconductor microchips, for example, in "read only memory" (ROM).

These piratical programs can be seized under Section 603 of the Copyright Act (17 USC 603). The associated computer hardware can be seized under Section 596 of the Tariff Act (19 USC 1595a(a), as things used in aiding or facilitating the importation of articles contrary to law.

The actual determination of whether a particular program is factually similar to a copyrighted work is a very technical matter that must be handled by a Customs laboratory. The legal conclusion as to copying will take into consideration the laboratory's findings and other relevant evidence. As soon as the legal ruling module is on-line with ACS, it may be checked for possible precedents.

Customs officers may also use electronic equipment provided by an importer or copyright owner to screen or "field test" personal computers as part of the preliminary examination. The information derived from such equipment may be used in determining whether to seize the imported computers.

If, however, a decision on piracy is not clear-cut and an immediate determination cannot be made, you should contact the appropriate Customs laboratory. Then, if necessary, a sample computer can be sent to the laboratory for further analysis.

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. COMPUTER PROGRAM GUIDELINES:

In the absence of special factors, (b) (7)(E)

[REDACTED] piracy is presumed

and the entire shipment can be seized pursuant to 19 CFR 133.42 (Computer Guidelines Issuance No. 86-161, dated August 11, 1986).

If the suspected program checks out to be (b) (7)(E) piracy is suspected and the procedures of 19 CFR 133.43 are to be followed step-by-step as described earlier in this Directive.

When the (b) (7)(E) report their findings on these tests, they should always reference the specific copyright issuance involved. If a work is similar to more than one recordation, all relevant recordation should be noted.

There is no need to detain under 19 CFR 133.43 certain types of computer equipment when such equipment contains no programs and thus cannot be considered to infringe on any program copyrights (so-called "ROMLESS"). Included in this category are shipments consisting solely of these types of equipment:

- computer cases ("shells")
- power supplies
- motherboards containing no ROM or RAM chips,
- no microprocessors, etc.

Keyboards can no longer be considered in this category since IBM has recorded a copyright for a 'ROM' which is resident in the keyboard.

Also, a "ROMless" computer may be subject to a specific Exclusion Order issued by the International Trade Commission. At this time, there is only one such order (Investigation No. 337-TA-140 - protecting certain 'Apple' personal computers and components).

15. RESPONSIBILITIES

Customs field officers are responsible for following these instructions.

Assistant district/area directors, supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs adhere to these instructions.

(b)(6),(b)(7)(C)

(Acting) Commissioner of Customs

Attachments

Distribution:

- H-02 Assistant Commissioners
- H-03 Office of Chief Counsel
- H-05 Office Directors
- R-01 Regional Commissioners
- R-03 Assistant Regional Commissioners (Enf)
- R-04 Assistant Regional Commissioners (Ops)
- F-01 District/Area Directors
- F-02 Port Directors
- F-03 Airport Directors
- F-04 Mail Branches
- F-09 Laboratory Directors
- G-03 All SACs/RACs
- G-05 All Customs Attaches/Senior Reps.
- G-10 USCS Academy
- G-19 All Customs Inspectors
- G-20 All Import Specialists

Attachment 1

Dear Sir or Madam:

In accordance with Customs Regulations 19 CFR 133.43 and 17 USC 603, the importation (including "in-transit" shipments) of piratical copies of a recorded copyrighted work is prohibited. You are hereby advised that there is reason to believe that your importation of may be a piratical copy of the recorded copyrighted work:

Title
Copyright Registration No.
Customs Headquarters Issuance No.

In the absence of receipt within 30 days of a denial by you that the article constitutes a piratical copy, it shall be considered to be such a copy and shall be subject to seizure and forfeiture.

If this merchandise is already in your possession, you may satisfy the requirement of this notice by giving us "constructive" custody until such time as the issue of piratical copying is resolved. This may be accomplished by a letter granting us constructive custody and affirming that the subject merchandise will be held intact by you pending further instructions from this office and the posting of a single entry bond for three times the value of the merchandise. The merchandise may not be sold, used, assigned, leased or disposed of without U.S. Customs permission.

If you believe the facts warrant, you may file a statement denying that the article is in fact a piratical copy and stating that the detention or redelivery of the article will result in a material depreciation of its value or a loss or damage to you. Upon receipt of your denial, a sample of the merchandise in question will be sent to the copyright holder. If he claims that there is a violation of his copyright, both you and he will have up to 30 days to submit additional evidence and legal briefs in support of your respective positions before we forward the matter to the Commissioner of Customs for decision.

In addition, you have several further options:

If you agree that these items are, in fact, piratical, or if you wish to waive your right to contest piracy, you may abandon such items to Customs at the time of redelivery and assent to their forfeiture; or

You may petition for relief from forfeiture of the articles.

If you can show, to the satisfaction of this office, that you had no reasonable grounds for believing that your act constituted a violation of law, you may be allowed to return this shipment to the country of exportation.

For more information you may contact

Sincerely,

District Director of Customs

Attachment 2

Dear Sir or Madam:

The Customs Service has detained a shipment of _____ which may constitute a violation of your copyright: _____ (article) along with the proper bond.

Title
Copyright Registration No.
Customs Headquarters Issuance No.

Pursuant to Customs Regulations, 19 CFR 133.43, a sample is hereby submitted for your review.

The importer denies that the articles are piratical copies, and alleges that their continued detention will result in a material loss or damage to him.

These imported articles will be released to the importer unless, within 30 days from the date of this letter, you file:

1. A written demand for the exclusion of these items, and
2. A bond on Customs Form 301 (copy enclosed) in the amount of \$_____, conditioned to hold the District Director, and the importer or owner, harmless from the loss or damage resulting from Customs detention in the event that these items are determined not to be piratical.

If you file the demand and bond, you and the importer will be notified of a time period for filing further evidence, briefs or material. You have the burden of proving infringement.

At the end of the time period (not more than 30 days), or after both briefs are filed, whichever comes first, the entire file will be forwarded to the Commissioner of Customs for his review and decision.

For more information you may contact

Sincerely,

District Director of Customs

Enclosures

Attachment 3

Dear Sir or Madam:

Pursuant to Customs Regulations, 19 CFR 133.43, the copyright owner has filed a proper bond and a written demand for exclusion of the suspected piratical copies of: (article) _____

Title of Copyright
Copyright Registration No.
Headquarters Issuance No.

You have (30) days from the date of this letter to submit further evidence, legal briefs or other pertinent material to substantiate your denial of piratical copying, if you so desire. The burden of proof is on the copyright owner.

At the end of the (30) days, or after both briefs are filed, whichever comes first, the entire file will be forwarded to the Commissioner of Customs for his review and decision.

Sincerely,

District Director of Customs

Attachment 4

Dear Sir or Madam:

Issue is joined as to your claim and the importer's denial of piratical copying. You have (30) days from the date of this letter to submit any additional information or documentation substantiating your claim. You have the burden of proof in this matter.

At the end of the (30) days, or after both briefs are filed, whichever comes first, the entire file will be forwarded to the Commissioner of Customs for review and decision.

Sincerely,

District Director of Customs

ATTACHMENT 5

US CUSTOMS SERVICE 37

C.S.D. 86-23)

Pursuant to 17 USC 602, this ruling holds that US. Customs officers shall detain merchandise suspected or found to be infringing upon a U.S. Customs recorded copyright even though the same merchandise has been the subject of a Copyright Office certificate of registration. In such circumstances, Customs officers are to be governed by 19 CFR 133.43.

The following policy ruling on procedures for dealing with competing copyright registrations is published for general guidance of Customs and the public; any previous rulings to the contrary are not to be relied upon.

Issue - What is the position of the Customs Service in protecting a registered and recorded copyright when a questioned article is itself covered by a certificate of registration issued by the Copyright Office?

Facts - Customs is experiencing an increasing number of claims from importers of seized or detained articles that those articles should be released merely because they, themselves, are covered by a Copyright Office certificate of registration. Some certificates have been obtained prior to importation and some only after Customs has seized or detained the goods. On the other side, copyright owners have complained that the law neither requires nor sanctions release under these circumstances, and to do so makes a mockery of effective enforcement against piratical copies.

Law and Analysis: Section 602 of the Copyright Act (17 USC 602) prohibits the importation of articles which are infringing copies of U.S. copyrights recorded with Customs. Section 410(c) of that Act provides that in any judicial proceedings a certificate of registration issued by the Copyright Office shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate; the evidentiary weight of the certificate shall be within the discretion of the court. The implementing procedures for obtaining Customs protection and processing violations of section 602 are found in Part 133 of the Customs Regulations (Title 19, Code of Federal Regulations Subparts D, E and F).

In the past, the defense of competing certificates of registration was infrequently raised but it was accepted in a number of on an ad hoc basis. In some Instances, the certificate was acquired prior to importation, and in others, it appeared reasonably obtained by a reputable firm. Also, Customs was careful not to appear to encroach on the courts' functions of passing on a certificate's validity under section 410(c), since the registrant vouches for the independence and originality of a copyright when he signs the certificate.

31 CUSTOMS BULLETIN AND DECISIONS. VOL 20. No. 33, AUGUST 20, 1986

Recent representations and occurrences strongly suggest that the competing registration defense is about to become widespread, if acceptable to Customs. An underlying problem is that it is extremely easy to register a claim to copyright since the Copyright Office is merely an office of record and will register documents if "fair on their face," similar to a registry of deeds.

Review establishes that a Copyright Office certificate of registration is significant mainly for shifting the burden of proof as to the facts stated in the certificate from the plaintiff to the defendant in a proceeding involving copyright infringement. *Wihtol vs. Wells*, 231 F. 2d 550, 553 (7th Cir. 1956). In cases where Customs would otherwise have taken action against the imported goods, it does not seem legally required or desirable enforcement practice to release the goods on the sole basis that they are also the subject of a certificate evidencing copyright. A recent order in the case of *New Bright Industrial Co., Ltd and New Bright Industries, Inc. v. Cheng Ching Toy Co. Ltd, et al*, 85 Civ. 3695, Bramwell, J. (U.S.D.C. E.D.N.Y. January 8, 1986), would seem to support this position as an administrative practice since the Judge in a copyright infringement suit (involving robot toys) directed that the Customs Service should enforce its regulations concerning the seizure and detention of suspected piratical copies " ' ' * as though (the defendant) did not possess a copyright registration."

A recently distributed internal Service communication advised all Customs officers that a competing certificate would not be accepted as conclusive proof of original authorship when obtained after the importation of goods suspected or determined to be infringing copyrights previously recorded with Customs. Although a copyright registration certificate acquired prior to importation is arguably somewhat more persuasive of originality than one obtained only after Customs has seized or detained imported goods, it is similarly subject to question and may be disregarded when other evidence indicates piratical copying.

It is highly unlikely that Customs will detain legitimately copyrighted goods, but if that should occur, a detention procedure would promptly result in clearance because the Customs copyright recordant would confirm that the importation was not infringing.

Holding: When evidence clearly indicates piratical copying or reason to suspect piratical copying of a copyright recorded with Customs, and the imported article itself is the subject of a copyright registration certificate (whether obtained before or after importation), Customs officers shall detain the merchandise and proceed under section 133.43 of the Customs Regulations (19 CFR 133.43).

ATTACHMENT 6

UNITED STATES CUSTOMS SERVICE 1301 CONSTITUTION AVENUE, NW.
WASHINGTON, D.C. 20229 UNCLASSIFIED

5/22/85

JOHN ATWOOD

566-5675

ALL REGIONAL COMMISSIONERS, DISTRICT, PORT REGIONAL DIRECTORS, OF INVESTIGATION SUBJECT: DISCLOSURE OF INFORMATION IN COPYRIGHT AND TRADEMARK INFRINGEMENT, COUNTERFEITING AND "GREY MARKET" CASES EXTREME CARE SHALL BE TAKEN TO PREVENT THE DISCLOSURE OF CONFIDENTIAL TRADE INFORMATION WHEN HANDLING POSSIBLE COPYRIGHT AND/OR TRADEMARK INFRINGEMENTS AND COUNTERFEITS, AND "GREY MARKET" IMPORTATIONS (UNAUTHORIZED IMPORTATIONS OF GENUINE TRADEMARKED ITEMS). CUSTOMS REGULATIONS SHALL BE FOLLOWED CLOSELY WHEN DEALING WITH "GREY MARKET" ITEMS AND ITEMS BEARING CONFUSINGLY SIMILAR MARKS (133.21 THROUGH 133.23, C.R.), OR ITEMS BEARING COUNTERFEIT TRADEMARKS (133.23a, C.R.). IN THE FORMER INSTANCE, THE IMPORTER SHALL BE FIRST NOTIFIED OF A DETENTION AND NOTICE ISSUED ACCORDINGLY, TRADEMARK OWNERS WILL NOT BE NOTIFIED OF THESE ACTIONS. IN THE CASE OF COUNTERFEIT TRADEMARKS, WITHIN THE MEANING OF 19 CFR 133.23a, TRADEMARK OWNERS WILL BE ROUTINELY NOTIFIED OF SEIZURES AND PROVIDED INFORMATION AS TO THE ITEMS SEIZED, THE QUANTITY SEIZED, THE LOCATION OF THE SEIZURE, THE COUNTRY OF ORIGIN, THE IMPORTER'S NAME AND ADDRESS AND THE MODE OF CONVEYANCE, AS PROVIDED IN MANUAL SUPPLEMENT 3257- 01, NOVEMBER 28, 1978. IN COPYRIGHT CASES, AN IMMEDIATE INITIAL DETERMINATION OF INFRINGEMENT (PIRATICAL COPYING) WILL RESULT IN SEIZURE (133.42, C.R.) BUT THE COPYRIGHT OWNER WILL NOT BE ROUTINELY NOTIFIED; HOWEVER, UPON SPECIFIC REQUEST, THE QUANTITY AND LOCATION OF THE SEIZURE, THE COUNTRY OF ORIGIN, THE IMPORTER'S NAME AND ADDRESS, AND MODE OF CONVEYANCE MAY BE RELEASED TO THE COPYRIGHT OWNER. WHERE THERE IS REASON TO BELIEVE AN IMPORT MAY BE PIRATICAL THE DETENTION PROCEDURE OF 133.43, C.R., SHALL BE FOLLOWED STEP-BY-STEP; THE COPYRIGHT OWNER WILL NOT BE NOTIFIED BEFORE, OR SIMULTANEOUSLY WITH, THE INITIAL NOTICE OF DETENTION TO THE IMPORTER. IF THE IMPORTER DENIES COPYING, A SAMPLE SHALL BE SENT TO THE COPYRIGHT OWNER AS PROVIDED BY 133.43(b), C.R., BUT NO ADDITIONAL INFORMATION SHALL BE VOLUNTEERED. IF THE COPYRIGHT OWNER WISHES TO CONTEST THE IMPORTATION, ONLY THE INFORMATION REQUIRED BY BOND FORM 301 (ACTIVITY CODE 8, 113.70, C.R.) SHALL BE FURNISHED THE COPYRIGHT OWNER TO ALLOW IT TO FILE THE BOND SPECIFIED BY 133.43(b)(2). THE ABOVE INFORMATION IS A REMINDER TO CARRY OUT PROTECTION EFFECTIVELY WHILE AT THE SAME TIME

PRESERVING THE LEGITIMATE CONCERNS OF IMPORTERS ABOUT SENSITIVITY TO THE AMOUNT AND KIND OF INFORMATION DISCLOSED. IT IS VERY IMPORTANT TO OBSERVE THAT CUSTOMS ACTION AND RESULTING DISCLOSURE IS PREDICATED ON TRADEMARKS AND COPYRIGHTS RECORDED WITH CUSTOMS; THERE IS NOT AT THIS TIME ANY PROCEDURE PURSUANT TO SECTION 602(b) OF THE COPYRIGHT ACT (TITLE 17, U.S. CODE) TO FURNISH INFORMATION ABOUT POSSIBLE INFRINGING IMPORTATIONS (WHICH MIGHT INCLUDE COPYRIGHT "GREY MARKET") IN THE ABSENCE OF SPECIFIC INSTRUCTIONS FROM HEADQUARTERS; NO SUCH INFORMATION SHALL BE DISCLOSED TO COPYRIGHT OWNERS EXCEPT THROUGH THE NORMAL ADVERSARY PROCESS OF 133.43, C.R. ANY PRELIMINARY "EDUCATIONAL" INFORMATION EXCHANGE TO ASCERTAIN RELEVANT FACTS OF ORIGIN AND GENUINENESS BY COOPERATING WITH TRADEMARK AND COPYRIGHT OWNERS SHOULD BE FURNISHED WITH CAUTION AND CARE NOT TO DISCLOSE PARTICULARS SUCH AS NAMES OF IMPORTERS OR FOREIGN SHIPPERS OR MANUFACTURERS, PRICING UNITS OR QUANTITIES. OTHER SPECIFIC REQUESTS RELATED TO FURNISHING INFORMATION IN COPYRIGHT OR TRADEMARK MATTERS SHOULD BE MADE PURSUANT TO THE FREEDOM OF INFORMATION ACT.

(signed) ROBERT P. SHAFFER
ASSISTANT COMMISSIONER
(COMMERCIAL OPERATIONS)



LU 2300-05, SEPT. 28, 1992
DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE
CUSTOMS BOND
19 CFR Part 115

ATTACHMENT 7
CUSTOMS
USE
ONLY
BOND NUMBER¹ (Assigned by Customs)
FILE REFERENCE

In order to secure payment of any duty, tax or charge and compliance with law or regulation as a result of activity covered by any condition referenced below, we, the below named principal(s) and surety(ies), bind ourselves to the United States in the amount or amounts, as set forth below.

SECTION I—Select Single Transaction OR Continuous Bond (not both) and fill in the applicable blank space.

☐ **SINGLE TRANSACTION BOND**
☐ **CONTINUOUS BOND**
Identification of transaction secured by this bond (e.g., entry No., bill of lading No., etc.)
Date of transaction
Transaction district & port code
Effective date
This bond remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each party to the amount(s) set herein for liability (ies) incurred in each period.
No extension to term date this bond must be achieved within the time period and manner prescribed in the Customs Regulations.

SECTION II—This bond includes the following agreements.² (Check one box only, except that, it may be checked independently or with 1, and 2a may be checked independently or with 3. List out all other parts of this section that are not used.)

Activity Code	Activity Name and Customs Regulations in which conditions codified	Limit of Liability	Activity Code	Activity Name and Customs Regulations in which conditions codified	Limit of Liability
<input type="checkbox"/> 1	Importer or broker.....	113.62	<input type="checkbox"/> 5	Public Gauger.....	113.67
<input type="checkbox"/> 1a	Lienback Payment Refunds.....	113.64	<input type="checkbox"/> 6	Wool & Fur Products Labeling Acts Imposition (Single Entry Only).....	113.68
<input type="checkbox"/> 2	Custodian of bonded merchandise..... (Includes bonded carriers, freight forwarders, cartmen and lightermen, all classes of warehouse, container station operators)	113.65	<input type="checkbox"/> 7	Bill of Lading (Single Entry Only).....	113.69
<input type="checkbox"/> 3	International Carrier.....	113.66	<input type="checkbox"/> 8	Detention of Copyrighted Material (Single Entry Only).....	113.70
<input type="checkbox"/> 3a	Instruments of International Traffic.....	113.68	<input type="checkbox"/> 9	Neutrality (Single Entry Only).....	113.71
<input type="checkbox"/> 4	Foreign Trade Zone Operator.....	113.72	<input type="checkbox"/> 10	Court Costs for Confirmed Cases (Single Entry Only).....	113.72

SECTION III—List below all trademarks or unincorporated divisions that will be permitted to obligate this bond in the principal's name including their Customs Identification Number(s).³ (If more space is needed, use Section III(Continuation) on back of form.)

Trademark Number	Trademark Name	Trademark Number	Trademark Name

Total number of importer names listed in Section III: _____

Principal and surety agree that any charge against the bond under any of the listed names is as though it was made by the principal(s).
Principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the Customs Regulations into this bond.
If the surety fails to appoint an agent under Title 5, United States Code, Section 5, surety consents to service on the Clerk of any United States District Court or the U.S. Court of International Trade, where suit is brought on this bond. That clerk is to send notice of the service to the surety at:
Mailing Address Requested by the Surety

	Name and Address	Importer No. ⁴	SIGNATURE ⁵	SEAL
PRINCIPAL ⁶				
PRINCIPAL ⁶				
SURETY ⁷		Surety No. ⁸	SIGNATURE ⁵	SEAL
SURETY ⁷		Surety No. ⁸	SIGNATURE ⁵	SEAL
SURETY AGENTS	Name ⁹	Identification No. ¹⁰	Name ⁹	Identification No. ¹⁰

SECTION III (Continuation)

North East

SEIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF

Name and Address of Witness for the Principals

Name and Address of Witness for the Burial

SIGNATURE:

SIGNATURE:

 Name and Address of Witnesses for the Defendant

Name and Address of Witness for the Surety

SIGNATURE:

SIGNATURE:

EXPLANATIONS AND FOOTNOTES

1. The Customs Bond Number is a control number assigned by Customs to the bond contract when the bond is approved by an authorized Customs official.
2. For all bond coverage available and the language of the bond conditions refer to Part 513, subpart A, Customs Regulations.
3. The Importer Number is the Customs identification number filed pursuant to section 54.3, Customs Regulations, when the Internal Revenue Service employer identification number is used the twodigit suffix code must be shown.
4. If the principal of surety is a corporation, the name of the State in which incorporated must be shown.
5. See witness requirement above.
6. Surety Name, if a corporation, shall be the company's name as it is entered in the Surety Contract Annual List published in the Federal Register by the Department of the Treasury (Treasury Department Circular 579).
7. Surety Number is the three digit identification code assigned by Customs to a surety company at the time the surety company initially gives notices to claimants that the company will be writing Customs bonds.
8. Surety Agent is the individual granted a Certificate Surety Power of Attorney, CP 5287, by the surety company executing the bond.
9. Agent Identification No. shall be the individual's Social Security number as shown on the Corporate Surety Power of Attorney, CP 5287, filed by the surety granting such power of attorney.

Hypermarket Reduction Act Notice. The Hypermarket Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us. We ask for this information to check with the U.S. Customs Service or the United States Coast Guard to insure that persons transacting business with Customs have the proper bond coverage to insure their transactions as required by law and regulation. Your presence is required to enter into any transaction in which a bond is a prerequisite under the Tariff Act of 1930, as amended.

Privacy Act Statement. The following notice is given pursuant to section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a). Furnishing the information on this form, including the Social Security Number, is mandatory. The primary use of the Social Security Number is to verify, in the Customs Automated System, if the name in question matches a Customs bond for approval; that the individual was granted a Customs Service Power of Attorney by the surety company. Section 7 of Act of July 30, 1967, chapter 390, § 1361, 646, authorizes the collection of this information.

Abstract

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE HAS BEEN CANCELLED BY INSPECTION & CONTROL (CARGO) 8/19/96)**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: P-98

CUSTOMS DIRECTIVE NO. 2310-001

DATE: June 4, 1985

SUBJECT: COPYRIGHT/TRADEMARK ENFORCEMENT

1. REFERENCES:

- A. Part 133, Customs Regulations (19 CFR Part 133)
- B. Section 1124, Title 15, U.S. Code
- C. Section 1526, Title 19, U.S. Code
- D. Part 8, Customs Inspectors Handbook (HB 3000-03)
- E. Manual Supplement 3257-01, dated November 28, 1978
- F. Copyright-Revision Act of 1976, P.L. 94-553
- G. Customs Procedural Reform and Simplification Act of 1978, P.L. 95-410

2. PURPOSE

To provide basic information and procedures for inspectors working on the initial stages of copyright/trademark cases.

3. BACKGROUND

Information and guidelines issued in the past have consisted of notices of trademarks and copyrights recorded with Customs and procedures subsequent to seizure. There has not been a basic text explaining the inspectional aspects of trademarks and copyrights, procedural instructions for the inspector to follow in ascertaining the existence of a violation, or the appropriate procedure to be followed for the detention and seizure of merchandise.

4. RESPONSIBILITIES

Regional Commissioners/District Directors should confirm that appropriate members of their staffs are aware of the content of this Directive and that a system of procedures, based on the following information and procedural guidelines, is established.

- A. Recordation - In order to be afforded protection by the Customs Service, the owner of the trademark or copyright must record the mark or work with the Entry, Licensing and Restricted Merchandise Branch, Office of Regulations and Rulings in Headquarters. These recordings are

published as Trademark Issuances and Copyright Issuances by that office. An attempt to automate a listing of registered marks and works is currently under development and will be made available when completed. Until this list is available you must refer to the issuances sent each District. Calls to Restricted Merchandise Branch should be made only after it is determined that the information is not available locally.

- B. Licensing - A Trademark or Copyright owner may license another company to manufacture his recorded work or use his mark. These licenses should be reported to Customs for inclusion in the Customs Issuance. In practice, however, it has been found that we are unable to remain current with this information. It, therefore, becomes essential that a suspected violation be detained until confirmation of legitimate manufacture can be received from the importer.
- C. Distribution Rights - Trademarked merchandise may be detention or seizure when bearing a mark which copies or simulates (confusingly similar) or bearing counterfeit marks, or in some cases of parallel importation ("grey market") genuinely trademarked foreign merchandise. The fact that a copyright owner has designated certain companies as legitimate importers or distributors has no bearing on Customs.

5. ACTION

The following information and procedures will be distributed to all appropriate Customs officers and will be implemented upon receipt.

A. Trademark General Information

- (1) Definition "The name, symbol, figure, letter, word, or mark adopted and used by a manufacturer or merchant in order to designate the goods he manufactures or sells and to distinguish them from those manufactured or sold by others".

The trademark is intended to identify to the purchaser, the manufacturer or seller of the item. Therefore, while the program for an Apple computer may be copyrighted, only the multi-colored apple with a bite taken from the side is the trademark of Apple Computer Company. Likewise, Mickey Mouse is a copyrighted figure that may have the trademark "Walt Disney" printed on it.

- (2) Marking - Many trademarks will have the letters "TM" or the letter R in a circle printed to the right of the mark. This is not a requirement, however. The alligator on an Izod-Lacoste shirt, for instance, has no "TM" or R on or near it.

- (3) Prohibitions - Importations of articles bearing a trademark that is identical to or; copies or simulates a trademark by counterfeiting or; is one which so resembles it as to be likely to cause the public to associate the copy or simulation with the recorded mark, are prohibited.

B. Copyright General Information

- (1) Definition "A copyright provides protection for a limited time for original works of authorship, including literary, musical, pictorial, and artistic works. Courts have decided that copyright protection is also available for audiovisual games and computer programs fixed on semiconductor chips. A copyright protects the author's work against copying, but does not protect ideas or discoveries. The author has the exclusive right to control the manufacture and distribution of copies of the work."

- (2) Marking - Generally speaking, a copyrighted work will have the letter "C" in a circle followed by the year of recordation and the copyright owners name printed on it.

Thus a Mickey Mouse watch will show "C" 1968 Walt Disney Productions" on the face of the watch. Most articles will have this information on a tag, label, or printed on the item itself or the carton in which it is sold.

- (3) Prohibitions - Actual or substantial copies of a recorded copyrighted work, produced and imported in contravention of the rights of the copyright owner, are considered to be piratical and importation of such articles is prohibited.

C. Procedures

- (1) Verification of Recordation - Each district should maintain, or have access to, a centralized file of trademark and copyright issuances. Headquarters is currently attempting the development of an automated listing of recorded trademarks and copyrights which will be available to each district. (b) (7)(E)

A copy of the applicable issuance must be included in any subsequent seizure report.

- (2) Questionable Violations - In the event that no previous ruling has been made concerning the admissibility of an item which is

suspected to be a piratical copy of a recorded copyright, the cargo will be detained at the place of examination. Pursuant to 19 CFR 133.43, the Entry Licensing and Restricted Merchandise Branch, ORR, Headquarters, will be asked for a determination on whether the item is a piratical copy.

In all other cases the district director may determine whether or not a violation exists.

(3) Disclosure - Notification

When there is a question as to whether an item has been legitimately manufactured, confirmation of the legitimacy must first be requested from the importer. (b) (7)(E)

If the importer claims the merchandise is legitimately manufactured, and does not assent to verification by Customs with the registered owner, it becomes the importers responsibility to provide proof of legitimate manufacture prior to the release of the cargo. If the importer claims there is no violation, the procedures found in 19 CFR 133.22 (trademark) or 19 CFR 133.43 (copyright) will be followed. Should the importer admit to a violation the cargo will be seized and the case will be forwarded to Fines, Penalties and Forfeitures.

(4) Violations Suspected - When it has been determined that there is a violation, the following initial action will be taken:

Violation	Authority	Initial Action
Trademark & Trade Name Violation (except Counterfeit Trademarks)	19 CFR 133.21-23	Detain
Counterfeit Trademarks	19 CFR 133.23a	Seize
Copyright – piratical copy (confirmed)	19 CFR 133.42	Seize
Copyright – piratical copy (suspected)	19 CFR 133.43	Detain

Notice of seizure or detention shall be issued on CF 6051. The cargo should be moved to the public stores unless the District Director is satisfied that the cargo can be safely stored at another

acceptable location. The importer will be requested to pay any storage costs incurred. The procedures found in 19 CFR 133.21-23a (Trademark) or 19 CFR 133.42-43 (Copyright) concerning notification will then be followed.

(5) Violation Confirmed - When it has been established that a violation exists, and no relief is available to the importer (19 CFR 133.21(c), 133.23a(b), 133.42 or 133.43), the cargo will be seized, and the case will be referred to the Fines, Penalties and Forfeitures Officer.

(6) Seizure, Forfeiture and Penalty Provisions

19 CFR 133.21(a) = Copying or simulating marks or names (attempt to confuse)

19 CFR 133.21(b) = Identical trademark (foreign company using same mark) - "Grey Market"

19 CFR 122.22(c) = Failure to obtain release (trademark)

19 CFR 133.23a = Counterfeit trademark

19 CFR 133.24 = Failure to redeliver (claim for liquidated damages, trademark)

19 CFR 133.42(c) = Piratical copies

19 CFR 133.43(a) = Failure to respond to notice of detention (copyright)

D. (b) (7)(E)

[REDACTED]

(b) (7)(E)
[REDACTED]

(b)
(7)



signed
Assistant Commissioner
Office of Inspection and Control

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

CBP DIRECTIVE NO. 2130-006A

DATE: November 26, 2010

ORIGINATING OFFICE: FO: OPS

SUPERSEDES: CD 2130-006, 2/12/99

REVIEW DATE: November 2013

SUBJECT: U.S. CUSTOMS AND BORDER PROTECTION FIELD OFFICES AND PORTS OF ENTRY

1 PURPOSE.

1.1 This directive establishes the Office of Field Operations (OFO) roles and responsibilities of the field offices and ports of entry (POEs) under their jurisdiction.

2 POLICY.

2.1 Field offices will exercise line authority over POEs under their jurisdiction and are accountable for the overall performance of port operations. In this capacity, field offices will disseminate and ensure implementation of U.S. Customs and Border Protection (CBP) Headquarters policy, provide technical assistance, participate with the ports in addressing operational issues, assess, control and improve overall performance, and provide process management and mission support services.

2.2 Ports are responsible and accountable for day-to-day operations within their geographical boundaries, for implementing and complying with national policy, and for maintaining an ongoing self-inspection program.

3 AUTHORITY. *Department of Homeland Security Delegation No. 7010.3, Delegation of Authority to the Commissioner of U.S. Customs and Border Protection.*

4 RESPONSIBILITIES.

4.1 The Assistant Commissioner, Office of Field Operations (OFO), will exercise line authority over the field offices, is responsible for the development of national policy and is accountable for the overall performance of the field offices and port operations.

4.2 The Directors, Field Operations, Assistant Directors, Field Operations, and the Port Directors are responsible for implementing the procedures outlined in this directive and for their dissemination and uniform application.

5 PROCEDURES.

5.1 The Director, Field Operations, reports directly to the Executive Director, OFO, Operations, and provides support on a range of policy initiatives.

5.2 The Director, Field Operations, is the responsible official for the field office area of jurisdiction, and exercise line authority over port directors, and is the first level of review above the port directors.

5.3 The Director, Field Operations, manages the day-to-day operations of the field office and employs subject matter experts to provide the management tools needed to be effective.

5.3.1 Each field office has an Assistant Director, Field Operations - Border Security; an Assistant Director, Field Operations - Mission Support; and an Assistant Director, Field Operations - Trade; who provide support through:

5.3.2 Participating in Headquarters initiatives.

5.3.3 Conducting self-inspections at the field offices and the ports to assess performance utilizing measurement, management controls, and reporting systems.

5.3.4 Ensuring uniformity of port operations.

5.3.5 Ensuring port level plans conform to national annual and strategic plans.

5.3.6 Giving technical advice to the Director, Field Operations and the POEs.

5.3.7 Participating with port personnel in addressing operational problems.

5.3.8 Disseminating and ensuring implementation of headquarters policy.

5.4 The Border Security Team works with the ports to coordinate operational facilitation for border security and traveler facilitation programs, (b) (7)(E)

5.5 The Mission Support Team works with the field offices and ports under their jurisdiction to coordinate and provide a full range of administrative support programs, (b) (7)(E)

5.6 The Trade team coordinates with the ports to ensure operational and functional programs of cargo, agriculture, and trade operations, (b) (7)(E)

5.7 The (Area) Port Director reports directly to the Director, Field Operations, at the field office.

5.7.1 The (Area) Port Director is the responsible official for the port of entry.

5.7.2 The (Area) Port Director manages the day-to-day operations of the port of entry and makes decisions on questions concerning interpretation of CBP related laws and regulations.

5.7.3 The (Area) Port Director is responsible for implementing and executing national policy in a uniform manner.

5.7.4 The (Area) Port Director is responsible for conducting self-inspections to assess performance-utilizing measurement, management controls, and reporting systems.

5.8 The Port Director reports directly to the Area Port Director, where applicable.

6 MEASUREMENTS.

6.1 The Assistant Commissioner established a yearly measurement plan through the Senior Executive Services Performance Plans, which will hold the Directors, Field Operations, accountable in the areas of Operational Performance, Human Resources, and Financial Management.

7 NO PRIVATE RIGHT CREATED.

7.1 This directive is an internal policy statement of the U.S. Customs and Border Protection. It does not create or confer any right, privilege or benefit on any private person or party.

(b)(6),(b)(7)(C)

Assistant Commissioner
Office of Field Operations

CUSTOMS DIRECTIVE

SUPERSEDED BY CBPD 2130-006A, NOVEMBER 26, 2010

ORIGINATING OFFICE: FO:PMT

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 2130-006

DATE: FEBRUARY 12, 1999

SUPERSEDES:

REVIEW DATE: FEBRUARY 2001

SUBJECT: CUSTOMS MANAGEMENT CENTERS/PORTS OF ENTRY

1 PURPOSE. This directive establishes the roles and responsibilities of Customs Management Centers (CMCs) and Ports of Entry under their jurisdiction.

2 POLICY.

2.1 CMCs will exercise line authority over ports under their jurisdiction and are accountable for the overall performance of port operations. In this capacity, CMCs will disseminate and ensure implementation of headquarters policy, provide technical assistance, participate with the ports in addressing operational problems, assess, control and improve overall performance, and provide process management and mission support services.

2.2 Ports are responsible and accountable for day to day operations within their geographical boundaries, for implementing and complying with national policy, and for maintaining an on-going self inspection program.

3 AUTHORITIES/REFERENCES. Customs Organizational Handbook (CIS, HB-2100-01), Change 10, issued August 3, 1995, and Treasury Order TO-165, Delegation to the Commissioner of Customs of General Authority Over Functions in the U.S. Customs Service.

4 RESPONSIBILITIES.

4.1 The Assistant Commissioner, Office of Field Operations (OFO), will exercise line authority over CMCs, is responsible for the development of national policy and is accountable for the overall performance of CMC and port operations.

4.2 The Directors, Field Operations (formerly called CMC Directors), and the Port Directors are responsible for carrying out the procedures outlined in this directive.

5 PROCEDURES.

5.1 The Director, Field Operations, reports directly to the Executive Director, OFO

Operations, and provides support on a variety of policy initiatives.

5.2 The Director, Field Operations, is the responsible official for the CMC area of jurisdiction, exercises line authority over port directors, and is the first level of review above the port directors.

5.3 The Director, Field Operations, manages the day to day operations of the CMC staff and employs subject matter experts to provide the management tools the CMCs will need to be effective.

5.4 Each CMC has a Process and Problem Solving Team (P&PST) which provides support through:

5.4.1 Training in business process management and strategic problem solving.

5.4.2 Participating in headquarters initiatives.

5.4.3 Conducting self inspections at the CMC and the ports to assess performance utilizing measurement, management controls, and reporting systems.

5.4.4 Ensuring uniformity of port operations.

5.4.5 Ensuring port level plans conform to national annual and strategic plans.

5.4.6 Giving technical advice to ports and the Director, Field Operations.

5.4.7 Participating with port personnel in addressing operational problems.

5.4.8 Disseminating and ensuring implementation of headquarters policy.

5.5 Each CMC has a Mission Support Team (MST) which works with the ports to coordinate administrative requests for services, responds to port management human resource needs, and assists OFO in the following areas:

(b) (7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.6 The Port Director reports directly to the Director, Field Operations, at the CMC.

5.6.1 The Port Director is the responsible official for the port.

5.6.2 The Port Director manages the day to day operations of the port and makes decisions on questions concerning interpretation of Customs related laws and regulations.

5.6.3 The Port Director is responsible for implementing and executing national policy in a uniform manner.

5.6.4 The Port Director is responsible for conducting self inspections to assess performance utilizing measurement, management controls, and reporting systems.

6 MEASUREMENTS.

6.1 The Assistant Commissioner, Office of Field Operations, will establish a CMC Measurement Plan which will hold the Directors, Field Operations, accountable in the areas of Operational Performance, Human Resources, and Financial Management.

Assistant Commissioner
Office of Field Operations

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY HB 3300-02, OCTOBER 1995)**

ORIGINATING OFFICE: IC:I

DISTRIBUTION: See Signature Page

CUSTOMS DIRECTIVE NO. 1520-006

DATE: AUGUST 2, 1991

SUBJECT: OPERATIONAL STANDARDS FOR SOUTHWEST BORDER TEAM
ORIENTED PROCESSING (STOP) OF PASSENGERS AND
VEHICLES

1. PURPOSE

To establish Southwest Border Team Oriented Processing (STOP) standards.

2. BACKGROUND

The Customs Service is making STOP the norm for processing vehicles and persons. This team oriented methodology has made significant changes in the way the Customs Service conducts inspection procedures at Southwest land border ports-of-entry. The establishment of basic standards reflecting these changes is necessary. These standards will further improve our processing of persons and traffic as well as create and promote uniformity. They are well founded on the lessons learned from a series of special operations.

3. ACTION

Effective immediately, inspection procedures shall comply with STOP standards for inspection functions at southwest land border ports-of-entry, in accordance with the procedures set forth in this directive.

4. PROCEDURES

STOP incorporates multiple enforcement screening elements across the flow of traffic in a rapid and unpredictable manner. (b) (7)(E)

[REDACTED]

(b) (7)(E)

[REDACTED]

(b) (7)(E)

TEAM ACTIVITIES

STOP operations may include one or more of the following activities for vehicle and pedestrian processing:

- Pre-Primary Roving
- Post-Primary Roving
- Secondary Roving
- Block Blitzes

NON-COMMERCIAL VEHICLES

The basic elements of the vehicle (any vehicle not entering through the import lot) enforcement strategy include:

- (b) (7)(E)
- (b) (7)(E)
- (b) (7)(E)
- (b) (7)(E)
- (b) (7)(E)
- (b) (7)(E)
- (b) (7)(E)

VEHICULAR BLOCK BLITZES

Land border ports should conduct block blitzes at intervals and times which are variable and unpredictable. (b) (7)(E)

(b) (7)(E)

Safety and effectiveness remain paramount.

PEDESTRIANS

Basic elements of the pedestrian strategy include but are not limited to:

- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]

Current procedures of referring individuals from primary to secondary for examination of hand carried items, imported articles, TECS checks, further interviewing, etc., remain the same.

TEAM MEMBERS

COMMUNICATIONS OFFICER

The Communications Officer is designed to support all STOP communications needs, especially in the areas of "Safety" (Monitoring radio traffic for request of assistance etc.) and "Enforcement" (Developing/inputting information requests from the field).

(b) (7)(E) [REDACTED]

- (b) [REDACTED]
- (c) [REDACTED]

STOP COORDINATOR

The STOP Coordinator is designed to be the focal point for the planning and coordination of all STOP operations during a given shift. Special attention should be placed on coordination and utilization of CEO's in the process. Supervisory CEO's are directed to coordinate their STOP activities with the STOP Coordinator.

The Supervisor serving as the STOP Coordinator ensures that the STOP operations are executed in a smooth and efficient manner, within all time, type

(b)
(7)

(b)

7

(

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103

Rover sweeps should be conducted at intervals which are variable and unpredictable and should be designed to allow maximum use of canine teams.

(b)(7)(C)

)

(b) [REDACTED]
[REDACTED]
(7) [REDACTED]
[REDACTED]

CANINE ENFORCEMENT OFFICER (CEO)

Supervisory CEO's are directed to coordinate their STOP activities with the STOP Coordinator.

The following procedures should apply to the use of Canine Teams for STOP.

(b) [REDACTED]
[REDACTED]
(7) [REDACTED]
[REDACTED]
(E) [REDACTED]
[REDACTED]

STOP ACTIVITY

PRE-PRIMARY ROVING

This screening component is designed to have Inspectors and canine teams
(b) (7)(E) [REDACTED]

The objective of this component is to:

(b) [REDACTED]
(7) [REDACTED]
(E) [REDACTED]
[REDACTED]

PRIMARY INSPECTIONS

Current primary inspection procedures remain the same, including referral to secondary for INS and other agency checks. Integrity standards for inspectional

operations such as lane bumps, flip flops and TECS utilization are outlined in CD 1520-05, dated April 18, 1991, Integrity in Inspectional Operations.

(b) (7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

(b) (7)(E)

[REDACTED]

[REDACTED]

(b) (7)(E)

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

VEHICULAR SECONDARY INTENSIVE TEAMS

This component is designed to use the team approach or assembly line technique to search vehicles.

Each secondary intensive team member is responsible for the thorough inspection of a pre-determined area of a vehicle. That area of responsibility should be assigned by the STOP Coordinator prior to commencing the operation and should remain the same until rotated by the STOP Coordinator. Canine teams should conduct a 100 percent search of the interior and exterior areas of a vehicle when appropriate.

(b) (7)(E)



5. RESPONSIBILITIES

Regional Commissioners and Assistant Regional Commissioners, Operations are responsible for the uniform application of these procedures and for reporting any variances to Headquarters. All District, Area and Port Directors along the Southwest border will be responsible for ensuring that local standard operating procedures are in place and the provisions of this Directive are implemented within their jurisdictions.

6. REFERENCES

Customs Directive 1520-05, dated April 18, 1991, Integrity in Inspectional Operations.

7. SUPERSEDED MATERIAL

None

signed
Assistant Commissioner
Office of Inspection and Control

Distribution:
H-02 Assistant Commissioners

R-01 Regional Commissioners
R-02 Regional Counsels
R-03 All ARC's (Operations)
F-01 District/Area Directors
F-02 Port Directors

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 1460-014A, 11/13/00)**

OFFICE OF ORIGATION: FO:PO

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO: 1460-014

SUPERSEDES: 099 1460-013, JULY 19, 1994

DATE: JANUARY 31, 1997

SUBJECT: TECS ACCESS BY NON-CUSTOMS USERS

1 PURPOSE. To establish uniform guidelines for the approval of Treasury Enforcement Communications System (TECS) access by non-Customs personnel who are assigned full time to Customs or to formal task forces in which Customs participates.

2 POLICY. Limited TECS access for non-Customs personnel assigned on a full-time basis to Customs or a joint task force has been approved by the ADP (Automatic Data Processing) Steering Committee. TECS access for these personnel will increase their effectiveness and maximize their support of the Customs Missions. Examples of non-Customs personnel who may be granted TECS access consistent with the provisions of this directive include: National Guard, Department of Defense (DoD), state police and local police. In addition, this directive does pertain to non-Customs personnel assigned to formal task forces in which Customs participates (e.g., EPIC, NDIC, Alliance, FJTG, and HIDTA). This directive does not pertain to personnel from agencies that already have access to TECS via formal memoranda of understanding (MOU). TECS access for these personnel is governed by the provisions of the applicable MOU. These personnel will gain access to TECS by contacting their agency system control officer (SCO). However, this directive does apply to personnel who work for agencies with existing TECS MOUs who are seeking a higher access level than the level that has already been approved for that agency. Personnel who meet this criterion include individuals who work on specific assignments such as a formal task force in which Customs is a participant (e.g., DEA personnel assigned to EPIC).

3 AUTHORITIES/REFERENCES. 5 CFR, Part 736; Privacy Act Issuances: 1991 Compilation, vol. II, p.735; 18 USC, Section 1385, Posse Comitatus Act; 10 USC, Section 371, et seq.; 32 CFR, Part 213.

4 DEFINITIONS. Generally, TECS record access levels include: (b) (7)(E)



5 RESPONSIBILITIES.

5.1 In addition to the requirement to read and comply with the TECS Security handbook, all TECS users are required to take the privacy awareness course and to

pass the TECS security training certification course in order to establish and retain access to TECS. These courses are accessible through the Customs TPX menu.

5.2 The first-line Customs supervisor of the non-Customs user is responsible for providing necessary and appropriate TECS training. This supervisor is also responsible for coordinating with the local SCO to ensure that non-Customs users are inactivated in TECS whenever their certification expires, when they no longer require access to TECS, or should any derogatory information develop that would require suspension from TECS. Non-Customs TECS users who are granted access to TECS under the provisions of this directive will not be granted "dial-in" TECS access. First-line supervisors are also responsible for initiating re-certification requests for those non-Customs users who require re-certification (use Attachments 2 and 3 or 2 and 4).

5.3 TECS National SCOs are responsible for reviewing requests for TECS access to ensure that they meet the minimum criteria listed in this directive.

5.4 The CMC Director (OFO) and SAC (OI) are responsible for reviewing requests for TECS access by non-Customs personnel to ensure that the results of background investigations do not contain derogatory information that is inconsistent with the Mission of the Customs Service.

6 PROCEDURES.

6.1 Minimum Access Criteria

6.1.1 To gain TECS access under the provisions of this directive, non-Customs personnel must meet the following minimum access criteria: (b) (7)(E)

[REDACTED]

8) TECS access under the provisions of this directive will not be granted for more than a maximum of one year at a time. If continued access is required after the termination of the initial authorization period, the user must be re-certified as meeting the minimum access criteria.

6.2 Background Investigations

6.2.1 TECS access for non-Customs personnel will not be granted prior to the completion of required background investigations or inquiries. All requests made under

the provisions of this directive must be approved by either the local Special Agent in Charge (Investigations) or the CMC Director (OFO) . The applicable CMC Director/SAC will be the deciding official to determine if derogatory information will preclude TECS access.

6.2.2 Whenever possible, background investigations for non-Customs personnel will be conducted by their own agency. As a last resort, background investigations will be conducted by Office of Investigations personnel. Because of the high cost associated with conducting background investigations, requests for TECS access by non-Customs personnel must be limited to only those personnel who absolutely need TECS access to support the Customs Mission. Additionally, users must have a demonstrated "need to know" before being granted TECS access.

6.2.3 Requests by Office of Field Operations (OFO) offices for background investigations or inquiries will be initiated by the responsible local supervisor. These requests will then be routed through the appropriate Port Director and CMC Director, to the appropriate SAC office for investigation. Results of completed background investigations or inquiries will be forwarded directly from the OI field office to the requesting CMC Director. Only original signatures will be accepted on background investigation requests and TECS access requests. Requests that have been photocopied or sent via facsimile will not be accepted.

6.2.4 Whenever practical, OFO requests for background inquiries for TECS access (b) (7)(E) will be completed within 10 working days of assignment to the local OI field office. Full field background investigations conducted by OI at the request of OFO will be performed in the most timely manner possible, considering the investigative case load of the OI office. The requesting OFO office will be advised by the SAC Office of which OI field office has been assigned the background investigation. Inquiries by OFO regarding the investigative status of specific investigations are to be made directly to the assigned OI field office.

6.3 OFO Access Request Procedures for Non-Customs Users

6.3.1 When the employing agency cannot conduct the necessary background investigation or inquiries, the Customs supervisor for the non-Customs user will initiate the attached Background Investigation Request (OI and OFO) (Attachment 1). Refer to Attachment 5 for a detailed description of the TECS access request process.

6.3.2 When the favorable background investigation or inquiries have been completed, the Customs supervisor will initiate the Non-Customs TECS Access Request (OFO) (Attachment 2) and coordinate the creation of the user profile record (UPR) with the local SCO.

6.3.3 The OFO TECS access request form will be forwarded by the appropriate Port Director to the appropriate CMC Director.

6.3.4 If the request is approved by the CMC Director (OFO), the request form will be forwarded to the OFO National SCO, who will be responsible for assigning a TECS

profile code and updating the Background Investigation (BI) exception table in TECS, based on OIT security guideline requirements.

6.3.5 The OFO National SCO will forward the approved request back to the originating supervisor, through the chain of command.

6.3.6 The originating supervisor will then coordinate with the local OFO SCO to ensure that the new user is assigned only those transaction and group codes that are absolutely necessary for the user to support the Customs Service.


6.4 OI Access Request Procedures for Non-Customs Users

6.4.1 When the employing agency cannot conduct the necessary background investigation or inquiries, the Customs supervisor for the non-Customs user will coordinate the assignment of the background investigation for completion. If the investigation cannot be completed by the requesting OI field office, the local supervisor will initiate the Background Investigation Request (OI and OFO) (Attachment #1). Refer to Attachment 5 for a detailed description of the TECS access request process.

6.4.2 When the favorable background investigation or inquiries have been completed, the Customs supervisor will initiate the Non-Customs TECS Access Request (OI) (Attachment 3) and coordinate the creation of the user profile record (UPR) with the local SCO.

6.4.3 The OI TECS access request form will be forwarded by the appropriate OI supervisor to the appropriate SAC (OI).

6.4.4 (b) (7)(E)



6.4.5 The OI National SCO will forward the approved request back to the originating supervisor, through the appropriate chain of command.

6.4.6 The originating supervisor will then coordinate with the local OI SCO to ensure that the new user is assigned only those transaction and group codes that are absolutely necessary for the user to support the Customs Service.

7 MEASUREMENT. TECS access by non-Customs users will be reviewed annually by the National SCOs. This review will include 1) an accurate count of how many non-Customs users have access to TECS; 2) an alphabetical listing of those non-Customs users; 3) the agency to which each individual is assigned; and 4) a verification that the individual and/or agency mission currently meets the guidelines for TECS access established in this directive. The list of those granted access will be maintained for immediate review. Any individual found not in compliance with the established guidelines set forth in this directive will be immediately removed from system access.

Commissioner of Customs

Attachments

ATTACHMENT #1

BACKGROUND INVESTIGATION REQUEST (OFO)

Enter the required information in the below spaces to request the initiation of a background investigation or investigative inquiries for a non-Customs TECS user under the provisions of Customs Directive 099-_____. Route the request by obtaining the signatures of the below listed individuals.

Name (LAST, First MI):

Social Security Number:

Date of Birth:

Place of Birth:

Home Address:

Employing Agency:

Requesting Customs Office:

(b) (7)(E)

Investigation Elements Requested (check those requested):

(b) (7)(E)

REQUEST ROUTING (Typed Name/Signature/Date):

Local Customs Supervisor:

Port Director:

SAC (OI)

CMC Director:

Investigation Assigned to OI Office:

Date Investigation Assigned to OI Office:

ATTACHMENT #2

BACKGROUND CERTIFICATION

The below listed background elements have been favorably completed for:











Name (LAST, First MI):

Social Security Number:

Employing Agency

Certified By: Background Element
(Signature and Date)

(b) (7)(E)



Verify Highest College Degree

Residences Over 60 Days

During Last 3 Years

Citizenship Verification

Military Service (Record Search Required for Recent 15 year Period)

Credit Checks for Recent 7 Years

ATTACHMENT #3

Personal Interview

Employment/Self-Employment/Unemployment

Over 60 Days in Last 5 Years With 1 Supervisor and 2 Co-workers Contacted

Inquiry at Parent Agency I/A Office to Determine Involvement in Any Current or Past
Conduct Investigation or Similar Type of Investigation

ATTACHMENT #4

NON-CUSTOMS TECS ACCESS REQUEST (OFO)

TECS access is requested for the below listed non-Customs user under the provisions of Customs Directive 099-_____. This individual meets all of the following criteria:

- * Assigned to Customs or a joint task force on a full-time basis.
- * TECS use supervised by a Customs Officer.
- * Minimum length of assignment is one year (if Customs is required to conduct the background investigation).
- * TECS access by Department of Defense (DoD) personnel is restricted by the Posse Comitatus Act (18 USC 1385). However, access may be granted under related exceptions (10 USC 371, et seq. and 32 CFR 213).
- * User must have a defined need to access TECS records.
- * (b) (7)(E) [REDACTED]
- * [REDACTED]
- * [REDACTED]
- * TECS access will not be granted for more than a maximum of one year at a time. If continued TECS access is required, after the termination of the initial authorization period, the user must be re-certified as meeting the minimum access criteria.

Name (LAST, First MI):

Social Security Number:

Requesting Customs Office:

(b) (7)(E) [REDACTED]

REQUEST ROUTING (Typed Name/Signature/Date):

Local Customs Supervisor:

Port Director:

CMC Director:

TECS National SCO (OFO):

NON-CUSTOMS TECS ACCESS REQUEST (OI)

TECS access is requested for the below listed non-Customs user under the provisions of Customs Directive 099-_____. This individual meets all of the following criteria:

- * Assigned to Customs or a joint task force on a full-time basis.
- * TECS access supervised by a Customs Officer.
- * Minimum length of assignment is one year (if Customs is required to conduct the background investigation).
- * TECS access by Department of Defense (DoD) personnel is restricted by the Posse Comitatus Act (18 USC 1385). However, access may be granted under related exceptions (10 USC 371, et seq. and 32 CFR 213).
- * User must have a defined need to access TECS records.
- * (b) (7)(E) [REDACTED]
(b) (7)(E) [REDACTED]
- * (b) (7)(E) [REDACTED]
- * [REDACTED]
- * [REDACTED]
- * TECS access will not be granted for more than a maximum of one year at a time. If continued TECS access is required, after the termination of the initial authorization period, the user must be re-certified as meeting the minimum access criteria.

Name (LAST, First MI):

Social Security Number:

Requesting Customs Office:

(b) (7)(E) [REDACTED]

REQUEST ROUTING (Typed Name/Signature/Date):

Local Customs Supervisor:

Special Agent in Charge:

TECS National SCO (OI):

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE HAS BEEN ABOLISHED 9/30/94 BY INSPECTION & CONTROL (CARGO))**

ORIGINATING OFFICE: IC:C

DISTRIBUTION: See signature page
CUSTOMS DIRECTIVE NO. 1460-005
DATE: February 24, 1989

SUBJECT: PROCEDURES FOR RESPONDING TO ACS INQUIRIES AND
LETTERS OF COMPLAINT

1. PURPOSE

To provide Customs employees with uniform guidelines concerning responses to inquiries and complaints about ACS Cargo Selectivity criteria and examinations.

2. BACKGROUND

As Customs continues electronic entry filing (paperless) cargo processing, it is anticipated that the trade community's correspondence with us regarding ACS cargo processing will increase. These exchanges will usually consist of concerns about delays in cargo releases, frequency and cost of examination, and information about the data in the ACS selectivity criteria. Security of ACS Cargo Selectivity data is addressed in Customs Directive 1400-16, "ACS Selectivity Security Procedures."

3. PROCEDURES

When a verbal inquiry is made by an importer directly to an inspector, import specialist, or other Customs officer, an explanation should be provided that Customs is responsible for examining cargo entering the United States to ensure compliance with U.S. laws and regulations. To fulfill this responsibility, Customs uses ACS Cargo Selectivity criteria to advise the examining inspector of potentially high-risk shipments. (b) (7)(E)

Further inquiries should be directed to the immediate supervisor on duty. (b) (7)(E)

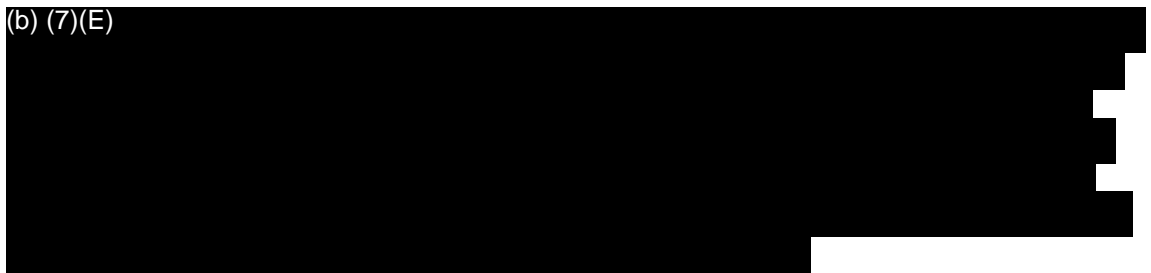
If at that point, the individual still wishes to complain or make an inquiry in writing, the office of the district director is the proper addressee for such correspondence. The district director should assign the district OAS to research the data and

prepare a proper response for his signature. If the issue involves local issues and criteria only, then a direct response from the district director to the individual should be prepared, using the information provided by the district OAS. Local correspondence need go no further than this.

Should the inquiry involve National Import Specialist (NIS) or National OAS criteria, then the district director will reply to the individual with a short note stating that his letter is being forwarded to the National OAS Office in New York for a response. If local criteria is also involved, it should be researched locally and forwarded for inclusion in New York's response. For inquiries forwarded to New York, the letter and all supporting documents should be forwarded to the New York OAS for resolution and response directly to the individual. A copy of the response will be sent to the district director and the OAS Program Manager at Headquarters.

Congressional inquiries and Freedom of Information Act (FOIA) requests must be forwarded through the regional counsel, who will provide guidance on legal issues to the responding office. The regional counsel may request assistance on disclosures from the Office of Regulations and Disclosure Law Branch at Headquarters.

(b) (7)(E)



4. RESPONSIBILITIES

District/area directors are responsible for ensuring that the Customs policy for responding to importer inquiries/complaints about ACS or examinations is disseminated to all OAS/DIO units and that policies regarding local issues are followed in a timely manner. The Director of National OAS in New York is responsible for providing proper and timely responses to inquiries on national criteria issues. The regional counsel and office of regulations and disclosures are responsible for providing legal guidance for the responding offices.

This Directive will become effective upon receipt.

(signed)
Commissioner of Customs

Distribution:

R-01 Regional Commissioners
R-02 Regional Counsel
R-04 ARC's (Operations)
R-05 Regional Director (IA)
R-09 D/ARC's (I&C)
F-01 District/Area Director
F-02 Port Director
F-11 Operational Analysis Staff
G-19 All Customs Inspectors

This issuance contains information that may be exempt from the public and therefore should not be released without approval by the Director, Office of Cargo Enforcement and Facilitation, Office of Inspection and Control, Headquarters.

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: FO:P

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 4410-001A

DATE: FEBRUARY 3, 2000

SUPERSEDES: 4410-001, 4/3/86

REVIEW DATE: FEBRUARY 2002

SUBJECT: GUIDELINES FOR DETENTION AND SEIZURES OF PORNOGRAPHIC MATERIALS

1 **PURPOSE.** This directive establishes guidelines for detention and seizure of obscene materials.

2 **POLICY.**

2.1 Obscene material is prohibited from entry into the United States. Such material is to be seized.

2.2 Customs officers should not interpret previous U.S. Attorney decisions, relating to similar material, as establishing a standard for seizing such material.

2.3 Customs Office of Investigation will determine whether the seizure warrants criminal investigation.

2.4 If criminal investigation or prosecution is warranted Customs will coordinate the forfeiture proceedings with the criminal proceedings as described in 19 USC 1305 (b).

2.5 If criminal investigation is not warranted, the local FP&F officer shall refer the seizure to the Associate or Assistant Chief Counsel for institution of civil forfeiture proceedings by the U.S. Attorney in district court.

2.6 Criminal matters arising under the Child Protection Act of 1994 are not covered by this directive except to the extent seized child pornography is referred to the U.S. Attorney for civil forfeiture proceedings.

3 **AUTHORITIES/REFERENCES.** 19 USC 1305

4 **DEFINITIONS.**

4.1 Obscenity. For Customs purposes, obscene includes, but is not limited to:

4.1.1 Material depicting persons appearing to be under the age of 18 engaged in sexual intercourse, masturbation, sexual violence, or lascivious exhibition of the genitals or pubic area;

4.1.2 Material depicting persons of any age engaged in sexual conduct with animals (bestiality);

4.1.3 Material depicting persons engaged in sadomasochism or other forms of sexual violence;

4.1.4 Material depicting persons engaged in sexual activity involving excrement or excretory functions;

4.1.5 Material depicting explicit sexual activity between adults (both homosexual and heterosexual). Note that depictions of explicit heterosexual or homosexual conduct without the degree of deviance set forth in other subsections may not necessarily be obscene, depending upon the community standards.

4.1.6 Material depicting nudity where, to arouse prurient interest, the models are shown in unnatural or exaggerated positions.

4.2 Material of a type that is widely available throughout the community (i.e., Playboy and Penthouse magazines) should not be seized or detained. Availability in geographically defined areas commonly referred to as "red light districts" does not necessarily indicate community tolerance or acceptance and does not provide an adequate basis by which to judge community standards.

4.3 Material that is not obscene, which may be readily separated from obscene material may not be seized. For example, if a magazine contains obscenity, the non-obscene pages need not be removed. However, if two magazines are in a package and only one contains obscenity, the other magazine may not be seized.

5 RESPONSIBILITIES.

5.1 The Assistant Commissioner, Office of Field Operations, shall have policy oversight on the detention and seizures of pornographic material by Field Operations personnel, which will include the formulation and implementation of guidelines and procedures.

5.2 Directors, Field Operations and Port Directors are responsible for developing and establishing procedures to ensure proper implementation of this directive.

6 PROCEDURES.

6.1 Customs officers involved in the inspection of baggage, cargo, and mail are to seize all material that they have probable cause to believe is obscene. Customs officers are encouraged to consult with their Associate or Assistant Chief Counsel for advice as to whether material is obscene.

6.2 The Port Directors will consult with their Assistant or Associate Chief Counsel about establishing local procedures for referral of these forfeiture cases.

6.3 If, over time, a pattern develops indicative of a court's refusal to grant forfeiture or the U.S. Attorney's refusal to institute proceedings for forfeiture, the Port Director and Associate or Assistant Chief Counsel will consult with the U.S. Attorney's office to ensure aggressive support for this program. When necessary, the Port Director may request that the Office of Chief Counsel consult with the Department of Justice to bring

such concerns to the Department's attention. A representative from the local OI office should be included in any discussions with the U.S. Attorney's Office.

7 **MEASUREMENT.** The number of seizures of suspected obscene material referred to the U.S. Attorney's office versus those seizures accepted for judicial proceedings.

8 **NO PRIVATE RIGHT CREATED.** This directive is an internal policy statement of the U.S. Customs Service. It does not create or confer any rights, privileges, or benefits for any person or party.

Office of Field Operations

Acting Assistant Commissioner

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 2310-005B, 12/12/01)**

ORIGINATING OFFICE: OR&R

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO: 2310-005A

SUPERSEDES: 2310-005 9/28/89

DATE: APRIL 7, 2000

SUBJECT: COPYRIGHT PROTECTION

1 PURPOSE. To provide relevant information and guidelines on Customs policies and procedures with respect to copyright protection.

2 POLICY. In order to fulfill its statutory, regulatory, and treaty-based obligations of preventing the importation of merchandise which violates certain claims to copyright [hereinafter, copyrights] which have been registered with the U.S. Copyright Office, U.S. Customs is vested with the authority to detain and/or seize, piratical copies of protected copyrighted works. For Customs purposes, "piratical copies" are actual or substantially similar copies of a registered copyrighted work, produced and imported in contravention of the rights of the copyright owner.

2.1 In general, a copyright protects original works of authorship, including written music, computer programs, video games, toy designs and other intellectual creations against unauthorized reproductions, derivations, distribution or display. This protection is available to both published and unpublished works. It is the actual, tangible expression, not the concept, which is copyrighted. The Copyright Office is merely the office which records the claim; it does not create or bestow copyright. Some products are protected under both copyright and trademark laws.

2.2 In order to most effectively provide protection against such violative imports, Customs has established an intellectual property rights (IPR) enforcement regime, which offers rights holders, a two-tiered enforcement option, while providing Customs officers with up-to-date, detailed information about the rights being protected.

2.3 The first tier of this two-tiered approach involves Customs "recordation" process. Under this system, copyright holders, once having duly registered their claim(s) to copyright with the U.S. Copyright Office, may request that Customs collect and retain information relative to those rights for a specified time, during which Customs shall, either of its own initiative, or with the assistance of the copyright holder, proactively monitor imports in order to prevent the importation of violative articles.

2.4 The second tier is Customs "application" process. Under this system, copyright holders, once having duly registered their claim(s) to copyright with the U.S. Copyright Office and recorded same with U.S. Customs, may provide Customs with information relative to specific importations of violative imports so that Customs can prevent such importation.

3 **AUTHORITY.** Relevant statutory and regulatory citations associated with Customs enforcement of copyrights are listed below. The narratives listed below are synopses of the statutory/regulatory mandates; care should be used to cite actual language of statutory/regulatory provisions in the course of enforcement actions. Prior to initiating enforcement actions, officers should undertake to review the descriptions of laws and regulations contained within this directive in order to gain a comprehensive understanding of their intent and purpose.

4 **RESPONSIBILITIES.** The Assistant Commissioner, Office of Regulations and Rulings, is responsible for formulating policy and procedures pertaining to Customs enforcement of copyrights. Area/Port directors, assistant port directors (trade operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

5 **DEFINITIONS.**

5.1 **UNITED STATES CODE**

5.1.1 Title 17 U.S.C. § 501 - Infringement of copyright.

5.1.2 Title 17 U.S.C. § 506 - Provides for criminal copyright offenses.

5.1.3 Title 17 U.S.C. § 509 - Provides for seizure and forfeiture of copyright violative goods under 17 U.S.C. § 506.

5.1.4 Title 17 U.S.C. § 602 - Provides right of action regarding importation of infringing copies of phonorecords. Prohibits gray market enforcement of copyright. Authorizes Customs to prescribe regulations and procedures relative to recordation of copyrights and notification of apparent violations.

5.1.5 Title 17 U.S.C. § 603 - Provides for specific seizure and forfeiture of importations of copyright violative merchandise in same manner as property imported in violation of the Customs laws.

5.1.6 Title 18 U.S.C. § 2318 - Provides criminal sanctions for trafficking in counterfeit labels for phonorecords, copies of computer programs, motion pictures or other audio-visual works.

5.1.7 Title 18 U.S.C. § 2319 - Provides criminal fines and prison terms for criminal infringement of copyright .

5.1.8 Title 18 U.S.C. § 2319A - Provides criminal fines and prison terms, as well as seizure, forfeiture, and destruction authority for the unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances, also known as "Bootleg" works.

5.1.9 Title 19 U.S.C. § 1595a(a) - Provides for seizures and forfeiture of conveyances or other thing used “in, or aid in, or to facilitate, the importation of any article contrary to law.”

5.1.10 Title 19 U.S.C. § 1595a(b) - Provides Customs with the authority to issue civil penalties equal to the value of the merchandise attempted to be introduced contrary to law.

5.1.11 Title 19 U.S.C. § 1595a(c)(2)(C) - Provides seizure and forfeiture authority for articles introduced or attempted to be introduced which violate trademarks or copyrights.

5.2 CODE OF FEDERAL REGULATIONS

5.2.1 Customs Regulations 19 CFR §§ 133.31 – 133.37 - Recordation of copyrights with Customs.

5.2.2 Customs Regulations 19 CFR § 133.42 - Seizure of articles constituting clearly piratical copyright violations.

5.2.3 Customs Regulations 19 CFR § 133.43 - Procedures for cases involving possibly-piratical copyright violations.

5.2.4 Customs Regulations 19 CFR § 133.44 - Decisions rendered in disputed claims of infringement.

5.2.5 Customs Regulations 19 CFR § 133.45 - Demand for Redelivery of released merchandise.

6 PROCEDURES. In general, Customs policy dictates that U.S. Customs focuses its enforcement efforts on copyrights that are "recorded" with Customs. Unrecorded copyrights, while not a priority, may be enforced when possible so long as the sound administration of Customs laws is not compromised. While Customs may pursue such cases, Customs policy dictates that the majority of resources and emphasis should be placed upon the enforcement of recorded copyrights.

6.1 Prior to the initiation of any intellectual property right action, the IPR Module should be consulted to ascertain whether the copyright in question is in fact recorded with Customs, and if so, the extent to which the copyright should be protected. The “IPR Module” is a computer function located within the Automated Commercial System (ACS) which contains individual records and information relative to all IPRs recorded with U.S. Customs.

6.2 When undertaking a copyright enforcement action, officers should accurately note the copyright recordation number(s) involved and accurately record same in records of the case. Similarly, officers seeking OR&R, IPR Branch assistance in arriving at infringement determinations are expected to have consulted the IPR Module prior to seeking assistance and should be prepared to accurately cite specific information from the relevant IPR recordation.

6.3 Characterizing copyright violations. Generally, the test of whether a copyrighted work has been infringed is, "Whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same." Another way of stating the substantial similarity test is, "Whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work." The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by employing the tactic of making deliberate, but trivial, variations of specific features of the copyright protected work.

6.3.1 Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the general ideas, but the expression of those ideas as well. Access to the copyrighted work may be presumed even without direct evidence in cases where it is apparent that the importer has ample opportunity to view the copyrighted work, and the substantial similarities between the works are so striking as to preclude the possibility that they were arrived at independently. Since, in most cases, access will be presumed, substantial similarity of expression will be the critical factor of analysis.

6.3.2 As a general matter, Customs recognizes two standards of copyright infringement in its enforcement of registered copyrights: "Clearly Piratical" and "Possibly Piratical." The first of these, "Clearly Piratical" is defined as overwhelming and substantial similarity between the copyrighted elements of the protected work and the imported item so as to clearly indicate that one work was based upon the other. The second, "Possibly Piratical" encompasses those situations in which articles are suspected of constituting piratical copies, but are not clearly deemed to be such at the time of presentment.

6.3.3 Upon presentation, or at the time of detention or seizure of suspect violative goods, it is incumbent upon the acting officer to characterize the nature of the alleged violation, and should be ascribed to one of the following four characterizations:

6.3.3.1 Clearly Piratical copyright violation: protected copyright recorded with Customs;

6.3.3.2 Clearly Piratical copyright violation; protected copyright not recorded with Customs;

6.3.3.3 Possibly Piratical copyright violation; protected copyright recorded with Customs;

6.3.3.4 Possibly Piratical copyright violation; protected copyright not recorded with Customs.

6.3.4 Each of these is discussed in detail below:

6.4 Processing the case: Clearly Piratical

6.4.1 "Clearly Piratical" (protected copyright recorded with Customs). Articles constituting "clearly piratical" copies of copyrights recorded with Customs shall be seized, and forfeiture proceedings instituted under 17 U.S.C. § 603, as implemented by 19 CFR §

133.42. Clear-cut copies, controlling decisions issued by the OR&R, IPR Branch, or (in specifically authorized instances only) decisions or orders issued by a court of law may form the basis for this determination. A sample "Notice of Seizure, Clearly Piratical Goods, Recorded with Customs" letter, to be sent to the importer is attached to this Directive at Appendix 1.

6.4.2 "Clearly Piratical" (protected copyright not recorded with Customs). Where administratively feasible and appropriate, such goods may be seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 501 incorporating 17 U.S.C. §106(3) and/or 17 U.S.C. § 602, or 17 U.S.C. §§ 506 and 509. No corresponding Customs regulations exist. Cases involving suspected criminal copyright actions should be referred to the Office of Investigations.

6.4.3 Disclosure: Clearly Piratical cases. When articles are subject to restrictions set forth in 19 CFR § 133.42, Customs officers SHALL disclose to the copyright owner in writing the following information within 30 business days of the date of the seizure as required in 19 CFR § 133.42(c).

Date of Importation:

Port of Entry:

Description of Merchandise:

Quantity:

Name and address of Manufacturer:

Name and address of Exporter:

Name and address of Importer (Note: If importer of record is broker or nominal consignee, provide the ultimate consignee if known):

Country of Origin:

6.4.4 Any time after seizure of the merchandise for examination, Customs MAY provide a sample to the copyright owner for exam, testing, etc. If a request for a sample is made, the copyright owner MUST provide Customs with a bond as required in 19 CFR § 133.42(e).

6.4.5 The amount of bond is to be specified by the area/port director. The bond is normally set at 120 percent (120%) of the CIF value of the sample, plus duty and entry fees (but not lower than \$100). In cases where the value of the sample is less than \$100, a cash deposit may be accepted by Customs. Customs may demand return of the sample at any time.

6.4.6 The owner must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its' return, the owner must certify to Customs that "the sample described as (full description) and provided pursuant to 19 CFR § 133.21(d) was damaged, destroyed or lost during examination, testing or other use." If the sample is not returned, Customs officers should proceed to forfeit the bond.

6.5 Processing the case: Possibly Piratical. Customs policy mandates that suspect possibly piratical copyright violative goods can only be detained upon a "reasonable suspicion" that said goods constitute possibly piratical copies of protected works.

6.5.1 "Possibly Piratical" (protected copyright recorded with Customs). Under 19 CFR § 133.43, possibly piratical copies shall be detained and the process outlined in that Section is to be followed. Please refer to 19 CFR § 133.43 for specific instructions. If determined to be piratical, the goods are to be seized pursuant to 17 U.S.C. § 603.

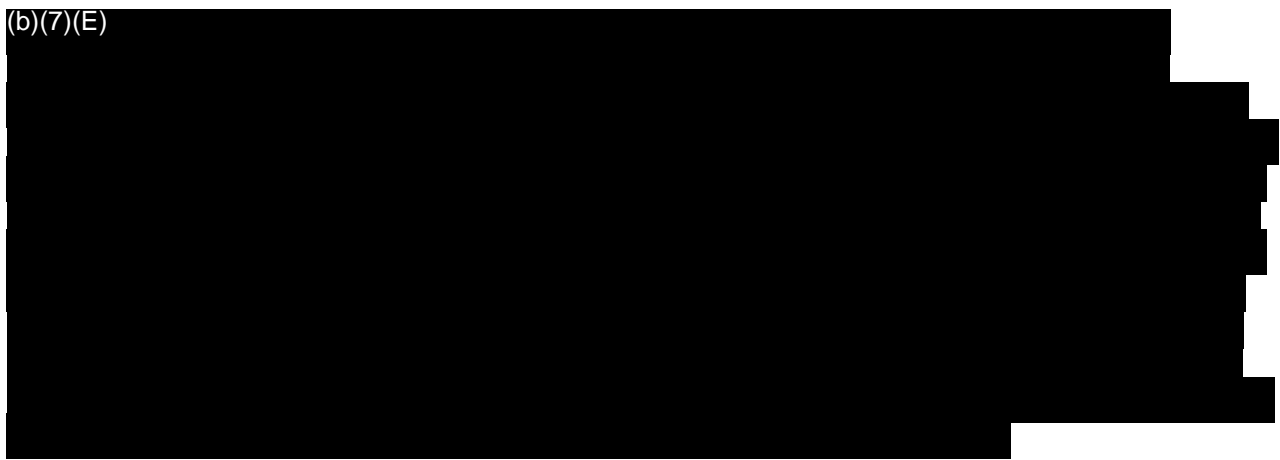
6.5.2 "Possibly Piratical" (protected copyright not recorded with Customs). Customs policy is to neither detain nor seize goods bearing such works.

6.5.3 Possibly Piratical, Detention: In general: In accordance with Customs policy, if a Customs officer can articulate a basis for having such "reasonable suspicion" with respect to copies of copyrighted works recorded with Customs at the time of presentation to Customs, he may detain the goods at that time. Although 19 CFR § 133.43 is silent as to when a detention notice is to be issued with respect to possibly piratical merchandise, 19 U.S.C. § 1499 provides that Customs has five (5) working days from the date the merchandise is presented for examination, to decide whether the merchandise should be released or detained.

6.5.4 19 U.S.C. § 1499 further provides that "merchandise which is not released within such five-day period shall be considered detained." Thus, where a Customs officer is unsure whether such "reasonable suspicion" exists at the time presentation to Customs, he may detain the goods for a 5-day period pursuant to 19 U.S.C. § 1499 to determine whether such "reasonable suspicion" exists. If Customs determines that such "reasonable suspicion" exists, Customs shall issue a formal letter of detention to the importer.

6.5.5 The issuance of the formal detention letter may take place before the expiration of the initial 5-day period, or between the 5th day and the 10th day after presentation, but in no case after the 10th day.

(b)(7)(E)



6.5.7 Notice of importer. If a Customs officer has reason to believe that an imported article may be a piratical copy of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact a piratical copy. In the absence of receipt within 30 days of such a denial by the importer, the article in question shall be considered to be such a copy and shall be subject to seizure and forfeiture under 19 CFR § 133.42. A

sample "Notice of Detention of Possibly Piratical Goods, Recorded Copyright" initial letter, to be sent to the importer is attached to this Directive at Appendix 3.

6.5.8 Notice to copyright holder, Disclosure: Possibly Piratical cases. If the importer files a denial of piratical copying, the area/port director shall furnish the copyright owner with the following information, if available, within 30 days of receipt of importer's denial of infringement:

Date of Importation:

Port of Entry:

Description of Merchandise:

Quantity:

Country of Origin:

6.5.8.1 The notice states that the imported article will be released to the importer unless within 30 days the copyright owner files with the area/port director:

6.5.8.1.1 A written demand for the exclusion from entry of the detained imported articles; and

6.5.8.1.2 A bond in an amount specified by the area/port director, conditioned to hold Customs and the importer or owner of such imported articles harmless from any loss or damage resulting from Customs detention in the event that the Commissioner of Customs or his designee determines that the articles are not piratical copies prohibited from entry under Section 602 of the Copyright Act (17 U.S.C. § 602). The amount of the bond is generally set at 110 percent (110%) of the value of the detained articles, plus the duty and entry fees. However, factors including but not limited to the value of the merchandise or relevant market factors may be considered by the area/port director in setting the amount of the bond.

6.5.8.2 Upon detaining and/or seizing suspected piratical or possibly piratical copies, contact the local Office of Investigations before initiating the requisite disclosure procedures.

6.5.8.3 A sample "Notice of Detention of Possibly Piratical Goods, Recorded with Customs" initial letter, to be sent to the copyright holder is attached to this Directive at Appendix 4.

6.5.8.4 Any time after presentation of the merchandise for examination, but prior to seizure, Customs MAY provide a sample to the copyright owner for exam, testing, etc. If a request for sample is made, the copyright owner MUST provide Customs with a bond as required in 19 CFR § 133.43(c). Prior to release of the sample, Customs officers should remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer, including all bar codes or otherwise identifying marks.

6.5.8.5 The amount of bond required to obtain release of the sample is to be specified by the area/port director. The bond is normally set at 120 percent (120%) of the CIF value of

the sample, plus duty and entry fees (but not lower than \$100). In cases where the value of the sample is less than \$100, a cash deposit may be accepted by Customs. Customs may demand return of the sample at any time.

6.5.8.6 The owner must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its' return, the owner must certify to Customs that "the sample described as (full description) and provided pursuant to 19 CFR § 133.23a(d) was damaged, destroyed or lost during examination, testing or other use." If the sample is not returned, Customs officers should proceed to forfeit the bond.

6.5.9 Exclusion demand by copyright owner. As stipulated in 19 CFR §133.43(d)(1), if the copyright owner files a written demand for exclusion of the suspected piratical copies together with a proper bond, the area/port director shall promptly notify the importer and the copyright owner that during a specified time limit of not more than 30 days, they may submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of piratical copying. Parties shall thereafter be provided with an additional time period ("rebuttal period"), not to exceed 30 days during which an exchange of briefs is to take place in order to allow each party an opportunity to respond to the other party's allegations. The burden of proof shall be upon the party claiming that any article is in fact a piratical copy. At the close of the period specified for submission of evidence, the area/port director shall forward the entire file in the case, together with a representative sample of the imported articles and his views or comments, to the Chief, IPR Branch, Office of Regulations & Rulings, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229. Sample letters to be sent to both the copyright holder and the importer, are attached to this Directive at Appendices 5 and 6.

6.5.10 Exclusion contention disclaimed by copyright owner. As stipulated in 19 CFR 133.43(d)(2), if the copyright owner disclaims his contention or concedes that he possesses insufficient evidence or proof to substantiate a claim of piracy, the area/port director shall release the detained shipment to the importer, and shall release all further importations of the same article, by whomever imported, without further notice to the copyright owner.

6.5.11 Failure to file exclusion demand. As stipulated in 19 CFR § 133.43(d)(3), if the copyright owner fails to file a written demand for exclusion and an accompanying bond, the area/port director shall release the detained articles to the importer, and notify the copyright owner of the release. The area/port director shall not withhold delivery of all further importations of the same article by the same importer unless the copyright owner has provided a satisfactory explanation as to why he failed to file a written demand for exclusion, and a bond.

6.5.12 Withdrawal of bond. Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

6.5.13 Claim of infringement sustained. As stipulated in 19 CFR § 133.44(a), if the Commissioner determines that the articles in question are piratical copies, the area/port

director shall seize and forfeit them under 17 U.S.C. § 603, and shall return the bond to the copyright holder. A petition for relief may still be filed under the provisions of 19 CFR §§133.44(a), 133.51-133.53.

6.5.14 Denial of infringement sustained. As stipulated in 19 CFR § 133.44(b), if the Commissioner determines that the articles are not piratical copies, the area/port director shall release all such detained merchandise and transmit the copyright holder's bond to the importer. Recovery of damages on the bond is to be arranged between the parties.

7 (b)(7)(E)

8 MISCELLANEOUS.

8.1 Merchandise not in Customs custody: Demand for redelivery. If after goods have been released Customs determines that a violation was likely to have existed, it may order the redelivery of the goods by sending a Notice to Redeliver (CF 4647) to the importer within 30 days of release of the goods. The importer has 30 days in which to redeliver the merchandise into Customs custody. If the importer does not redeliver the merchandise, a claim for liquidated damages shall be initiated (19 CFR § 141.113).

8.1.1 The local Office of Investigations will be notified immediately of all shipments of piratical merchandise which have been released from Customs custody.


8.2 Competing copyright registrations. Goods initially believed to be, or suspected of, infringing recorded copyrights have sometimes been released upon the importer's presentation of a certificate of registration of a claim to copyright issued by the United States Copyright Office after their seizure (19 CFR § 133.42) or detention (19 CFR § 133.43). This action has sometimes been referred to as the "Ten Dollar Defense" because that was the fee to register a claim to copyright with the Copyright Office.

8.2.1 When evidence clearly indicates piratical copying or reason to suspect piratical copying of a copyright recorded with Customs, and the imported article itself is the subject of a copyright registration certificate (whether obtained before or after importation), Customs officers shall still detain the merchandise and proceed as outlined above (19 CFR § 133.43; Customs Service Decision [C.S.D. 86-23]).

8.3 OTO-1 Bulletin Board. Periodically, special alerts pertaining to specific copyrights or commodities may be posted to the OFO OTO-1 Bulletin Board. Officers should routinely monitor the bulletin board to keep abreast of important developments in intellectual property right (IPR) enforcement.

8.4 (b)(7)(E)

(b)(7)(E)



8.4.1 If the suspect program contains between thirty percent (30%) and eighty percent (80%) similarity to a protected program, piracy is suspected and the procedures set out in 19 CFR § 133.43 should be followed. For internal use only

8.4.2 Reports issued by the Office of Laboratories and Scientific Services should always reference the specific copyright recordation involved. Where more than one protected work is involved, all relevant recordations should be noted.

9. The statements made herein are not intended to create or confer any rights, privileges or benefits for any private person, but are intended merely for internal guidance.

Commissioner of Customs

Attachments

APPENDIX 1

Notice of Seizure to Importer, Clearly Piratical Copyrights Recorded with Customs.

Dear Sir or Madam:

In accordance with Customs Regulations 19 CFR § 133.42, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 603 of the Copyright Act of 1976 (17 U.S.C. § 603), articles constituting clearly piratical copies of registered copyrights are subject to seizure and forfeiture.

You are hereby notified that under section 133.42 of the Customs Regulations, your importation of _____, entry number _____ has been seized by U.S. Customs as constituting clearly piratical copies of the following registered and recorded copyright:

Title:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

If you admit that these items are, in fact, piratical, you may abandon such items to Customs and assent to their forfeiture; or you may petition for relief from forfeiture of the articles pursuant to 19 CFR §§ 171 and 172.

Sincerely,

Area/Port Director

APPENDIX 2

Notice of Seizure to Importer, Clearly Piratical Copyrights Not Recorded with Customs.

Dear Sir or Madam:

You are hereby notified that your importation of _____,
entry number _____ has been seized by U.S. Customs as
constituting clearly piratical copies of the following registered copyright:

Title:

U.S. Copyright Office Registration Number:

In accordance with 19 U.S.C. § 1595a(c)(2)(C), the imported goods listed above have been seized as clearly piratical copies of protected works in violation of 17 U.S.C. § 501, incorporating 17 U.S.C. 106(3) and/or 17 U.S.C. 602, or (17 U.S.C. 506 and 509 in criminal cases) and are further subject to immediate forfeiture.

If you admit that these items are, in fact, piratical, you may abandon such items to Customs and assent to their forfeiture; or you may petition for relief from forfeiture of the articles pursuant to 19 CFR §§ 171 and 172.

Sincerely,

Area/Port Director

APPENDIX 3

Notice of Detention to the Importer, Possibly Piratical Recorded Copyright

Dear Sir or Madam:

In accordance with Customs Regulations 19 CFR § 133.43 and 17 USC § 603, the importation (including "in-transit" shipments) of piratical copies of a recorded copyrighted work is prohibited. You are hereby advised that there is reason to believe that your importation of _____ may constitute a piratical copy of the following registered and recorded copyrighted work:

Title:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

In the absence of receipt within 30 days of a denial by you that the article constitutes a piratical copy, it shall be considered to be such a copy and shall be subject to seizure and forfeiture. If this merchandise is already in your possession, you may satisfy the requirement of this notice by giving Customs "constructive" custody until such time as the issue of piratical copying is resolved. This may be accomplished by a letter granting us constructive custody and affirming that the subject merchandise will be held intact by you pending further instructions from this office and the posting of a single entry bond for three times the value of the merchandise. The merchandise may not be sold, used, assigned, leased or disposed of without U.S. Customs permission.

If you believe the facts warrant, you may file a statement denying that the article is in fact a piratical copy and stating that the detention or redelivery of the article will result in a material depreciation of its value or a loss or damage to you.

Upon receipt of your denial, a sample of the merchandise in question will be sent to the copyright holder. If he claims that there is a violation of his copyright, both you and he will have up to 30 days to submit additional evidence and legal briefs in support of your respective positions, before we forward the matter to the Commissioner of Customs for decision.

In addition, you have several further options. If you agree that these items are, in fact, piratical, or if you wish to waive your right to contest piracy, you may abandon such items to Customs at the time of redelivery and assent to their forfeiture, or you may petition for relief from forfeiture of the articles.

Sincerely,

Area/Port Director

APPENDIX 4

Letter to Copyright Holder, Possibly Piratical Recorded with Customs.

Dear Sir or Madam:

The Customs Service has detained a shipment of _____ which may constitute a violation of the following copyrighted work:

Title:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

Pursuant to Customs Regulations 19 CFR §133.43, a sample is hereby submitted for your review. The importer denies that the articles are piratical copies, and alleges that their continued detention will result in a material loss or damage to him. Please be advised that these imported articles will be released to the importer unless, within 30 days from the date of this letter, you file:

1. A written demand for the exclusion of these items; and
2. A bond on Customs Form 301 (copy enclosed) in the amount of _____ conditioned to hold U.S. Customs, and the importer or owner, harmless from the loss or damage resulting from Customs detention in the event that these items are determined not to be piratical.

If you file the demand and bond, you and the importer will be notified of a time period for filing further evidence, briefs or material. You, the copyright holder, have the burden of proving infringement.

At the conclusion of the regulatory and statutory time periods, the entire file will be forwarded to the Commissioner of Customs for review and decision.

Sincerely,

Area/Port Director

APPENDIX 5

Notice to Copyright Owner and Importer (Exclusion Demand)

Dear Sir or Madam:

Relative to the exclusion of the suspected piratical copies of:
_____, entry number _____ for
suspected violation of the following protected works:

Title of Copyright:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number.

Issue is joined as to the claim. Pursuant to 19 CFR § 133.43(c)(1)(I), within thirty (30) days from the date of this letter, both parties, or their duly-authorized agents, may submit to Customs any additional information or documentation substantiating its claim. The copyright holder has the burden of proof in this matter. Within this 30-day period, both parties should submit to each other and to Customs:

1. Copies of any and all arguments, legal briefs, evidence, or other pertinent material submitted, whether part of the initial claim or subsequent discovery.
2. A written statement, signed by the party or duly-authorized agent, confirming that copies of the above were in fact provided to the importer within the 30-day time period.

Please be advised that no additional material to substantiate the claim or denial of infringement will be accepted by this office after this 30-day period expires.

Sincerely,

Area/Port Director

APPENDIX 6

Notice to Copyright Owner and Importer, Rebuttal Period

Dear Sir or Madam:

Relative to the exclusion of the suspected piratical copies of _____,
entry number _____ for suspected violation of the following protected
works:

Title of Copyright:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

Pursuant to 19 CFR § 133.43(c)(1)(I), the parties have submitted to Customs, and exchanged copies of any and all arguments, legal briefs, evidence, or other pertinent material, whether part of the initial claim or subsequently discovered, and a written statement, signed by the parties or duly authorized agent confirming that copies of the above were in fact provided to the importer within the initial 30-day time period.

The parties will be afforded an additional 30-day "rebuttal period" (beginning as of the date of this letter) in which to exchange and submit to Customs:

1. Copies of any and all arguments, legal briefs, evidence, or other pertinent material submitted in rebuttal to arguments submitted, and
2. A written statement, signed by the importer or duly-authorized agent, confirming that copies of the above were in fact provided to the other party within the 30-day rebuttal period.

Please be advised that no additional material to substantiate the claim or denial of infringement will be accepted by this office once this 30-day rebuttal period expires.

Sincerely,

Area/Port Director

U.S. CUSTOMS AND BORDER PROTECTION

CBP DIRECTIVE NO. 4410-020

DATE: September 20, 2010

ORIGINATING OFFICE: OT: CTE

SUPERSEDES:

REVIEW DATE: September 2013

POLICY FOR PUBLIC DISCLOSURE OF INFORMATION CONCERNING TRADE ENFORCEMENT ACTIONS

1. PURPOSE.

1.1 To establish a policy for the public disclosure of information concerning a trade enforcement action undertaken by the U.S. Customs and Border Protection (CBP) prior to the completion of that action.

1.2 The mission-related purposes of releasing the information outlined herein is to: (1) effectively communicate CBP enforcement successes in a timely and accurate manner to the public, including the trade community; (2) serve as a deterrent for those who engage in (or would potentially engage in) illicit activity involving international trade; and (3) increase the understanding and awareness by the public - through the media - of the important role CBP plays in enforcing the trade laws of the United States (U.S.).

2. DEFINITIONS.

2.1 Trade Enforcement Action – For this directive, the term “trade enforcement action” refers to CBP fines, penalties, or forfeiture cases or any significant action taken by CBP to enforce the customs and related laws, including, but not limited to, seizures, exclusions, or collection of duty.

2.2 Completion – For purposes of this directive, the term “completion” refers to closure of a fines, penalties, or forfeiture case, occurring by payment of the claim amount, payment of a mitigated amount, or commencement of judicial action, as set forth in 19 C.F.R. § 103.32.

2.3 Public Disclosure – For purposes of this directive, the term “public disclosure” refers to a CBP news release available at www.cbp.gov (CBP Directive No. 5510-035) or any disclosure method or venue approved by the Office of Public Affairs (OPA).

3. BACKGROUND.

3.1 OPA is the single point of contact within CBP for all news media matters involving CBP and is responsible for initiating and coordinating all CBP contact with the media. With the exception of official CBP spokespersons and those delegated authority to speak on behalf of CBP, no office within CBP or employee of CBP may communicate or work with the media or

plan to execute any public affairs outreach without the approval of the Assistant Commissioner, OPA. CBP Directive No. 5410-001B.

3.2 Existing guidelines for the release of information concerning fines, penalties, and forfeitures cases are described in 19 C.F.R. § 103.32 and restrict what information may be shared with the public concerning such cases. Title 19 C.F.R. § 103.32 states in relevant part: “Except as otherwise provided in these regulations or in other directives (including those published as Treasury Decisions), port directors and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until Customs action is completed ... Public disclosure of any other item of information concerning such cases, whether open or closed, shall only be made in conformance with the procedures provided in [19 C.F.R.] § 103.5.”

3.3 This directive provides CBP with a mechanism for releasing certain information otherwise not authorized for release pursuant to 19 C.F.R. § 103.32. Notwithstanding the effect of this directive, public disclosure of any item of information concerning such cases, whether open or closed, shall only be made in conformance with Department of Homeland Security policy and applicable law.

4. POLICY.

4.1 CBP shall seek to deter violations of customs and related laws by making publicly available, when appropriate as determined by CBP, general information about trade enforcement actions prior to the completion of those actions, pursuant to the following procedures and guidelines.

4.2 The issuances of news releases by CBP are ordinarily most effective when released in close temporal proximity to the trade enforcement action that has been taken. Accordingly, every office within CBP responsible for preparation and/or review of a news release should act expeditiously to prepare and/or review such a document. Absent extenuating circumstances, each office within CBP should complete the review within 3 days.

5. PROCEDURES.

5.1 Only CBP officials authorized by CBP Directive No. 5410-001B to speak on behalf of CBP should initiate contact with members of the media for reasons of official business. All disclosures of official CBP information will adhere to CBP Directive No. 5410-001B, which directs that OPA is responsible for the release of official CBP information to accredited news organizations, mass media, published professional journals, and stakeholders groups, which includes issuance of news releases.

6. GUIDELINES.

6.1 This directive does not authorize CBP to disclose any investigative information including specific targeting information pertaining to any CBP enforcement matter. In addition, this directive does not permit the agency to disclose any law enforcement sensitive information, confidential business information, or information the disclosure of which is prohibited by law.

This directive does not authorize CBP to disclose information on civil cases that have been accepted by the United States Department of Justice (DOJ) for litigation, unless the disclosure of information is coordinated with, and approved by, DOJ prior to release.

6.2 CBP may, at its discretion, disclose the following information:

- a) Actual or projected loss of revenue;
- b) Amount of penalty assessed in the penalty notice (this would not include pre-penalty assessments);
- c) Approximate date of the trade enforcement action;
- d) Estimated domestic value of merchandise or Manufacturer's Suggested Retail Price (MSRP) – where CBP has issued a penalty pursuant to 19 U.S.C. § 1526(f);
- e) General merchandise and/or product description;
- f) Port where the trade enforcement action took place;
- g) Section of the law allegedly violated;
- h) Type of trade enforcement action (i.e. seizure, forfeiture, penalty or liquidated damage) and;

6.3 In cases involving intellectual property, CBP may, at its discretion, disclose the Trademark or Copyright name and/or image infringed upon should circumstances warrant such disclosure. In the event the owner requests that CBP not disclose the Trademark or Copyright name and/or image, CBP will consider the owner's interest in nondisclosure of the information together with CBP's responsibility to perform its import safety mission and protect the public.

6.4 In cases in which CBP has determined, after legal review by the Office of Chief Counsel (OCC), and after coordination with Immigration and Customs Enforcement (ICE) or DOJ as appropriate, to disclose information related to an ICE or DOJ open case arising out of a trade enforcement action, CBP personnel shall accurately describe the legal and factual circumstances of the case. CBP may choose to indicate that the circumstances described in seizure and penalty notices constitute allegations and that final legal determinations are still pending. CBP may also choose to describe circumstances in general terms to avoid adversely affecting open cases.

7. RESPONSIBILITIES.

7.1 The Office of Field Operations (OFO) is responsible for working with OPA regarding the public disclosure of information arising from trade enforcement actions over which it has the authority to decide petitions for relief as outlined by Treasury Decision 00-58 (Sept. 5, 2000) or any subsequent delegation of authority.

7.2 The Office of International Trade (OT) is responsible for working with OPA regarding the public disclosure of information arising from trade enforcement actions over which it has the authority to decide petitions for relief as outlined by Treasury Decision 00-58 (Sept. 5, 2000) or any subsequent delegation of authority.

7.3 OPA is responsible for the approval and dissemination of all official information to the public. Trade enforcement actions potentially involving information for public disclosure must promptly be reported to and coordinated through OPA.

7.4 Public disclosure of information concerning a trade enforcement action may take place at anytime after the occurrence of the trade enforcement action in accordance with the following procedures:

- a) Where the authority lies with a Fines, Penalties, and Forfeitures (FP&F) Officer or Director¹ to decide any petition or supplemental petition which may be submitted in a case arising from the trade enforcement action, the following procedure will apply:
 - 1) The Port Director shall submit the proposed release to either the local Office of Assistant or Associate Chief Counsel (ACC) with jurisdiction over the area where the initial trade enforcement action occurred, and to the CBP Privacy Officer.²
 - 1.1) Within the request the Port Director overseeing the trade enforcement action shall confirm that disclosure of the trade enforcement action will not conflict with pending law enforcement investigations by ICE.
 - 2) ACC shall provide written advice to the Port Director concerning whether disclosure of the trade enforcement action; (i) would present litigation risks for further enforcement actions or proceedings; (ii) is restricted or prohibited under U.S. law; or (iii) is otherwise legally inadvisable due to the circumstances of the trade enforcement action.
 - 3) The CBP Privacy Officer shall provide written approval to the Port Director that disclosure of the trade enforcement action complies with the Trade Secrets Act, the Privacy Act, the Freedom of Information Act and other laws as appropriate.
 - 4) Upon receipt of written advice from the ACC and written approval from the CBP Privacy Officer, the OFO Public Affairs Liaison, in conjunction with an OPA, Public Affairs Specialist shall prepare a draft media release in conformance with section 6 of this directive.
 - 5) The draft news release shall be approved by the Port Director and transmitted to OPA for further coordination by OPA.
 - 6) Once OPA standard review procedures are completed, OPA will distribute the news release.

¹ For purposes of this Directive, this and all future identification of any OT or OFO position shall assume inclusion of any individual to whom authority has been delegated.

² Draft media releases are to be submitted to the CBP Privacy Officer at PRIVACY.CBP@DHS.GOV.

- b) When the authority lies with any Headquarters official³ (including those working for Regulations and Rulings and the Border Security and Trade Compliance Division) to decide any petition or supplemental petition which may be submitted in a case arising from the trade enforcement action, the following procedure will apply:
- 1) The OT Communications Director shall submit the proposed release to both OCC and to the CBP Privacy Officer.⁴
 - 1.1) Within the request the Port Director overseeing the trade enforcement action shall confirm that disclosure of the trade enforcement action will not conflict with pending law enforcement investigations by ICE.
 - 2) OCC shall provide written advice to the OT Communications Director concerning whether disclosure of the trade enforcement action: (i) would present litigation risk for further enforcement actions or proceedings; (ii) is restricted or prohibited under U.S. law; or (iii) is otherwise legally inadvisable.
 - 3) The CBP Privacy Officer shall provide written advice to the OT Communications Director that disclosure of the trade enforcement action complies with the Trade Secrets Act, the Privacy Act, the Freedom of Information Act and other laws as appropriate.
 - 4) Upon receipt of written legal advice from the OCC and written approval from the CBP Privacy Officer, the OT Communications Director in conjunction with the OPA, Public Affairs Specialist shall prepare a draft media release in conformance with section 6 of this directive.
 - 5) The OT Communications Director shall transmit the draft media release to the Assistant Commissioner of OT for OT review.
 - 6) Once authorized by the Assistant Commissioner of OT, the draft news release is transmitted by the Assistant Commissioner of OT or his or her staff to OPA HQ for further coordination by OPA.
 - 7) Once OPA standard review procedures are completed, OPA will distribute the news release.
 - 8) News releases that include CBP actions across multiple Field Office areas of responsibility or are national in scope shall be reviewed by OCC, OT and if appropriate, OFO headquarters, prior to publication. OCC shall provide written advice to the OT Communications Director concerning whether the disclosure of the trade enforcement action: (i) would present litigation risk for further enforcement

³ *Id.*


⁴ Draft media releases are to be submitted to the CBP Privacy Officer at PRIVACY.CBP@DHS.GOV.

actions or proceedings; (ii) is restricted or prohibited under U.S. law; or (iii) is otherwise legally inadvisable.

8. NO PRIVATE RIGHTS CREATED.

8.1 The procedures set forth in this directive are for CBP internal use only and create no private rights, benefits, or privileges for any private person or party.

(b)(6),(b)(7)(C)



Commissioner
U.S. Customs and Border Protection

CUSTOMS DIRECTIVE

*(SUPERSEDED BY CD 3340-010A, AUGUST 18, 1999)

ORIGINATING: E:IV:FI

DISTRIBUTION: See Signature Page
CUSTOMS DIRECTIVE NO. 3340-010
DATE: November 9, 1989

SUBJECT: CURRENCY VERIFICATION PROGRAM OF AMOUNTS IN EXCESS
OF \$100,000

1. PURPOSE

This Directive establishes national policy and procedural requirements for the verification of all Reports of International Transportation of Currency or Monetary Instruments (CMIR), Customs Form 4790, reporting the importation of currency in excess of \$100,000. This new policy does not apply to CMIRs reporting the export of currency, or to inbound CMIRs reporting currency in the amount of \$100,000 or less.

By verifying that currency is in fact being imported and that the amount of currency is as stated on the CMIR, (b) (7)(E) will be effectively neutralized.

2. BACKGROUND

The Office of Enforcement has identified a scheme used by money launderers who (b) (7)(E)

To begin the scheme, an inbound passenger files (b) (7)(E) in one of the following ways:

- a. Claims currency for (b) (7)(E) on the CMIR.
or
- b. Claims currency when the traveler (b) (7)(E) with total face value equal to the currency claimed. If the Customs inspector (b) (7)(E) on the CMIR, the (b) (7)(E)

(b) (7)(E) in case Customs asks to see the currency.

or

- c. Claims (b) (7)(E) If questioned, the traveler (b) (7)(E) claimed on the CMIR. Again, the (b) (7)(E) the CMIR. Since the Inspector has (b) (7)(E) the CMIR. In this example, the (b) (7)(E) but the traveler has (b) (7)(E).

After (b) (7)(E) already in his possession. If questioned by law enforcement agencies, (b) (7)(E) thus completing the laundering process.

The illicit funds on deposit at the bank could (b) (7)(E) that the funds were earned abroad.

This method of money (b) (7)(E) is established as set forth below.

3. RESPONSIBILITIES

Regional Commissioners, Area and District Directors and Special Agents In Charge will be responsible for ensuring that the provisions of this Directive are implemented within their jurisdictions.

Guidance concerning the application of this Directive may be requested from the Director, Smuggling Investigations Division, (b) (7)(E) or the Director, Office of Passenger Enforcement and Facilitation, (b) (7)(E)

4. ACTION

a. Inspection and Control

Customs Inspectors will review all CMIR's reporting currency or monetary instruments (b) (7)(E) Care should be taken that all pertinent blocks are filled in as per the instructions on the back of the form. Particular attention should be paid to Part III of the CMIR to assure that the type and amount are correct (as described below).

All CMIRs reporting the importation of currency (b) (7)(E) The currency will be examined to verify:

- (1) That it is, in fact, currency as stated.
- (2) That the amount declared is accurate. The following guidelines apply to accuracy verification:

(a) (b) (7)(E) may be made, but is generally not necessary.

(b) In lieu of (b) (7)(E) be used for amount verification.

(c) Verification of the amount claimed need only be approximate, within reason, to the satisfaction of the examining officer. (b) (7)(E)

the purpose of this currency verification directive.

Please note that as matter of policy, a discrepancy between the amount reported and the amount transported of (b) (7)(E) is considered a material misstatement and subjects the currency or monetary instruments to seizure and forfeiture.

Currency verifications should be conducted in a private and secure area, away from the view of other travelers. At least two Customs officers must be present during the examination.

While it is recognized that travelers do make legitimate mistakes in completing CF-4790's, i.e., a careless error, Customs officers should keep in mind (b) (7)(E)

Keep in mind that the money laundering scheme is only worthwhile if large amounts of currency are claimed over that actually being imported.

The Office of Enforcement will be called to investigate (b) (7)(E)

will determine if the omission or misstatement on the CMIR is "material" and thus in violation of 31 USC 5317. In most cases an extensive investigation will be necessary to determine if an arrest and prosecution is warranted.

The Inspector will write the date, time, flight number, badge number, and initials in the upper right corner of the form. In addition, all verified CMIR's will be annotated by the Customs Inspector above the "Customs Use Only" block with the abbreviation "CAV" meaning "Currency Amount Verified by weighing, measuring, or counting." This notation is critical to (b) (7)(E)

b. Office of Enforcement

Special Agents in Charge will assist District Directors in establishing local policy and procedures necessary to implement this program. Where feasible, especially in larger offices, a senior special agent or group supervisor should be assigned responsibility for coordination with Inspection and Control to ensure that follow-up investigations are conducted when appropriate. The Office of Enforcement will investigate all false CF-4790 declaring:

- (1) Currency in excess of (b) (7)(E) reveals only checks or other monetary instruments.
- (2) Currency in (b) (7)(E) but where inspection reveals an (b) (7)(E) reported.

The Office of Enforcement investigation will be initiated since either of the above situations may constitute a criminal violation of 18 USC 1001 (false statement); and/or 31 USC 5316/5322 (false CMIR). In order for the currency or monetary instrument to be subject to seizure under 31 USC 5317, the amount actually transported must be in excess of \$10,000 and thus reportable under 31 USC 5316. For example, where \$200,000 in currency or monetary instruments is reported on a CMIR and an

examination reveals that only \$2,000 is actually being transported, there is no legal requirement that a CMIR be filed. Thus, the \$2,000 is not subject to seizure under 31 USC 5317, although it may be subject to seizure under 18 USC 981-82. There may be criminal liability under 18 USC 1001. In most instances the currency or monetary instruments will have already been seized by the District Director based on a material omission or a misstatement (overstatement) of 2 percent or more on the CF-4790. The investigation will be necessary to determine if the omission or misstatement is part of a criminal money laundering scheme.

In addition to the criminal violations, the currency or monetary instruments may be forfeited under 31 USC 5317(c) if a material omission or misstatement was made on the CF-4790.

It should also be noted that false CMIR's coupled with evidence developed by investigation may establish criminal violation of 18 USC 1956/1957 (Money laundering), civil penalty liability under 18 USC 1956, and subject the currency to forfeiture under 18 USC 981 (Civil Forfeiture) or 18 USC 982 (Criminal Forfeiture).

5. SUPERSEDED MATERIAL

This Directive supersedes Customs Directive 3300-06 dated June 13, 1986, with regard only to the processing of inbound CMIR's declaring currency (b) (7)(E)

In particular, the previous policy allowed verification of (b) (7)(E)

as declared. This directive changes these policies and practices.

In addition, a separate directive is being issued to supersede Customs Directive 3300-06 in its entirety.

6. EFFECTIVE DATE

The procedures contained in this document are effective 30 days from the date of this directive.

Acting Commissioner of Customs

Attachments

Distribution:

R-01 Regional Commissioners

F-01 District/ Area Directors

G-08 All Intelligence Personnel

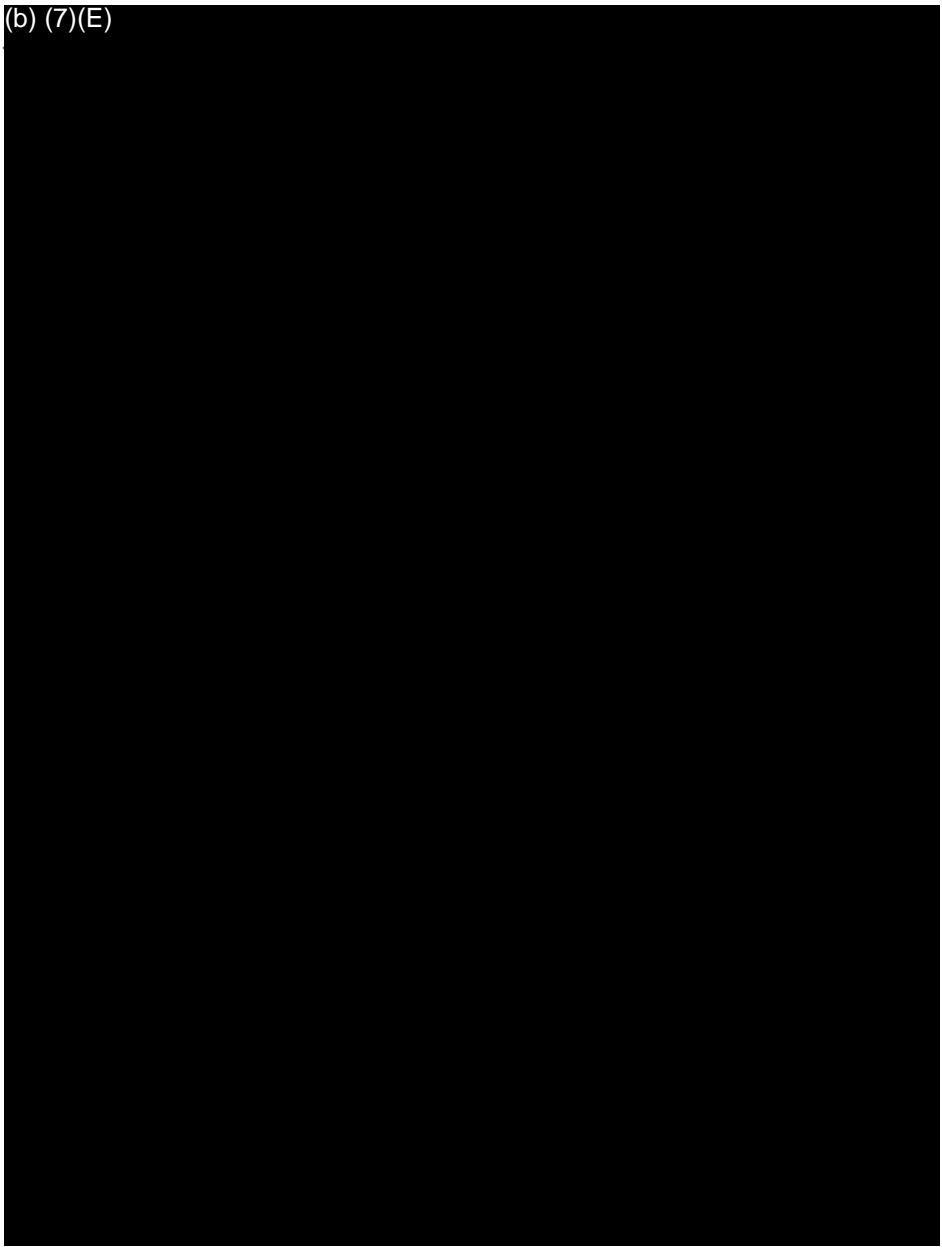
G-18 All Criminal Investigators (ENF)

G-19 All Customs Inspectors

H-03 Chief Counsel

CD 3300-08; November 9, 1989

(b) (7)(E)



ATTACHMENT 1

CD 3300-08; November 9, 1989

(b) (7)(E)



Dimensions of U.S. Currency = 6 1/8" long x 2 5/8" wide

U.S. Government Printing Office : 1989 - 241-041/00187

ATTACHMENT 2

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: CO:T:F:F

DISTRIBUTION: See signature page
CUSTOMS DIRECTIVE NO. 4410-012
OLD NUMBER: 4400-12A
DATE: DECEMBER 1, 1989

SUBJECT: BOND SUFFICIENCY ACTIONS AGAINST BONDED CARRIERS

1. Purpose

To set forth actions to be taken by Regional Commissioners/District/Area Directors in cases in which the amount of delinquent liquidated damages claims against a bonded carrier exceed the amount of the carrier's custodial bond.

2. Background

In the past, certain bonded carriers have not responded to Customs liquidated damages claims involving violations of 19 CFR 18.8. This has led to actions to collect the amounts due from their surety companies. In many cases, the amounts of claims far exceed the amount of the custodial bond.

The Customs Regulations (19 CFR 113.13(c) and (d)) require, Regional Commissioners and District Directors to review bond sufficiency on a periodic basis and to notify the principal in writing of a need for a bond increase if the bond is not adequate to protect the revenue and to insure compliance with the law and regulations. *Hera Shipping Company v. Harry Carnes* (CIT Slip Opinion 86-75) reaffirmed the right of Customs to demand increased bond coverage for just cause.

As we have taken action against other principals and their sureties for delinquent claims, we should also take action against bonded carriers.

3. Action

District/Area Directors should review the liquidated damages claims against a bonded carrier whose bond is on file in their district using the automated FP&F system. Any liquidated damages claim which has not been petitioned or paid within 90 days may be considered a delinquent claim. When the amount of delinquent claims substantially exceeds the amount of the bond a written notice should be issued to the bonded carrier under 19 CFR 113.13 demanding increased bond coverage. If the carrier fails to respond satisfactorily to the letter listing the delinquencies and the demand for increased bond coverage, the district should issue a notice to all other districts using facsimile or ACS E-Mail informing them that they should not accept additional liabilities against the

existing bond. The Office of Trade Operations in Headquarters should be notified.

District/Area Directors who are aware of situations in which the amount of unpaid or unpetitioned claims exceeds a carrier's bond filed in another district should bring this matter to the attention of the appropriate District/Area Directors for action under this directive.

4. Responsibilities

Regional Commissioners are responsible for ensuring that District/Area Directors effectively implement this directive. District/Area Directors should ensure that their Fines, Penalties, and Forfeitures Officers are aware of the requirements of this Directive.

5. Effective Date

Since this directive merely states the authority already contained in the Customs Regulations for action to be taken in cases of bond insufficiency, it should be implemented immediately.

Acting Commissioner of Customs

Distribution:

R-01 All Regional Commissioners

F-01 All District Directors

F-02 All Port Directors

F-10 All PP&F Officers

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY HB 5200-13, 3/96)**

ORIGINATING OFFICE: OM:L:N:F

DISTRIBUTION: G-25

CUSTOMS DIRECTIVE NO. 51735-008

DATE: AUGUST 29, 1991

SUBJECT: REPORTING PROCEDURES FOR GIFTS GIVEN TO OR RECEIVED
FROM FOREIGN GOVERNMENTS

1. PURPOSE

To provide procedures for employees of the U.S. Customs Service (USCS), their spouses (unless separated) and their dependents concerning the acceptance, reporting, retention and disposition of gifts and decorations received from representatives of foreign Governments. Secondly, the directive also provides procedures for giving gifts and decorations to representatives of foreign Governments.

2. REFERENCES

41 CFR 101-49: Utilization, Donation, and Disposal of Foreign Gifts and Decorations; Department of the Treasury Minimum Standards of Conduct, Section 0.735-35: Gifts or gratuities from foreign Governments; 5 USC 7342: Foreign Gifts and Decorations Act; Treasury Directive 61-04 and Public Law 95-105.

3. BACKGROUND

Under Minimum Standards of Conduct Section 0.735-35, gifts, awards, entertainment, favors, or other items of monetary value received from outside sources will not be accepted by employees where such acceptance may result in or create the appearance of a conflict of interest. In the case of foreign gifts, there are similar, yet special regulations that apply. These include dollar ceilings and corresponding reporting and disposition procedures for gifts and decorations received by employees and representatives of the USCS.

Under Public Law 95-105, 91 Stat. 866, 22 USC 2694 any gifts more than the minimal value (\$200) purchased with appropriated or non-appropriated funds which were given to a foreign Government during the previous fiscal year must be reported.

4. SCOPE

The requirements contained in this directive are applicable to USCS employees, their spouses (unless separated), and their dependents. This also includes all contractors and consultants representing Customs who may be subject to receiving gifts from or giving gifts to foreign Governments.

5. DEFINITIONS

- a. Employee - USCS employees, their spouses (unless separated), their dependents, and consultants to Customs who may be subject to receiving and giving gifts to foreign Governments.
- b. Foreign Government - Any foreign Governmental authority or international or multinational organization whose membership comprises of any unit of a foreign Government, or any representative of any such unit or organization, while acting as such. Any agent or representative of a foreign country or acting as such who is not a citizen of the United States.
- c. Tangible Gifts - Objects or items which are capable of being possessed physically.
- d. Intangible Gifts - Entertainment, personal services, educational scholarships, medical treatment, travel or expenses for travel.
- e. Decoration - An order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign Government.
- f. Minimal Value - An item's retail value in the United States at the time of issuance or receipt of \$200 or less. This amount is subject to redefinition at 3 year intervals by the General Services Administration (GSA), starting on January 1, 1981.
- g. Promotional Materials and Souvenirs - Items of intrinsic value such as pens, note pads, and calendars.

6. RESPONSIBILITIES

- a. Office of Logistics Management (OLM)

OLM is responsible for the overall management and implementation of the program.

- b. National Logistics Center (NLC)

The NLC is responsible for directing, reporting, evaluation, disposition and general administration of the Foreign Gifts and Decorations Program.

c. Supervisory officials

All supervisory officials shall advise employees of their responsibilities and will inform them of their obligation to decline acceptance of foreign gifts, whenever possible at the time they are offered, or to return them if they have been delivered without a prior notice. Measures such as periodic briefings shall be taken to minimize the number of gifts which employees must deposit with Customs and which may become subject to disposal as provided in this directive.

d. Local Property Officers (LPOs)

The LPOs are responsible for the retention, storage, reporting, evaluation, and disposition of the foreign gifts and decorations given or received at the local level by employees pursuant to this directive.

7. GENERAL PROHIBITION AGAINST RECEIVING FOREIGN GIFTS

Employees are prohibited from requesting or encouraging the tender of foreign gifts or decorations. Employees shall not accept or retain gifts or decorations when it would create adverse diplomatic, economic, trade, or tax consequences to the United States. Moreover, 5 USC 7342 states that heads of United States Diplomatic Missions shall inform their host Governments that "..... it is a general policy of the United States Government to prohibit employees from receiving gifts or decorations of more than minimal value."

An employee's refusal of a gift or decoration at inception should be regarded as in the interest of both the foreign Governmental donor and the United States Government. As a rule, employees should accept gifts or decorations only if refusal would clearly cause offense, embarrassment, or otherwise adversely affect foreign relations of the United States.

Acceptance and retention (either personally or on behalf of the United States) of all foreign or domestic gifts and decorations are subject to the provisions of Minimum Standards of Conduct Section 0.735-35. Money, cash, currency, and such intangible gifts as checks, money orders, bonds, shares of stock and other securities and negotiable instruments are required to be reported and deposited with the Department of the Treasury. These items should be receipted on a Cash Receipt (CF 5104). The CF 5104 must include the name and address of donor and donee; signature of Customs official receiving the intangible gift for collection; collection class code 042, Miscellaneous Recoveries and Refunds, N.O.C.

The completed CF 5104, and the intangible gift will be given to the cashier for deposit.

8. GIFTS OF MINIMAL VALUE RECEIVED

If the requirements and prohibitions cited in paragraph 7 have been met, an employee may accept, and under certain conditions retain a foreign gift of minimal value (\$200 or less). Retention of gifts is subject to further restrictions. When more than one tangible gift is received from the same foreign Government within any 12 month period, the total value of all such gifts must not exceed \$200. When a gift of minimal value, when added to the total value of prior gifts would exceed \$200, that gift will be reported as if it is a gift of more than minimal value.

If an individual receives or accepts a tangible gift of minimal value inconsistent with Minimum Standards of Conduct Section 0.735-35, it is deemed to have been accepted on behalf of the United States and must be either returned to the donor or screened for property utilization as provided for gifts and decorations in excess of minimal value.

When the gift or decoration is of minimal value, and its acceptance and retention is consistent with these procedures, the NLC will direct that the gift or decoration be returned to the employee, if the employee has indicated that retention is desired. Otherwise, the gift or decoration may be returned to the foreign donor (as appropriate) or screened for property utilization.

9. GIFTS OF MORE THAN MINIMAL VALUE RECEIVED

Subject to the aforementioned restrictions, employees may accept tangible gifts, travel, or expenses for travel occurring entirely outside the United States (embarkation through destination), educational scholarships, and medical treatment when accepted on behalf of the United States, if it is reasonably certain that to refuse the gift would cause offense, embarrassment, or otherwise adversely affect the foreign relations to the United States. Acceptance must be appropriate and consistent with the interest of the United States. For example, it would be inappropriate for a Customs official to accept travel reimbursement from a foreign Government where the Customs Service or that official is engaged in any bilateral negotiation.

Tangible gifts of more than minimal value may not be retained by an employee. An employee can purchase at fair market value such a gift which has been accepted on behalf of the United States, provided that the gift has first been screened for possible Government use by GSA.

If the reported item is more than minimal value, the NLC will forward one copy of the report (Attachment A) within 10 calendar days to each of the following organizations:

Assistant Commissioner Internal Affairs

U.S. Customs Service
1301 Constitution Ave. NW, Room 3103
Washington, D.C. 20229

Department of the Treasury
Management Program Directorate
Room 6141-Annex
1500 Pennsylvania Ave., NW.
Washington, D.C. 20220

The item is a gift or decoration in excess of minimal value, consideration will be given to returning the gift or decoration to the donor, screening it for official use within Customs (depending on value, appropriate utilization potential, etc.); or reporting it (within 30 days of receipt) to GSA for transfer, donation, or other disposal as provided in 41 CFR 101-49(3). If the gift or decoration is placed into official use within Customs, such use must be for the benefit of the greatest number of employees and/or members of the public. In addition, officially retained items must be accounted for via the USCS automated property system. When official use ends, GSA must be notified within 30 calendar days by the NLC pursuant to 41 CFR 101-49.201-1. If the employee has indicated a desire to retain a gift in excess of minimal value which has not been transferred or donated by order of GSA, the gift may be sold to the employee through a negotiated sale between GSA and the employee pursuant to 41 CFR 101-49.402.

Employees who have accepted or received a gift or decoration (other than promotional material and souvenirs) shall file a report and relinquish the item (if tangible) to their LPO for storage and safekeeping. The report (Attachment A) must be forwarded to the employee's LPO within 10 calendar days after receipt.

The LPO will review and sign the report, obtain secure storage, assume property accountability, and obtain a certified value from a Customs Import Specialist or other competent appraisal authority. The LPO will forward the original report to the NLC within 10 calendar days.

10. DECORATIONS RECEIVED

Decorations tendered in recognition of active field service in time of combat operations or awarded for other outstanding or meritorious performance may be accepted, retained and worn by an employee upon approval by the Secretary of the Treasury. Without this approval, the decoration is deemed to have been accepted on behalf of the United States and will become United States property. The NLC will process all requests for employee retention of decorations.

11. FOREIGN GIFTS GIVEN

A Customs employee acting as a representative of the U.S. Government that gives a tangible gift to a foreign Government must complete Attachment 3 and forward it to their supervisor and LPO within 10 days. The LPO is required to forward the completed form to the NLC within 10 days of receipt. Exception: If the gift is valued at less than \$25, the LPO is not required to report the gift to the NLC.

Foreign tangible gifts given as a courtesy, which are in the nature of unsolicited token souvenirs, promotional materials and trinkets (all obviously less than \$25 retail U.S. value), are generally permitted and not subject to the formal reporting and retention requirement. However, employees must report (Attachment A) the acceptance of gifts under \$25 to their supervisors.

12. REPORTING REQUIREMENTS

No later than January 15 of each year, the NLC will compile a list of all gifts received in excess of minimal value for the preceding calendar year. The report will be submitted to OLM for transmittal to Treasury with a copy to the Assistant Commissioner, Internal Affairs. This list will be based upon the reports of "Foreign Gift or Decoration: Statement of Receipt and Disposition" received from the LPO (Attachment A). Ultimately, this list will be published in the Federal Register pursuant to 5 USC 7342.

No later than October 10 of each year, the NLC will compile a list of all gifts given to foreign Governments in excess of minimal value for the fiscal year. The report will be submitted to the Office of Logistics Management for transmittal to Treasury, with a copy to the Assistant Commissioner, Internal Affairs. This list will be based upon the report of "Foreign Gifts Given." This report is submitted to the Secretary of State who is required by law to annually transmit this information to the Speaker of the House of Representatives and the Chairman of the Senate Committee on Foreign Relations.

13. PENALTIES

Disciplinary measures or civil action may be taken when an employee knowingly:

- a. solicits a gift or decoration from a foreign Government;
- b. willfully fails to report a gift or decoration within 10 calendar days after acceptance/receipt;
- c. fails to account properly for the acceptance of travel expenses;
- d. fails to comply with the disposal requirements for gifts and decorations retained for official use; or

e. otherwise violates the USCS Standards of Conduct.

14. SUPERSEDED MATERIAL

This directive supersedes Customs Directive 5200-12 on Acceptance, Reporting, and Disposition of Foreign Gifts and Decorations dated June 11, 1986.

Signed
Assistant Commissioner
(Management)

Attachments

Attachment A

Foreign Gift or Decoration: Statement of Receipt and Disposition

A. DONOR (Foreign Individual who gave the gift)

1. Name:
2. Country:
3. Title/Organization:
4. Occasion/circumstance Justifying Acceptance:
5. Date of Acceptance/Receipt:

B. ITEM DESCRIPTION (check appropriate box)

1. ☐ Gift:
2. ☐ Decoration:
3. ☐ Travel & Travel Expenses:
☐ Medical Treatment, or:
☐ Educational Scholarship:
4. Item(s) Include model & serial numbers:
5. Appraised Value at time of Acceptance or Receipt
6. Appraiser's Title:
7. Appraiser's Certification:
(signature & date)

C. EMPLOYEE/RECIPIENT

1. Name:
2. Title/Position:
3. Office address and phone:

4. Employee would like to retain item: () Yes () No or have it donated to an eligible public agency or non-profit tax-exempt institution for public display:
() Yes () No

5. Signature and date:

D. LOCAL PROPERTY OFFICER (LPO)

1. Name:

2. 8-Digit Organization Code:

3. Office address and phone:

4. Storage location of item:

5. Signature and date:

E. NLC Property Officer and Disposition

1. Name:

2. Date initial report received by NLC:

3. Date, if item is returned to donor:

4. Date, if item is returned to donee:

5. Date, if item retained by Customs for official use:

6. Location, if retained:

7. Date, if item subsequently transferred by GSA Order:

8. NLC signature and date:

Filing Instructions for Foreign Gifts and Decorations Received by a
Customs employee

The employee/recipient prepares the initial report, completing blocks A through C except appraisal data in blocks B5 through B7. Employee must forward the report and the gift or decoration to his/her Local Property Officer (LPO) within 10 calendar days of receiving the item.

The LPO completes block D and obtains an appraiser's valuation and certification (blocks B5 through B7) for the item's appraised value. The LPO also receives and stores the gift or decoration pending final disposition instructions from the NLC. The LPO must complete these blocks and forward this report to the NLC within 10 calendar days of its receipt.

Within 10 calendar days of receiving the original report from the LPO, the NLC completes blocks E1 through E3 and if the item is in excess of minimum value, forwards one copy each to the Assistant Commissioner Internal Affairs, and to the Department of the Treasury, Management Program Directorate, 1500 Pennsylvania Ave., NW., Room 6141-Annex, Washington, D.C. 20006. Blocks E4 through E7 are completed in accordance with section 9 of the Foreign Gifts Directive. Block E8 will be filled out upon completion of the actions noted in blocks E4 through E7.

Because of the low-volume use of this form, it will not be printed and stocked. It should be reproduced locally as needed.

Attachment B

Gift or Decoration:
Given to a Foreign Individual
(see filing instructions on next page)

A. DONEE (Foreign Individual)

1. Name:
2. Country:
3. Title/Organization:
4. Occasion/Circumstance Justifying Donation:
5. Date Gift Given:

B. ITEM DESCRIPTION (check appropriate box)

1. ☐ Gift:
2. ☐ Decoration:
3. ☐ Travel & Travel Expenses:
☐ Medical Treatment, or:
☐ Educational Scholarship:
4. Item(s) Include model & serial numbers:
5. Purchase receipt of gift:
6. ☐ Purchased with Appropriated Funds:
7. ☐ Purchased with Non-Appropriated Funds:

C. LOCAL PROPERTY OFFICER

1. Name:
2. 8-Digit Organization Code:
3. Office address and phone:

4. Signature and date:

D. National Logistics Center (NLC) Property officer

1. Name:

2. Date initial report received by NLC:

3. NLC signature and date:

Filing Instructions
Gift or Decorations Given
to a Foreign Individual

The employee that presented the gift must prepare the initial report, completing blocks A through B. The employee must forward this report to his/her Local Property Officer (LPO) within 10 calendar days of giving the item to the foreign individual.

The LPO completes block C. The LPO must complete these blocks and forward this report to the National Logistics Center (NLC) within 10 calendar days of its receipt.

Within 10 calendar days of receiving the original report from the LPO, the NLC completes blocks D. A copy of the completed form will be mailed back to the LPO.

Because of the low-volume use of this form, it will not be printed and stocked. It should be reproduced locally as needed.

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OA

DISTRIBUTION: SEE SIGNATURE PAGE

CUSTOMS DIRECTIVE NO. 3510-004

OLD NUMBER: 3510-04

ISSUE DATE: JULY 23, 1991

SUBJECT: MONETARY GUIDELINES FOR SETTING BOND AMOUNTS

1. PURPOSE

To update the Customs Directive on Revised Specific Monetary Guidelines for Setting Bond Amounts, dated January 14, 1991.

2. BACKGROUND

On February 7, 1986, guidelines were established for setting bond amounts in Customs Directive 3510-01 or 02, "Specific Monetary Guidelines for Setting Bond Amounts." This Directive provided for an interim evaluation to modify these guidelines if needed. A new Directive was issued on January 14, 1991, to modify these guidelines.

3. ACTION

- A. The amount of a bond shall be set by utilizing information on the bond application prescribed in Section 113.12, Customs Regulations (CR), in conjunction with the criteria set forth in Section 113.13 CR, and the guidelines attached to this Directive.
- B. The purpose of the bond is to protect the revenue and ensure compliance. Examples include redelivery of merchandise, marking, proper record-keeping, etc. However, it is not Customs intent to require bond amounts which unnecessarily put an excessive burden on a person or firm, or place them in an impossible situation.
- C. The process of setting bond amounts is straightforward in most situations, but in others, judgment and discretion are necessary.

4. RESPONSIBILITIES

District and Area Directors are responsible for following these guidelines within their jurisdiction and making this Directive available to the public. Regional Commissioners are responsible for seeing that the guidelines are applied consistently within their respective regions.

5. SUPERSEDES

This Directive supersedes Customs Directive 3510-03, "Revised Specific Monetary Guidelines for Setting Bond Amounts," issue date January 14, 1991.

Assistant Commissioner
Office of Commercial Operations

Attachment

Distribution:

- R-01 Regional Commissioners
- F-01 District/Area Directors
- F-02 Port Directors
- G-07 All Entry Personnel
- G-19 All Customs Inspectors
- G-20 All Import Specialists

Guidelines for Determining Amounts of Bonds

INTRODUCTION

To require excessive security where it serves no valid purpose places an unnecessary burden on international trade and commerce. Judgment and discretion are important ingredients in the process of setting bond amounts. While discretion is an important aspect in setting bond amounts, the principles of national uniformity or standardization must also be followed regardless of the particular technique or formula used to determine bond amount. Setting the amount of a bond must not be an arbitrary action.

Since all districts are directed to use the same criteria to set bond amounts, a continuous bond in the amount approved by one district shall be honored by all districts unless any district director is aware that either extraordinary circumstances or a greater risk to the government is involved. When such extenuating circumstances are involved, the district director with such knowledge shall contact the district where the bond is filed and convey the supporting facts so that appropriate action, if required, can be taken. For example: When the amount of a continuous bond does not cover the duty on a particular shipment and the district director suspects that a greater risk to the government is involved, the district director shall:

1. secure, at the time of release, deposit of the estimated duty due on the shipment, or
2. request a single entry bond for that shipment, or
3. request that a new continuous bond in a higher amount be filed.

The district director should use discretion in situations where an importer infrequently imports high value shipments and the amount of the continuous bond does not cover the duty on a particular shipment. When a single entry bond is requested in these circumstances, the bond limit of liability may be for the total amount of duty, taxes and fees only.

When a firm conducts business in more than one district, setting and maintaining adequate bond coverage must be a collaborative effort. This effort will become smoother as more definitive data related to bonds and risk of loss or non-compliance become available from the ACS modules which interact with the bond module.

Activity 1 - Importer or Broker - Continuous

The bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given. The non-

discretionary bond amount minimum is \$50,000. To assist the district director in fixing the limit of liability amount, the following formula shall be used.

None to \$1,000,000 duties and taxes - the bond limit of liability amount shall be fixed in multiples of \$10,000 nearest to 10 percent of duties, taxes and fees paid by the importer or broker acting as importer of record during the calendar year preceding the date of the application.

Over \$1,000,000 duties and taxes - the bond limit of liability amount shall be fixed in multiples of \$100,000 nearest to 10 percent of duties, taxes and fees paid by an importer or broker acting as importer of record during the calendar year preceding the date of the application.

In either of these two categories a bond may be demanded with a limit of liability amount greater than that computed using this formula, provided sufficient evidence of high risk is on-hand to support the higher amount.

Bond amounts computed with this 10 percent formula also apply to importations of restricted merchandise unless specific instructions issued mandate otherwise.

If no imports were made during the preceding calendar year, the bond limit of liability amount will be fixed based on the duties, taxes and fees which the applicant estimates will accrue on imports during the calendar year, provided that the district director is satisfied with the accuracy of the estimate. In no event shall the limit of liability amount of any continuous Activity Code 1 bond be less than \$50,000.

However, when little or no duties, taxes, and fees are involved and the \$50,000 bond minimum amount is not deemed sufficient, as an option, the bond limit of liability amount may be fixed at one-half of 1 percent of the value of importations applicable to an annual period.

Activity 1 - Importer or Broker - Single Transaction

- a. Generally, a single transaction, Activity Code 1, Importer or Broker bond (for a consumption entry, immediate delivery, to cover articles entered or withdrawn from a warehouse, etc.) will be executed in an amount not less than the total entered value plus all duties, taxes, and fees which apply, unless the merchandise being imported falls into one of the following categories. In these cases, the bond will be executed in an amount which is not less than three times the total entered value of the merchandise.
 1. **MERCHANDISE SUBJECT TO OTHER AGENCY REQUIREMENTS WHERE FAILURE TO REDELIVER COULD POSE A THREAT TO THE PUBLIC HEALTH AND SAFETY**
 - A) Food and Drug Administration (FDA) - All

- B) Environmental Protection Agency (EPA) - All
- C) Bureau of Alcohol, Tobacco and Firearms (BATF) - Alcoholic Beverages and Distilled Spirits Only
- D) Consumer Products Safety Commission (CPSC) - Toys and Fireworks only if sampled by Customs for CPSC testing
- E) Department of Agriculture, Agricultural Marketing Service (AMS) - Subject to marketing orders
- F) Federal Communications Commission (FCC) - All
- G) Toxic Substances Control Act (TOSCA) - All

2. ALL MERCHANDISE SUBJECT TO QUOTA AND/OR VISA REQUIREMENTS

In cases in which the entry includes merchandise which falls into the above categories, and merchandise which does not, the district director may set the bond amount equal to three times the total entered value of the merchandise which falls into the specified categories, plus the total entered value and all duties, taxes, and fees which apply, for the remainder of the merchandise.

In addition, the district director may set the single transaction bond amount at 10 percent of the total entered value for unconditionally free merchandise, which is not subject to the above categories.

The district director has the authority to accept a single transaction bond unsecured by surety or other means for an entry after making a potential risk assessment (for example, an entry with a total entered value of \$10,000 or less with no revenue implications, no other agency requirements, and no chance of requiring redelivery). Each case should be determined individually; however, continuous bonds without surety or other security are not acceptable. In such individual cases, the importer will be required to execute the bond in an amount equal to the value of the merchandise being imported, unless the district director deems a greater or lesser amount is necessary to accomplish the purpose for which the bond is given. If the importer defaults on any of the bond conditions, liquidated damages will be assessed in accordance with Subpart G, Part 113 CR.

- b. When the bond is given to cover articles for exhibition, the bond limit of liability amount shall be fixed in an amount equal to the estimated duties, as determined at the time of entry. If the commodity would otherwise be free of duty, the bond liability amount shall include one times the merchandise processing fee, or \$100, whichever is greater, if MPF is applicable.

- c. When the bond is for a trade fair operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given.
- d. When the bond is for a temporary importation, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to protect the revenue, but not less than an amount equal to double the duties which it is estimated would accrue had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders, motion picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the bond limit of liability amount shall be 110 percent of the estimated duties. Taxes and special duties (for example, IR taxes, antidumping and countervailing duties, etc.) shall be taken into account in all computations.

If the commodity would otherwise be free of duty, the bond liability amount shall include one times the merchandise processing fee or \$100, whichever is greater, if MPF is applicable.

- e. When the bond is to secure the payment of overtime services requested by or on behalf of parties in interest, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to secure the payment of the amount due.
- f. When the bond is for the importation of flammable fabrics, the bond limit of liability shall be fixed in an amount equal to triple the value of the merchandise.
- g. When the bond is for the conditionally free withdrawal of distilled spirits (including alcohol), wines, or beers for supplies of fishing vessels, the bond limit of liability shall be fixed in an amount equal to the duties, taxes, and fees that would have been assessed had the supplies been regularly entered or withdrawn for consumption.
- h. When the bond is for entry of merchandise found or believed by the U.S. International Trade Commission to involve unfair practices or methods of competition, the bond limit of liability amount shall be fixed in an amount determined by that Commission.
- i. When the bond is for the actual owner whose declaration has been filed pursuant to section 485(d), Tariff Act of 1930, as amended (19 USC 1485(d)), the bond limit of liability amount shall be fixed in an amount either equal to the amount of the single transaction bond related to the entry, or if the bond related to the entry was a continuous bond, in an amount equal to the amount a single transaction bond would have been.

Activity Ia - Drawback Payment Refunds Continuous

When the bond is for accelerated payment of drawback, the bond limit of liability amount shall be fixed in an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during an annual period.

When the bond is for drawback claims using the exporter's summary procedure the bond limit of liability amount shall be fixed in an amount equal to 25 percent of the drawback claimed on entries filed by the principal (exporter-claimant) during an annual period.

When the bond is for both accelerated payment of drawback and claims using the exporter's summary procedure the bond limit of liability amount shall be fixed at an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during an annual period, or much larger amount the district director may deem necessary to afford ample protection of the revenue.

Activity 1a - Drawback Payment Refunds - Single Transaction

The bond limit of liability amount for accelerated payment of drawback shall be equal to the amount of accelerated payment to be received on the entry covered.

Activity 2 - Custodian of Bonded Merchandise

When the bond is for a bonded warehouse operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000 on each building or area covered by the bond. Note: In determining the bond amount for a warehouse which will be used to store distilled spirits, consideration must be given to the fact that the warehouse proprietor is liable for both the duty and tax on distilled spirits missing from the warehouse. When the bond is for the carriage of merchandise by common carriers, contract carriers, and freight forwarders, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000 in the case of motor and air carriers and in an amount not less than \$50,000 in the case of other carriers.

When the bond is for a container station operator, independent of either the importing carrier or bonded carrier, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a Centralized Examination Station (CES), the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a customhouse cartage or lighterage operation, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000.

When the bond is for a private carrier operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given.

When the bond is to secure the payment of overtime services requested by or on behalf of parties in interest, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to secure the payment of the amount due.

When the bond is for more than one kind of custodial operation, the bond limit of liability shall be fixed in an amount large enough to cover the combined operations. For instance, if a bonded warehouse and container station are covered under the same bond, the bond limit of liability shall be fixed in an amount the district director may deem necessary to accomplish the purposes for which the bond is given, but not less than \$25,000, plus \$25,000 per warehouse building.

Activity 3 - International Carrier - Continuous

When the bond is to secure activities, including requested overtime services, related to the entry or clearance of vessels, vehicles, or aircraft which arrive directly or indirectly from any place outside the customs territory of the United States, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$25,000. In addition, the district director has full responsibility for setting bond limits at higher amounts, up to \$250,000 as deemed necessary, for carriers with past narcotics violations and/or those originating from high-risk drug areas.

Activity 3 - International Carrier - Single Transaction

When the bond is to secure activities, including requested overtime services, related to the entry or clearance of a vessel, vehicle, or aircraft which arrives directly or indirectly from any place outside the customs territory of the United States, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given but not less than \$25,000. If the bond is to secure the landing in foreign ports, by a vessel of less than 500 net tons, of spirits, wines, or other alcoholic beverages not covered by a certificate of shipment, the bond limit of liability amount shall be fixed in an amount equal to double the estimated duty and taxes.

(CHANGE 1/AUG '93)

Activity 3a - Instruments of International Traffic

When the bond is for the control of instruments of international traffic required by Section 10.41a CR and/or clearance of serially numbered substantial holders or outer containers required in Section 10.41b CR, the bond limit of liability shall be fixed at \$20,000, or such larger amount the district director deems necessary to accomplish the purpose for which the bond is given.

Activity 4 - Foreign Trade Zone Operator - Continuous

When the bond is for a Foreign Trade Zone operator, the bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given, but not less than \$50,000.

Activity 5 - Public Gauger - Continuous

The bond limit of liability amount shall be fixed in an amount the district director may deem necessary to accomplish the purpose for which the bond is given. Under normal circumstances, the bond limit of liability for Public Gauger and Commercial Laboratory companies who have not been the subject of adverse Customs actions will be based on the number of approved or accredited sites operated by that gauger or laboratory company.

Laboratories or gaugers operating one site are considered small and the bond limit of liability should be not less than \$20,000. Companies operating two to ten sites are considered medium in size and the bond limit of liability should be from \$30,000 to \$50,000. Those companies operating more than ten sites are considered large in size and the bond limit of liability should be from \$100,000 to \$120,000.

Activity 6 - Wool & Fur Products Labeling Acts and Fiber Products Identification Act Importations - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to two times the value of the merchandise involved and duty thereon.

Activity 7 - Bill of Lading - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to one and one-half times the invoice value.

Activity 8 - Detention of Copyrighted Material – Single Transaction

The bond limit of liability amount shall be fixed in an amount appropriate to hold the United States and its employees, and the importer or owner, harmless from any material depreciation of articles detained as alleged to be infringing and from any loss caused by the detention of articles found not to be infringing. Generally, 120 percent of the value of the articles, as set forth in the entry, plus the estimated duties, taxes and fees will be appropriate, but the district director may raise or lower the amount as necessary.

Activity 9 - Neutrality - Single Transaction

The bond limit of liability amount shall be fixed in an amount equal to double the value of the vessel and cargo on board.

Activity 10 - Court Costs for Condemned Goods - Single Transaction

The bond limit of liability amount shall be fixed in an amount of \$5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than \$250.

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 4350-021A, 1/28/02)**

ORIGINATING OFFICE: OI:CM

DISTRIBUTION: H-02, G-03, OIN, CMC

CUSTOMS DIRECTIVE NO: 4350-021

DATE: JULY 12, 1995

SUBJECT: AVAILABILITY & ACCESSIBILITY OF FINANCIAL DATABASE
INFORMATION

1 PURPOSE. To enable Customs Special Agents and Customs Investigators to receive Financial Data Base (FDB) information from the (b)(7)(E) during periods when direct access may not be possible.

2 POLICY. The Communications Management Division (CMD) has the authority and the responsibility to disseminate FDB information. (b)(7)(E)

3 AUTHORITIES/REFERENCES. 31 CFR Part 103; Dissemination Guidelines for FDB: INV-2-06-E:OE:SD:C:P EMF (7-14-86).

4 DEFINITIONS.

4.1 CMIR: Currency and Monetary Instruments Report

4.2 CTR : Currency Transaction Report

4.3 FBA : Federal Banking Act

4.4 IDN: I. D. Number

4.5 TECS: Treasury Enforcement Communications System

5 RESPONSIBILITIES.

5.1 The Communications Management Division has overall responsibility for policy oversight.

5.2 The (b)(7)(E) operations manager has overall responsibility for the implementation of this directive.

6 PROCEDURES. (b)(7)(E)

6.1 (b)(7)(E)

6.2 (b)(7)(E)

(b)(7)(E)
Enforcement Specialists will honor requests for FDB data only from Customs Special Agents or Investigators.

6.3 Individuals who access the FDB must observe the following procedures. Both investigative and Customs National Law Enforcement Communications Center personnel must ensure that Treasury and Customs procedures and/or regulations are strictly followed.

6.4 These procedures should be considered inclusive of all situations concerning release of FDB data by (b)(7)(E) personnel. If an occasion arises that is not covered by this directive the matter should be referred to the Director, Smuggling Investigations Division for resolution.

6.5 FDB Requests

6.5.1 Exigent Requests. Special Agents should request FDB data from (b)(7)(E) only when they are unable to obtain it via their local office. To limit the demands placed on (b)(7)(E) for lower priority actions, FDB requests should be made sparingly and only under exigent circumstances. The agent in the field should first attempt to obtain such information from (b)(7)(E) by telephone before contact is made by radio. Access to FDB via Customs National Law Enforcement Communications Center is essentially intended for use after regular duty hours, on weekends and holidays, and in situations in which it is not feasible to contact an Investigations field office.

6.5.2 Requests by Radio. Investigations officers are encouraged to make all requests for FDB records via telephone. The use of cellular telephones should be avoided when contacting (b)(7)(E). If requests are made by radio, the (b)(7)(E) mode must be used in all instances regarding FDB whether calling (b)(7)(E) or local offices.

6.5.3 Verification and Logging of FDB Requests at (b)(7)(E). The (b)(7)(E) or other system shall contain a log of all FDB requests and include at least the following information:

- (b)(7)(E)

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If the SECTOR operator is unsure of the requestor's identity, the request should be referred to the supervisor on duty for appropriate action.

6.6 Dissemination of FDB Information to Other Agencies

6.6.1 By Customs Special Agents or Investigators. Criminal investigators may not routinely disseminate FDB information to other agencies. Treasury Department dissemination guidelines for Bank Secrecy Act Information are dated 7-14- 86 (see AUTHORITIES).

6.6.2 By Customs National Law Enforcement Communications Center Personnel.

(b)(7)(E) personnel are permitted to release FDB data only to (b)(7)(E)

7 MEASUREMENT.

(b)(7)(E) logs and reports of FDB transactions (and related requests) will be reviewed to measure compliance.

Commissioner of Customs

Attachment

ATTACHMENT

(b)(7)(E) COMMUNICATIONS MESSAGE SECURITY AND CONTROL

1 The integrity of information processed through the (b)(7)(E) must be protected from unauthorized access, distribution and disclosure.

2 The control and release of () national security information, () data stored in the Treasury Enforcement Communication System (TECS) or () sensitive information contained in other automated systems accesses by (b)(7)(E) personnel will be made in accordance with and subject to the provisions of this document.

3 (b)(7)(E)

4 Communications personnel will be responsible for safeguarding the receipt, transmission, dissemination and storage of all enforcement data handled at SECTOR. Personnel who handle classified information must be fully familiar with pertinent National Security Agency (NSA), Treasury and Customs regulations when processing voice and data traffic. This includes classified material involving (b)(7)(E) or other activities.

5 PROCEDURES.

5.1 Prior to releasing any level of restricted information, the (b)(7)(E) Enforcement Specialist will confirm the identity of the requesting party by asking for badge number or user identification number and checking that data against the (b)(7)(E).

5.2 Unless the data can be transmitted to the requesting party by way of an encrypted radio transmission, all level () information is to be transmitted by telephone.

5.3 Restricted Level () information will not be provided to anyone that is not a member of the Office to which the record is restricted (IA, IC, OI, etc.).

5.4 Restricted Level () information may be provided to any Customs Officer after confirmation that he/she is a valid user of TECS.

5.5 Restricted Level () information may be provided to anyone after confirmation that he/she is a valid TECS user.

5.6 When directed to do so by appropriate management officials, Communications personnel will expeditiously advise designated Customs officials and/or offices of any (b)(7)(E) resulting from inquiries by non-Treasury law enforcement agencies.

5.7 Archive search requests should be referred to the TECS II National Program Manager, Special Investigations Division, Office of Investigative Programs, Office of Investigations, at Customs Headquarters.

5.8 All disclosures to non-Treasury Law Enforcement agencies shall be recorded in the (b)(7)(E)

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: IA:S:0

DISTRIBUTION: G-24

CUSTOMS DIRECTIVE NO. 1450-009

OLD NUMBER: 1400-10

ISSUE DATE: January 6, 1988

SUBJECT: RELEASE OF OFFICE OF INTERNAL AFFAIRS RECORDS

1. PURPOSE

This Customs Directive sets forth procedures for handling Office of Internal Affairs records. It also establishes responsibility for release of the various records generated by that office.

2. BACKGROUND

The principal categories of records generated by the Office of Internal Affairs are integrity investigations, background investigations, audits, proactive programs and management inspections. Copies of audit reports are routinely retained by the Office of Internal Affairs field offices while the other records noted above are permanently retained at Headquarters. Even though they are Office of Internal Affairs records, integrity investigations, background investigations, audits, proactive programs and management inspections are routinely forwarded to Principal Field Officers for review or action and may, therefore, be in the custody of field offices for various periods of time. It is necessary to formalize procedures for handling Office of Internal Affairs records as well as requests for access to those records and to fix responsibility for releasing them.

3. ACTION

A. Safeguarding

Office of Internal Affairs records may or may not reflect a control marking, e.g., 'Official Use Only.' However, they frequently contain sensitive information. All Office of Internal Affairs records shall be handled, transmitted and stored in a manner which will not make them accessible to the public or unauthorized persons.

B. Release of Records

Integrity Investigations

Integrity investigations that are in the temporary custody of Principal Field officers to serve as the basis for proposals of administrative action will be

released to the employee or the employee's representative by the Principal Field Officer subject to the procedures contained in Policy Statement 1400-01.

That Policy Statement provides for full disclosure of integrity investigations at the time administrative action is proposed, except for the following categories of information which may be withheld when the need to protect the information clearly outweighs other considerations:

- (1) Confidential sources and information furnished only by confidential sources
- (2) Information which might endanger the life or physical safety of law enforcement personnel
- (3) Classified information
- (4) Information which would reveal investigative techniques and procedures
- (5) Internal documents, i.e., intra and internal agency communications containing opinions, advice, etc.
- (6) Information which might interfere with an ongoing investigation
- (7) Information which would constitute an unwarranted invasion of an individual's privacy

In addition, the Policy Statement calls for the Office of Internal Affairs to mark those portions of the integrity investigations which may warrant withholding by placing the symbol (E) following the specific paragraph or sentence. Portions so marked shall not be released by Labor Relations or Employee Relations without consultation with and approval from the local Office of Internal Affairs. All disputes over release of information so marked shall be referred to the Headquarters Office of Security for resolution with Headquarters Employee Relations Program Branch or Labor Relations.

Only under the circumstances dictated above may any field personnel, either within or outside the Office of Internal Affairs, release integrity investigations. All other requests for access to investigations shall be referred to Headquarters, Office of Internal Affairs. Disclosures of those records shall be made by Headquarters.

Background Investigations

Although background investigations are also furnished to Principal Field Officers when a suitability determination is required, neither the report of investigation nor its contents should be disseminated except within established, administrative channels. All disclosures of background investigations shall be made by Headquarters Office of Internal Affairs.

Audits and Proactive Programs

Copies of audit reports and proactive reports are retained in Office of Internal Affairs field offices. Headquarters is, however, the official repository for all audit and proactive reports. These reports may be provided to Principal Field Officers for their review. Any dissemination outside established internal, administrative channels shall be made only by Headquarters, Office of Internal Affairs.

Management Inspections

Management Inspection reports are permanently retained at Headquarters, although, they are provided to Principal Field Officers for their administrative use. While management inspections are in field custody, no dissemination will be made except that required for administrative review. All disclosures shall be made by Headquarters, Office of Internal Affairs.

Requests by the General Accounting Office (GAO) for access to office of Internal Affairs records shall be referred to Headquarters, Office of Internal Affairs. The exemptions cited above, regarding integrity investigations also are applicable to records requested by GAO. Disclosures of Office of Internal Affairs records to GAO shall be made by Headquarters, Office of Internal Affairs, pursuant to the provisions of Office of Management and Budget Bulletin No. 80-14, dated March 23, 1981.

The procedures noted above do not preclude routine administrative use of the Internal Affairs records cited. Other than the exceptions noted above, all disclosures of Office of Internal Affairs records shall be made by Headquarters, Office of Internal Affairs. The Office of Security, Personnel Security Division, will prepare records for disclosure, however, the decision to disclose or withhold the record rests with the head of the Office of Internal Affairs with functional responsibility for the record.

All appeals under the Freedom of Information Act or the Privacy Act will be handled by the Freedom of Information/Privacy Branch.

This Customs Directive supersedes Manual Supplement 1400-04 issued on August 12, 1981, entitled "Release of Office of Management Integrity Records."

Commissioner of Customs

CUSTOMS DIRECTIVE

***(NOTE: THIS DIRECTIVE IS SUPERSEDED BY CD 1420-010, 11/5/93)**

ORIGINATING OFFICE: IA:I

DISTRIBUTION: G-25

NEW NUMBER: 099 1420-006

OLD NUMBER: 1420-06

ISSUE DATE: November 5, 1990

SUBJECT: REPORTS OF INVESTIGATION ISSUED BY THE OFFICE OF
INTERNAL AFFAIRS

1. PURPOSE

The purpose of this issuance is to advise all principal field officers of their responsibility in responding to reports of investigation transmitted by the Office of Internal Affairs.

2. BACKGROUND

The Office of Internal Affairs is responsible for ensuring compliance with Servicewide programs, policies, and procedures pertaining to security activities and the maintenance of high standards of honesty, integrity, and suitability of Customs employees.

Based on the findings of the office of Internal Affairs, principal field officers have the authority and responsibility to take timely administrative action to promote the integrity and the efficiency of the Service.

3. ACTION/RESPONSIBILITY

Upon completion of an investigation, the Assistant Commissioner (Internal Affairs) or the Regional Director (Internal Affairs), will forward the original report of investigation to the concerned principal field officer having administrative responsibility for the matter investigated.

The principal field officers shall, (b)(2) & (b)(7)(E) issue written notice to the employee detailing any proposed administrative action. Simultaneously, a written proposed action report will be submitted to the Commissioner through the Assistant Commissioner (Internal Affairs).

(b)(2) & (b)(7)(E), the principal field officer will issue written notice to the employee detailing what and when final

administrative action will be taken, and when that action will take effect. Simultaneously, the principal field officer will notify the Commissioner, through the Assistant Commissioner (Internal Affairs), of such action.

When due to extraordinary circumstances these time constraints cannot be met, principal field officers will submit, within the same prescribed time constraints, a written report to the Commissioner through the Assistant Commissioner (Internal Affairs), detailing the reason for the delay. (b)(2) & (b)(7)(E)

4. SUPERSEDED MATERIAL

This Customs Directive supersedes Customs Directive 1420-04 issued on September 8, 1987, entitled "Reports of Investigation Issued by the Office of Internal Affairs."

(signed)
Commissioner of Customs

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: IA:IP

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 4510-019A

DATE: JULY 23, 2002

SUPERSEDES: 4510-019, 3/31/98

REVIEW DATE: JULY 2005

SUBJECT: MANAGEMENT OF CRITICAL INCIDENTS

1. PURPOSE.

1.1 To establish guidelines concerning responses to the aftermath of critical incidents involving U.S. Customs Service employees.

1.2 A *critical incident* is any event related to official acts (both on duty and off duty) that result in serious bodily injury or death to a Customs employee or another party. *Serious bodily injury* is considered to be any injury that is so severe it requires hospitalization for more than 24 hours; results in a fracture of any bone (except simple fractures of fingers, toes, or nose); causes severe hemorrhages, nerve, muscle, or tendon damage; or involves any internal organ or any serious burns.

2. POLICY. Critical incidents shall be reported to the Office of Internal Affairs (IA) and the Office of Investigations (OI) as soon as possible. An investigation or fact finding review will be conducted for all critical incidents. IA is the responsible Customs entity for investigation of all critical incidents. The Assistant Commissioner IA (AC/IA) will determine the appropriate level of review. In the event that IA determines that a case should be forwarded to OI, the AC/IA will consult with the AC/OI prior to the case being forwarded for review.

3. BACKGROUND.

3.1 Legal Issues. Concern over potential legal problems may add to the trauma associated with a critical incident. The following is a brief summary of the legal issues attendant to a critical incident:

3.1.1 Local law enforcement agencies have investigative jurisdiction for critical incidents occurring within their territories. Such jurisdiction does not diminish because one of the participants is a federal employee. Accordingly, an employee involved in a critical incident should anticipate an investigation by local authorities. (*Note:* Employees involved in critical incidents enjoy the same protections afforded to other citizens under the Constitution of the United States. They may be interviewed by local police or subpoenaed to a local grand jury or court proceeding but cannot be compelled to make self-incriminating statements to local authorities concerning the incident. Like other

citizens, they enjoy the rights of due process, representation by counsel, and protection against unreasonable searches and seizures.)

3.1.2 Assistant United States Attorneys (AUSAs) and attorneys of the Office of Chief Counsel, U.S. Customs Service, are *not authorized* to provide legal advice to Customs employees concerning their potential personal civil and criminal liability as a result of a critical incident.

3.1.3 Attorney-client privilege.

3.1.3.1 AUSAs are *not authorized* to enter into attorney-client relationships with Customs employees unless and until representation is approved by an official of the Civil Division or other appropriate litigating division at the Department of Justice (DOJ) as referenced in 28 CFR 50.15. Prior to such authorization, AUSAs are permitted to represent only the interests of the United States Government. Therefore, because an attorney-client privilege does not exist at the scene of a critical incident, any statement made by a Customs employee to an AUSA would not be a privileged communication and might be subject to disclosure.

3.1.3.2 The attorney-client privilege is a legal rule that protects only communications made between clients and their attorneys. So employees involved in a critical incident are cautioned about discussing their actions and the incident with union representatives as those communications might subsequently be discovered in criminal or civil litigation. Federal labor law recognizes that a right to confidentiality exists regarding conversations between bargaining unit employees and union representatives in the course of representing employees in matters which may lead to administrative discipline.

3.1.3.3 Attorneys for the Office of Chief Counsel (including attorneys in all Associate Chief Counsel offices) represent the interests of the U.S. Customs Service and the Department of the Treasury at all times. Unlike AUSAs, who may ultimately be authorized to provide representation to individual Customs employees, the representation provided by Customs Chief Counsel attorneys is only with regard to furthering the policies and programs of the Customs Service and the Department of the Treasury. Chief Counsel attorneys do not have authority to enter into attorney-client relationships with Customs employees to provide representation concerning the employees' personal interests. Thus, the attorney-client privilege does not attach to any statements made to Chief Counsel attorneys by Customs employees involved in critical incidents.

3.1.4 DOJ representation.

3.1.4.1 The DOJ strictly defines the term "critical incident" as one in which there has been the use of force by a federal employee in the line of duty which results in death or serious bodily injury. For the DOJ, the phrase "serious bodily injury" generally means an injury which is so severe as to require hospitalization of the alleged victim.

3.1.4.2 A Customs employee involved in a critical incident where use of force is an issue may be entitled to receive DOJ representation. In order for a Customs employee to receive personal representation by the DOJ, the acts giving rise to the suit or the state prosecution must have occurred within the scope of employment and must appear to be in the interests of the United States. To receive consideration for DOJ representation, Customs officers and employees must make formal written request for such representation through local Customs Counsel, including copies of summonses or complaints as applicable. Of course, a Customs employee always has the right to hire a private attorney in lieu of seeking DOJ representation.

3.1.4.3 The Attorney General has authorized representation of employees by private counsel at DOJ expense in the immediate aftermath of line-of-duty critical incidents where use of force is an issue. Private counsel will provide personal representation for a subject of a critical incident investigation only on a temporary basis while the DOJ Civil Division, Torts Branch, Constitutional and Specialized Torts Staff (Constitutional Torts Staff) processes a request for representation.

3.1.4.4 At the time of the critical incident, the supervisor of the affected employee will contact the appropriate field Associate/Assistant Chief Counsel (ACC) office to request representation. The field ACC office will present the representation request to the DOJ. If emergency representation is approved, the DOJ and the appropriate ACC office will coordinate the provisions of legal representation for the affected employee. The DOJ will make an initial determination of scope of employment based upon the facts presented by the agency. In addition, the DOJ will consider whether a federal civil rights investigation has developed evidence, in the opinion of the Civil Rights Division, indicating there is potential prosecutive merit. If emergency representation is approved, the agency will contact a previously approved private attorney to coordinate representation.

4. AUTHORITIES/REFERENCES. Treasury Order 105-12, 28 CFR 50.15, "Policy on the Use of Force," October 17, 1995; CD 1440-021A; CD 1440-023; CIS HB 4500-01A, 12/2001, Firearms and Use of Force Handbook; Memorandum from the Office of the Assistant Attorney General, dated August 21, 2000, regarding Provisions of Emergency, Interim Legal Representation of Federal Law Enforcement Officials Involved in "Critical Incidents."

5. RESPONSIBILITIES.

5.1 The AC/IA will be responsible for determining the appropriate level of review and investigation of all critical incidents as defined in section 2.1. If necessary, the AC/IA will make the determination concerning the proper level of review after consulting with the AC/OI.

5.2 IA will be responsible for coordinating with and rendering support to local

investigative authorities in critical incidents. Such coordination will include conducting an immediate situational analysis of the incident and rendering investigative assistance as requested by the local authority. If there is no IA presence at the scene of a critical incident, this responsibility will fall to the ranking OI special agent. The ranking OI special agent will be responsible for consulting with the responding IA special agent as needed.

5.3 Customs employees are required to immediately report the occurrence of all critical incidents which occurred during any:

5.3.1 Law enforcement activity (on duty or off duty) in which a Customs employee is either participating or is present.

5.3.2 Non-enforcement (line of duty) activity in which a Customs employee is either participating or is present (on or off duty).

Note: Automobile, marine vessel, aviation, and training incidents or accidents (as well as intentional or accidental firearms discharges) resulting in serious injury or death are included under this issuance. Serious injury to or the death of any person (i.e., Customs employee, other law enforcement officer, violator, civilian, or any other person) occurring during any incident where a Customs employee is either participating in or immediately present (line of duty) triggers the reporting requirement under this policy. Air and Marine Branch Chiefs will implement local accident plans for all critical incidents as defined in this directive.

5.4 The supervisor which was notified of the occurrence of a critical incident must immediately report the information to IA.

5.5 Employees either directly or indirectly involved in critical incidents are strongly encouraged to seek professional assistance through the Customs Employee Assistance Program (EAP) because most law enforcement officers and other employees involved in shootings or other critical incidents experience moderate to severe trauma reactions immediately after the event. Supervisors, a very important component of the EAP, may contact the EAP counselors for consultation related to these issues. An employee seeking assistance from an EAP counselor will be informed, prior to their meeting, that their conversation might not be privileged and that information provided to the counselor might be discovered in a subsequent civil or criminal case.

6. PROCEDURES.

6.1 Ranking Employee on the Scene. The ranking employee on the scene of a critical incident will immediately report the incident to the National Law Enforcement Communications Center (NLECC) at (b)(7)(E) [REDACTED]. If the ranking employee is involved in the incident and is unable to make notification due to an incapacitating injury, the next highest ranking Customs employee on the scene is obliged to do so.

6.2 NLECC. The NLECC will coordinate other assistance (e.g., directions to incident site, etc.) as needed and notify: state and local law enforcement authorities and emergency medical response teams (e.g., ambulance, fire department) as appropriate; IA area duty agent; OI area duty agent; involved employee's first-line supervisor; involved employee's second-line supervisor; Commissioner's Situation Room; Director, SAFE Division, Office of Human Resources Management, Headquarters.

6.3 First-line supervisor. First-line supervisors or their designees will personally respond to the scene of the incident as soon as possible after notification. The first-line supervisor will immediately report the facts and circumstances of the incident to the principal field officer and other personnel in the chain of command as appropriate. In addition, they will notify the EAP, which may be contacted on a 24-hour basis through the NLECC. In incidents related to undercover operations, the local psychological coordinator will also be notified by the first line supervisor.

6.4 Principal Field Officers. Principal field officers will immediately report the facts and circumstances of the incident to their Assistant Commissioners. This notification will be followed up by a Significant Activity Report and a Commissioner's Situation Room Report.

6.5 Customs employees. Customs employees are responsible for demonstrating good judgment during and after any critical incident. The guidance below is provided to ensure an appropriate response and uniform follow-up to these incidents. As applicable, the following will apply:

6.5.1 Customs employees will take steps necessary to ensure both personal and public safety. They will determine the physical condition of all injured parties and render appropriate first aid or request emergency medical aid.

6.5.2 The ranking Customs employee at the scene of a critical incident will ensure notification of local law enforcement authorities. Early liaison (including informing authorities of Customs policy regarding statements) with other agencies having investigative jurisdiction will reduce possible duplication of effort and jurisdictional conflicts. (*Note:* Customs is obligated to fully cooperate with any investigative agency in a manner, time, and place that is mutually agreed upon.)

6.5.3 Customs employees will ensure that employees directly involved in the incident are removed from the scene as soon as practical to the nearest neutral off-scene law enforcement facility. This action will be accomplished by an on scene supervisor (or senior personnel) with the coordination of the local or state authority.

6.5.4 Customs employees (except as provided in 6.5.5-6.5.6) will not discuss the incident with anyone other than supervisory personnel conducting the initial incident inquiry or entities having formal investigative jurisdiction (i.e., IA, OI, and the state or local authority). No aspects of the incident will be discussed with members of the

media. However, employees may exercise their right to union representation or legal counsel as appropriate.

6.5.5 In critical incidents involving shootings, the involved Customs employee and his or her supervisor must follow the procedures set forth in the U.S. Customs Service Firearms and Use of Force Handbook (CIS HB 4500-01A), December 2001.

6.5.6 Customs employees *may submit* to an interview or provide a detailed written report covering those facts germane to the incident upon formal request by competent authority having independent jurisdictional responsibility. *However, prior to complying with any such request, Customs employees will be afforded reasonable time to regain composure, to be capable of understanding their rights.* Furthermore, it is Customs policy that no statements will be provided to outside agencies until the employees involved have had an opportunity to consult with counsel.

6.5.7 Customs employees will have a legal and professional responsibility to cooperate with other agencies should circumstances emanating from the incident continue to pose a real or potential threat to public safety (e.g., control of scene, hostage situation, flight of an armed suspect, etc.).

6.5.8 If a bargaining unit employee is to be interviewed by IA or OI concerning their involvement in a critical incident, the employee shall be advised of their right to a union representative prior to the interview. The interview will not be held until the employee has had a reasonable opportunity to secure union representation. Pursuant to Article 41 of the National Agreement, employees will be provided all applicable notices and rights.

6.5.9 Customs employees will ensure that, in all incidents wherein officers fire their weapons, those officers' firearms (needed for technical or ballistic examination) are secured and upon request turned over to the primary investigative authority. As in all cases where evidence is collected or retained, chain-of-custody documentation is to be completed.

6.5.10 Customs employees will be encouraged to personally contact their families as soon as possible after the incident. (*Note: All contact with the media—print, TV, or radio--will be handled by the principal field officers. Port Directors must coordinate all contact with the media with the Customs Management Center Public Affairs Officer. Field personnel are not authorized to submit to interviews or make statements to the media relative to the incident without the prior approval of the principal field officer. In addition, the names of employees involved in the incident will not be released to the media without approval of the principal field officer.*)

6.6 Processing the Scene.

6.6.1 The scene of any incident should be secured immediately for evidentiary and investigative purposes whenever possible. Agents from IA will be responsible for

processing the scene upon arrival. The IA agents will secure the scene, conduct liaison and relinquish all incident scenes to the designated investigative agency upon their arrival.

6.6.2 (b)(7)(E)

6.6.3 (b)(7)(E)

6.6.4 If IA's response to the scene of an OFO or OI critical incident will be significantly delayed, IA field managers will request assistance from OI field managers until IA agents reach the scene. OI agents will assist and coordinate with the IA team as requested, including securing the scene, conducting liaison and relinquishing all incident scenes to the designated agency upon their arrival. All requests for assistance from OI personnel will be coordinated through the appropriate OI supervisor.

6.6.5 Preservation of the scene should include:

6.6.5.1 Roping or taping off the incident scene.

6.6.5.2 Securing all Customs weapons that have been discharged for later ballistic comparison and technical examination. Exact position and configuration of the weapon should be immediately documented. The number of rounds in the weapon magazine or cylinder and the position of the slide and hammer should be documented. Customs weapons shall not be turned over to any other entity without the coordination of the IA.

6.6.5.3 Chain-of-custody documentation as related to evidence retained or relinquished.

6.6.5.4 Canvassing the general area to identify all possible witnesses.

Note: The attached Critical Incident Checklist may be used as a guide for notification of parties and securing and processing critical incident scenes.

7. MEASUREMENT. IA will compare the number of critical incidents reported to the number of critical incidents reviewed and investigated to determine compliance.

Commissioner of Customs

Attachment

Critical Incident Checklist

1. DO:

- 1.1.1 Verify the condition of all parties involved.
- 1.1.2 Verify that all necessary assistance is requested.
- 1.1.3 (b)(7)(E)
- 1.1.4 Establish a scene perimeter and secure it.
- 1.1.5 (b)(7)(E)
- 1.1.6 Maintain scene security and limit access.
- 1.1.7 Assign an agent to document scene access and activity.
- 1.1.8 Remove the involved officer from the scene.
- 1.1.9 Identify and isolate suspects and witnesses.
- 1.1.10 Notify the appropriate state or local agency.
- 1.1.11 Turn the scene over only to the designated investigative authority.

1.2 If officers are injured:

- 1.2.1 Assign an agent or other Customs employee to accompany them to the hospital.
- 1.2.2 Arrange for EAP or other assistance.

1.3 DO NOT:

- 1.3.1 Enter the scene unless absolutely necessary.
- 1.3.2 Allow unnecessary access regardless of rank.
- 1.3.3 Touch or move anything unless absolutely necessary.
- 1.3.4 Conduct an independent search for evidence.
- 1.3.5 Take the officer's firearm as evidence unless directed by investigative authority. (If taken, promptly replace the firearm.)
- 1.3.6 Release any information.
- 1.3.7 Leave the scene until properly relieved.
- 1.3.8 Conduct independent post-scene investigations.
- 1.3.9 Lose sight of your mission.
- 1.3.10 Forget safety of officers and other persons present.
- 1.3.11 Forget to maintain the protection of government property, and
- 1.3.12 Forget security of the scene.

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE HAS BEEN ABOLISHED BY OFFICE OF INVESTIGATIONS, 9/30/95)**

ORIGINATING OFFICE: E:IV

DISTRIBUTION: G-22

CUSTOMS DIRECTIVE NO: 1450-017

ISSUE DATE: May 4, 1993

SUBJECT: U.S. CUSTOMS SERVICE POLYGRAPH POLICY

1. PURPOSE

The purpose of this directive is to establish a unified polygraph program within the Customs Service which is within the criteria established by the Federal Inter-Agency Polygraph Committee.

2. BACKGROUND

The U.S. Customs Service Polygraph Program was established by directive in 1984 and placed under the direction of the Office of Internal Affairs (IA). In 1988, the program was transferred from IA to the Office of Enforcement (OE) until 1992, when the program was bifurcated and each office managed polygraph programs independent of one another. A review of polygraph usage by other Federal Law Enforcement agencies revealed that Customs is one of the few agencies that does not have central control of its polygraph program. This directive will reestablish a unified program more in line with the policies of other Federal Law Enforcement Agencies.







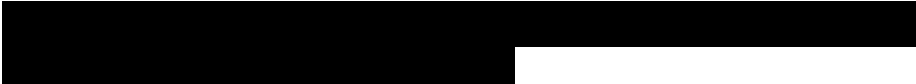



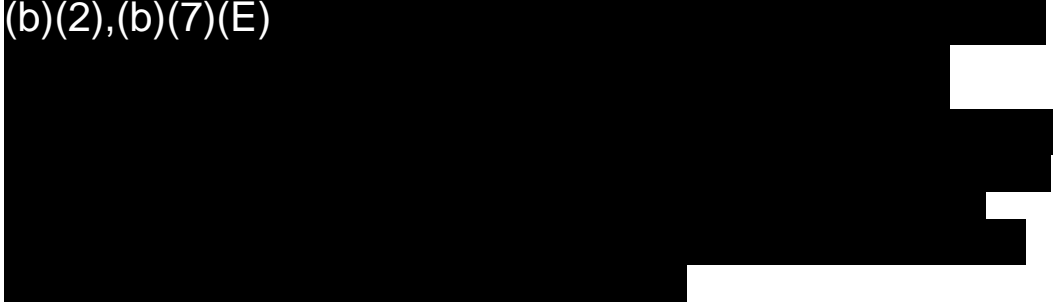
3. INTRODUCTION

The polygraph examination has been accepted by the U.S. Customs Service as a valuable investigative aid which can be utilized in all cases under its jurisdiction. Under the control of a competent and ethical examiner, the polygraph is highly reliable in detecting deception or verifying the truth in answers provided by a subject regarding a specific issue. The polygraph has proved very successful in the verification of information provided by Cooperating Individuals. Through its proper use, many otherwise incomplete investigations can be resolved with a resultant savings in man-hours, equipment and money. However, the polygraph cannot replace a proper and thorough investigation, and should only be used as a supplement to a comprehensive investigation.

4. DEFINITION

A. (b)(2),(b)(7)(E)

(b)(2),(b)(7)(E)



5. **AUTHORIZATION FOR CONDUCTING POLYGRAPH EXAMINATIONS**

- A. The following guidelines are provided regarding authorization for the conduct of polygraph examinations by the U.S. Customs Service:
- (1) Only the Assistant Commissioner, Office of Enforcement, Director, Office of investigative Programs, or the Director, Special Investigations Division, may authorize polygraph examinations for matters under the investigative jurisdiction of the Office of Enforcement. The Office of Enforcement shall not polygraph Customs employees without the approval of one of the officials designated in 5.A.(2) below.
 - (2) Only the Assistant Commissioner, Office of Internal Affairs, or the Director, Office of Professional Responsibility, may authorize polygraph examinations for investigative matters dealing with the internal security or integrity of the Customs Service. These matters include, but are not limited to, polygraph examinations of Customs employees.

- (3) All Customs polygraph examinations must be approved by one of the officials designated in 5.A.(1) or (2) above, prior to the examination being conducted. Requests for polygraph examinations will be made through supervisory channels and supervisors must concur that a polygraph exam is a necessary and appropriate step in the overall investigation. If the initial request and approval are verbal (telephonic), a written request must be submitted as soon as possible thereafter (within five (5) days).
- (4) The decision to utilize a polygraph examination in an investigation should be made with the awareness that the results of the examination might impact on a decision regarding subsequent judicial prosecution. Therefore, the U.S. Attorney's Office or appropriate prosecuting attorney's office should be consulted when the potential exists for criminal prosecution of subjects or witnesses involved in the investigation.
- (5) Polygraph examinations conducted as a cooperative service to other law enforcement agencies must be approved by one of the officials designated in 5.A.(1) or (2) above. A written request must be submitted through supervisory channels as discussed in 5.A.(3).
- (6) The use of polygraph examiners from outside the U.S. Customs Service shall NOT be authorized to administer exams in Customs investigations, except in special situations approved by the officials designated in 5.A.(1) or (2). In all such circumstances, the examiner must be from another Federal agency and meet standards equivalent to those of Customs examiners.
- (7) All requests for polygraph examination shall be submitted in writing and contain the following information: name of requestor; requesting office; date of request; telephone number of requestor; name of case agent; case number; subject's full name or CI#; subject's date of birth; subject's social security number; proposed date of examination; purpose of examination (specific issues to be addressed during exam); and U.S. Attorney information if applicable. The "Request for Polygraph Examination" form is provided as an attachment to this directive.
- (8) In all circumstances involving polygraph use by the Customs Service, including examinations administered by non-Customs examiners, a completed polygraph report shall be forwarded to the polygraph program manager through the Director, Special Investigations Division, Office of Enforcement. The report shall include the name and other identifying data of the examiner and

examinee, the questions asked, and the dates and results of the examination.

- (9) Offices which request polygraph examinations will fund the travel expenses of the polygraph examiner.

6. PROCEDURES


The following procedures are established to ensure that the Customs Service polygraph program is effective, professional, cost efficient, and conducted within Executive Branch and judicial guidelines and regulations.

- A. (b)(2),(b)(7)(E) [REDACTED]
- B. Polygraph examinations shall be administered only to individuals who agree or volunteer to take an examination, and then only in accordance with existing laws and regulations. Exceptions to an individual's volition may be taken in certain situations where law or Executive Order requires that polygraph examinations be given during investigations concerning the disclosure of national security information.
- C. Once a request for polygraph examination has been approved by an official designated in 5.A.(1) or (2), the polygraph program manager will assign a polygraph examiner.
- D. A special agent who is thoroughly familiar with the investigation, preferably the case agent, shall be available for consultation with the examiner prior to and during the polygraph examination.
- E. Polygraph examinations shall be conducted only when the designated examiner, in his professional judgment, believes the conditions are such that accurate results will be obtained. All reasonable efforts must be made to ensure accuracy of the results.
- F. When information is supplied to the Customs Service and that information is not subject to verification by other investigative methods, use of the polygraph could be of value. Utilization of polygraph should be considered prior to making significant commitments of Customs manpower or financial resources solely on the basis of unverified information. Use of the polygraph will in no way absolve Special Agents of their

responsibility to conduct all logical investigation possible by conventional means in order to verify the truthfulness and accuracy of information furnished.

- G. As an investigative aid in Customs cases, the polygraph may be used for the following purposes:
- (1) To aid in determining whether a person has pertinent knowledge of a particular matter under investigation.
 - (2) To aid in determining the truthfulness of statements made by a subject, victim or witness in connection with a particular matter under investigation.
 - (3) To obtain information leading to the location of evidence, individuals or sites of offenses.
- H. The following areas shall not be examined without specific relevance to an investigation:
- (1) Religious beliefs or affiliations.
 - (2) Beliefs and opinions regarding social matters.
 - (3) Information concerning sexual opinions or practices.
 - (4) Political beliefs and organizational affiliations of a non-subversive nature.

I. (b)(2),(b)(7)(E)



7. DESIGNATION AND TRAINING OF POLYGRAPH EXAMINERS

Individuals designated to serve as polygraph examiners for the U.S. Customs Service must meet the highest standards of competence and professionalism, therefore the following requirements regarding designation and training shall apply:

- A. Designation of U.S. Customs Polygraph Examiners

- (1) The individual designated to be a polygraph examiner must be a special agent (criminal investigator), series 1811, and possess a baccalaureate from an accredited college or university.
- (2) The special agent must have 5 years experience as a federal criminal investigator, or 3 years as a federal investigator, plus 3 years as an investigator with another recognized law enforcement agency. Prior polygraph training and experience (which meet Federal Interagency Polygraph Committee standards) may be considered in lieu of investigative experience.
- (3) The special agent shall have demonstrated superior interview/interrogation skills, have high integrity, be of sound emotional temperament, and have exhibited a keen insight into human nature.
- (4) All special agents designated as polygraph examiners must be authorized in writing by the designated officials in 5.A.(1) or (2) to conduct examinations.
- (5) When conferring the position of Customs polygraph examiner to a special agent, the officials designated in 5.A.(1) and (2), will be guided by the professional recommendations of the polygraph program manager.

B. Training of Customs Polygraph Examiners

- (1) Special agents designated as polygraph examiners shall attend and successfully complete the Basic Course in Forensic Psychophysiology at the Department of Defense Polygraph Institute (DODPI), Ft. McClellan, Alabama, or another course accepted by the Federal Interagency Polygraph Committee.
- (2) Special agents shall complete the internship requirements established by the Customs Service and the polygraph school where training is accomplished.
- (3) Customs polygraph examiners will attend at least one advanced training course or seminar every two years which is approved by the designated officials in 5.A.(1) or (2), and based upon the advice of the polygraph program manager. Each examiner shall request headquarters approval from the polygraph program manager in writing for any polygraph training anticipated. The polygraph program manager shall be notified in writing of any polygraph training completed.

- (4) Customs polygraph examiners shall demonstrate to the polygraph program manager, a continued proficiency in the polygraph technique. The polygraph program manager shall determine each examiner's proficiency through a quality control review of examination charts, question formulation and opinion rendered.
- (5) Customs polygraph examiners who exhibit a deficiency in the polygraph technique shall attend an approved refresher course. Continued failure to exhibit proficiency in the polygraph technique will be grounds for removal from the polygraph program.
- (6) Customs polygraph examiners shall comply with the standards and policies of the Customs Polygraph Program.

8. **QUALITY REVIEW**

- A. The Customs Service will maintain the highest standards of professionalism and accuracy by ensuring that each examiner conforms to procedures taught at the Department of Defense Polygraph Institute and any U.S.

Customs policies regarding the administration of polygraph examinations. To ensure this conformity, all examinations conducted by/for the Customs Service will be subject to quality review.

- B. Polygraph examination results shall not be considered final until completion of the quality control review by the polygraph program manager and/or his designee. Therefore, examiners shall send completed polygraph reports to the polygraph program manager within five (5) calendar days of completion of an examination.
- C. Quality review shall include an analysis of test question construction, an independent evaluation of the polygraph charts to be compared to the field examiner's evaluation, and an overall review of the technical aspects of the test to ensure that all required procedures were followed and that the recorded results are in agreement with the opinion rendered.
- D. Quality review shall be conducted by a highly trained and experienced polygraph examiner who has attended the DODPI or other polygraph school accepted by the Federal Interagency Polygraph Committee. The quality reviewer in order of preference may be the Customs Service polygraph program manager or his designee, a polygraph consultant for the Customs Service, or a polygraph coordinator from another Federal agency.

- E. The Customs Service polygraph program manager shall be a highly trained and experienced examiner. The program manager's duties will include a quality review of reports, charts, and related documents to ensure proper format, reporting procedures, technical accuracy, and to implement or advise on matters concerning polygraph within the Customs Service. The polygraph program manager shall represent the Service on the Federal Interagency Polygraph Committee and other professional organizations.

9. **POLYGRAPH EQUIPMENT**

Only polygraph instruments authorized by the designated officials in 5.A.(1) and (2), with the advice of the polygraph program manager, shall be used to conduct polygraph examinations. Only authorized polygraph instruments shall be procured by the Customs Service.

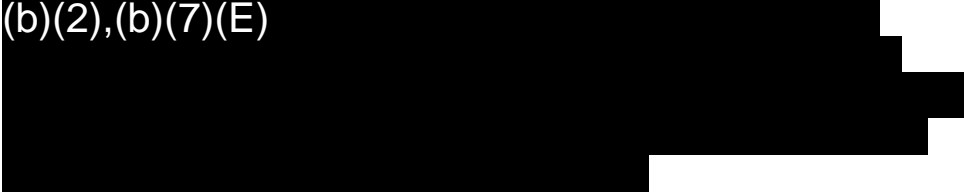
10. **RESPONSIBILITIES**

- A. The Assistant Commissioners (Enforcement) and (Internal Affairs), Regional Directors (Internal Affairs) and Special Agents in Charge (Enforcement) are responsible for ensuring adherence to the policies and procedures set forth in this directive.
- B. The Director, Special Investigations Division, and the Director, Office of Professional Responsibility, shall be responsible for maintaining information detailing the number of polygraph examinations administered for their respective organizations, who administered the examinations, the dates the examinations were administered and the results of the examinations. This information shall be available for periodic reports to Congress and the Department of Treasury relating to Customs use of the polygraph instrument.

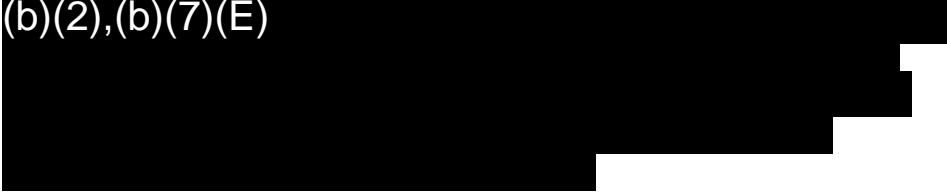
- C. (b)(2),(b)(7)(E) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

(4) The case agent shall ensure the examinee is available at the designated time and location of the examination.

(5) (b)(2),(b)(7)(E)

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(6) (b)(2),(b)(7)(E)

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11. **SUPERSEDED ISSUANCES**

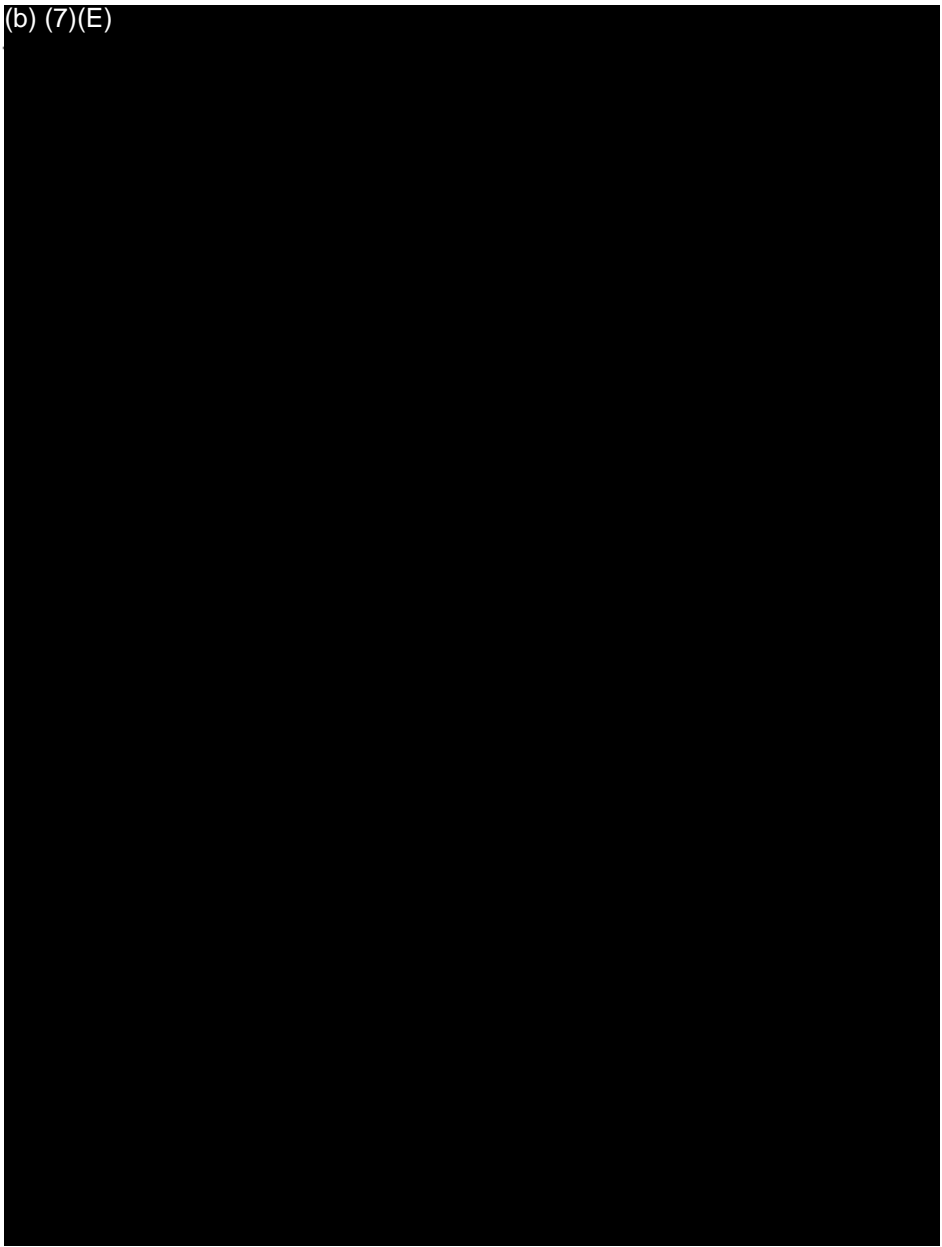
This directive supersedes CD 1450-16, dated June 30, 1992, Office of Internal Affairs Polygraph Policy, and the Special Agent Handbook Change 11, dated November 6, 1985, U.S. Customs Service Polygraph Program – Chapter 36.

signed
Commissioner of Customs

Attachment

CD 3300-08; November 9, 1989

(b) (7)(E)



ATTACHMENT 1

Distribution:

R-01 Regional Commissioners

F-01 District/ Area Directors

G-08 All Intelligence Personnel

G-18 All Criminal Investigators (ENF)

G-19 All Customs Inspectors

H-03 Chief Counsel

CUSTOMS DIRECTIVE

*(SUPERSEDED BY CD 3340-010A, AUGUST 18, 1999)

ORIGINATING: E:IV:FI

DISTRIBUTION: See Signature Page
CUSTOMS DIRECTIVE NO. 3340-010
DATE: November 9, 1989

SUBJECT: CURRENCY VERIFICATION PROGRAM OF AMOUNTS IN EXCESS
OF \$100,000

1. PURPOSE

This Directive establishes national policy and procedural requirements for the verification of all Reports of International Transportation of Currency or Monetary Instruments (CMIR), Customs Form 4790, reporting the importation of currency in excess of \$100,000. This new policy does not apply to CMIRs reporting the export of currency, or to inbound CMIRs reporting currency in the amount of \$100,000 or less.

By verifying that currency is in fact being imported and that the amount of currency is as stated on the CMIR, (b) (7)(E) will be effectively neutralized.

2. BACKGROUND

The Office of Enforcement has identified a scheme used by money launderers who (b) (7)(E)

To begin the scheme, an inbound passenger files (b) (7)(E) in one of the following ways:

- a. Claims currency for (b) (7)(E) on the CMIR.
or
- b. Claims currency when the traveler (b) (7)(E) with total face value equal to the currency claimed. If the Customs inspector (b) (7)(E) on the CMIR, the (b) (7)(E)

APPENDIX 6

Notice to Copyright Owner and Importer, Rebuttal Period

Dear Sir or Madam:

Relative to the exclusion of the suspected piratical copies of _____,
entry number _____ for suspected violation of the following protected
works:

Title of Copyright:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

Pursuant to 19 CFR § 133.43(c)(1)(I), the parties have submitted to Customs, and exchanged copies of any and all arguments, legal briefs, evidence, or other pertinent material, whether part of the initial claim or subsequently discovered, and a written statement, signed by the parties or duly authorized agent confirming that copies of the above were in fact provided to the importer within the initial 30-day time period.

The parties will be afforded an additional 30-day "rebuttal period" (beginning as of the date of this letter) in which to exchange and submit to Customs:

1. Copies of any and all arguments, legal briefs, evidence, or other pertinent material submitted in rebuttal to arguments submitted, and
2. A written statement, signed by the importer or duly-authorized agent, confirming that copies of the above were in fact provided to the other party within the 30-day rebuttal period.

Please be advised that no additional material to substantiate the claim or denial of infringement will be accepted by this office once this 30-day rebuttal period expires.

Sincerely,

Area/Port Director

APPENDIX 5

Notice to Copyright Owner and Importer (Exclusion Demand)

Dear Sir or Madam:

Relative to the exclusion of the suspected piratical copies of:
_____, entry number _____ for
suspected violation of the following protected works:

Title of Copyright:
U.S. Copyright Office Registration Number:
U.S. Customs Recordation Number.

Issue is joined as to the claim. Pursuant to 19 CFR § 133.43(c)(1)(I), within thirty (30) days from the date of this letter, both parties, or their duly-authorized agents, may submit to Customs any additional information or documentation substantiating its claim. The copyright holder has the burden of proof in this matter. Within this 30-day period, both parties should submit to each other and to Customs:

1. Copies of any and all arguments, legal briefs, evidence, or other pertinent material submitted, whether part of the initial claim or subsequent discovery.
2. A written statement, signed by the party or duly-authorized agent, confirming that copies of the above were in fact provided to the importer within the 30-day time period.

Please be advised that no additional material to substantiate the claim or denial of infringement will be accepted by this office after this 30-day period expires.

Sincerely,

Area/Port Director

APPENDIX 4

Letter to Copyright Holder, Possibly Piratical Recorded with Customs.

Dear Sir or Madam:

The Customs Service has detained a shipment of _____ which may constitute a violation of the following copyrighted work:

Title:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

Pursuant to Customs Regulations 19 CFR §133.43, a sample is hereby submitted for your review. The importer denies that the articles are piratical copies, and alleges that their continued detention will result in a material loss or damage to him. Please be advised that these imported articles will be released to the importer unless, within 30 days from the date of this letter, you file:

1. A written demand for the exclusion of these items; and
2. A bond on Customs Form 301 (copy enclosed) in the amount of _____ conditioned to hold U.S. Customs, and the importer or owner, harmless from the loss or damage resulting from Customs detention in the event that these items are determined not to be piratical.

If you file the demand and bond, you and the importer will be notified of a time period for filing further evidence, briefs or material. You, the copyright holder, have the burden of proving infringement.

At the conclusion of the regulatory and statutory time periods, the entire file will be forwarded to the Commissioner of Customs for review and decision.

Sincerely,

Area/Port Director

APPENDIX 3

Notice of Detention to the Importer, Possibly Piratical Recorded Copyright

Dear Sir or Madam:

In accordance with Customs Regulations 19 CFR § 133.43 and 17 USC § 603, the importation (including "in-transit" shipments) of piratical copies of a recorded copyrighted work is prohibited. You are hereby advised that there is reason to believe that your importation of _____ may constitute a piratical copy of the following registered and recorded copyrighted work:

Title:

U.S. Copyright Office Registration Number:

U.S. Customs Recordation Number:

In the absence of receipt within 30 days of a denial by you that the article constitutes a piratical copy, it shall be considered to be such a copy and shall be subject to seizure and forfeiture. If this merchandise is already in your possession, you may satisfy the requirement of this notice by giving Customs "constructive" custody until such time as the issue of piratical copying is resolved. This may be accomplished by a letter granting us constructive custody and affirming that the subject merchandise will be held intact by you pending further instructions from this office and the posting of a single entry bond for three times the value of the merchandise. The merchandise may not be sold, used, assigned, leased or disposed of without U.S. Customs permission.

If you believe the facts warrant, you may file a statement denying that the article is in fact a piratical copy and stating that the detention or redelivery of the article will result in a material depreciation of its value or a loss or damage to you.

Upon receipt of your denial, a sample of the merchandise in question will be sent to the copyright holder. If he claims that there is a violation of his copyright, both you and he will have up to 30 days to submit additional evidence and legal briefs in support of your respective positions, before we forward the matter to the Commissioner of Customs for decision.

In addition, you have several further options. If you agree that these items are, in fact, piratical, or if you wish to waive your right to contest piracy, you may abandon such items to Customs at the time of redelivery and assent to their forfeiture, or you may petition for relief from forfeiture of the articles.

Sincerely,

Area/Port Director

APPENDIX 2

Notice of Seizure to Importer, Clearly Piratical Copyrights Not Recorded with Customs.

Dear Sir or Madam:

You are hereby notified that your importation of _____,
entry number _____ has been seized by U.S. Customs as
constituting clearly piratical copies of the following registered copyright:

Title:

U.S. Copyright Office Registration Number:

In accordance with 19 U.S.C. § 1595a(c)(2)(C), the imported goods listed above have been seized as clearly piratical copies of protected works in violation of 17 U.S.C. § 501, incorporating 17 U.S.C. 106(3) and/or 17 U.S.C. 602, or (17 U.S.C. 506 and 509 in criminal cases) and are further subject to immediate forfeiture.

If you admit that these items are, in fact, piratical, you may abandon such items to Customs and assent to their forfeiture; or you may petition for relief from forfeiture of the articles pursuant to 19 CFR §§ 171 and 172.

Sincerely,

Area/Port Director

APPENDIX 1

Notice of Seizure to Importer, Clearly Piratical Copyrights Recorded with Customs.

Dear Sir or Madam:

In accordance with Customs Regulations 19 CFR § 133.42, Customs Regulations (Title 19, Code of Federal Regulations), implementing section 603 of the Copyright Act of 1976 (17 U.S.C. § 603), articles constituting clearly piratical copies of registered copyrights are subject to seizure and forfeiture.

You are hereby notified that under section 133.42 of the Customs Regulations, your importation of _____, entry number _____ has been seized by U.S. Customs as constituting clearly piratical copies of the following registered and recorded copyright:

Title:

U.S. Copyright Office Registration Number:


U.S. Customs Recordation Number:

If you admit that these items are, in fact, piratical, you may abandon such items to Customs and assent to their forfeiture; or you may petition for relief from forfeiture of the articles pursuant to 19 CFR §§ 171 and 172.

Sincerely,

Area/Port Director

(b)(7)(E)



8.4.1 If the suspect program contains between thirty percent (30%) and eighty percent (80%) similarity to a protected program, piracy is suspected and the procedures set out in 19 CFR § 133.43 should be followed. For internal use only

8.4.2 Reports issued by the Office of Laboratories and Scientific Services should always reference the specific copyright recordation involved. Where more than one protected work is involved, all relevant recordations should be noted.

9. The statements made herein are not intended to create or confer any rights, privileges or benefits for any private person, but are intended merely for internal guidance.

Commissioner of Customs

Attachments

director shall seize and forfeit them under 17 U.S.C. § 603, and shall return the bond to the copyright holder. A petition for relief may still be filed under the provisions of 19 CFR §§133.44(a), 133.51-133.53.

6.5.14 Denial of infringement sustained. As stipulated in 19 CFR § 133.44(b), if the Commissioner determines that the articles are not piratical copies, the area/port director shall release all such detained merchandise and transmit the copyright holder's bond to the importer. Recovery of damages on the bond is to be arranged between the parties.

7 (b)(7)(E)

8 MISCELLANEOUS.

8.1 Merchandise not in Customs custody: Demand for redelivery. If after goods have been released Customs determines that a violation was likely to have existed, it may order the redelivery of the goods by sending a Notice to Redeliver (CF 4647) to the importer within 30 days of release of the goods. The importer has 30 days in which to redeliver the merchandise into Customs custody. If the importer does not redeliver the merchandise, a claim for liquidated damages shall be initiated (19 CFR § 141.113).

8.1.1 The local Office of Investigations will be notified immediately of all shipments of piratical merchandise which have been released from Customs custody.

8.2 Competing copyright registrations. Goods initially believed to be, or suspected of, infringing recorded copyrights have sometimes been released upon the importer's presentation of a certificate of registration of a claim to copyright issued by the United States Copyright Office after their seizure (19 CFR § 133.42) or detention (19 CFR § 133.43). This action has sometimes been referred to as the "Ten Dollar Defense" because that was the fee to register a claim to copyright with the Copyright Office.

8.2.1 When evidence clearly indicates piratical copying or reason to suspect piratical copying of a copyright recorded with Customs, and the imported article itself is the subject of a copyright registration certificate (whether obtained before or after importation), Customs officers shall still detain the merchandise and proceed as outlined above (19 CFR § 133.43; Customs Service Decision [C.S.D. 86-23]).

8.3 OTO-1 Bulletin Board. Periodically, special alerts pertaining to specific copyrights or commodities may be posted to the OFO OTO-1 Bulletin Board. Officers should routinely monitor the bulletin board to keep abreast of important developments in intellectual property right (IPR) enforcement.

8.4 (b)(7)(E)

the sample, plus duty and entry fees (but not lower than \$100). In cases where the value of the sample is less than \$100, a cash deposit may be accepted by Customs. Customs may demand return of the sample at any time.

6.5.8.6 The owner must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its' return, the owner must certify to Customs that "the sample described as (full description) and provided pursuant to 19 CFR § 133.23a(d) was damaged, destroyed or lost during examination, testing or other use." If the sample is not returned, Customs officers should proceed to forfeit the bond.

6.5.9 Exclusion demand by copyright owner. As stipulated in 19 CFR §133.43(d)(1), if the copyright owner files a written demand for exclusion of the suspected piratical copies together with a proper bond, the area/port director shall promptly notify the importer and the copyright owner that during a specified time limit of not more than 30 days, they may submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of piratical copying. Parties shall thereafter be provided with an additional time period ("rebuttal period"), not to exceed 30 days during which an exchange of briefs is to take place in order to allow each party an opportunity to respond to the other party's allegations. The burden of proof shall be upon the party claiming that any article is in fact a piratical copy. At the close of the period specified for submission of evidence, the area/port director shall forward the entire file in the case, together with a representative sample of the imported articles and his views or comments, to the Chief, IPR Branch, Office of Regulations & Rulings, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229. Sample letters to be sent to both the copyright holder and the importer, are attached to this Directive at Appendices 5 and 6.

6.5.10 Exclusion contention disclaimed by copyright owner. As stipulated in 19 CFR 133.43(d)(2), if the copyright owner disclaims his contention or concedes that he possesses insufficient evidence or proof to substantiate a claim of piracy, the area/port director shall release the detained shipment to the importer, and shall release all further importations of the same article, by whomever imported, without further notice to the copyright owner.

6.5.11 Failure to file exclusion demand. As stipulated in 19 CFR § 133.43(d)(3), if the copyright owner fails to file a written demand for exclusion and an accompanying bond, the area/port director shall release the detained articles to the importer, and notify the copyright owner of the release. The area/port director shall not withhold delivery of all further importations of the same article by the same importer unless the copyright owner has provided a satisfactory explanation as to why he failed to file a written demand for exclusion, and a bond.

6.5.12 Withdrawal of bond. Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

6.5.13 Claim of infringement sustained. As stipulated in 19 CFR § 133.44(a), if the Commissioner determines that the articles in question are piratical copies, the area/port

sample "Notice of Detention of Possibly Piratical Goods, Recorded Copyright" initial letter, to be sent to the importer is attached to this Directive at Appendix 3.

6.5.8 Notice to copyright holder, Disclosure: Possibly Piratical cases. If the importer files a denial of piratical copying, the area/port director shall furnish the copyright owner with the following information, if available, within 30 days of receipt of importer's denial of infringement:

Date of Importation:

Port of Entry:

Description of Merchandise:

Quantity:

Country of Origin:

6.5.8.1 The notice states that the imported article will be released to the importer unless within 30 days the copyright owner files with the area/port director:

6.5.8.1.1 A written demand for the exclusion from entry of the detained imported articles; and

6.5.8.1.2 A bond in an amount specified by the area/port director, conditioned to hold Customs and the importer or owner of such imported articles harmless from any loss or damage resulting from Customs detention in the event that the Commissioner of Customs or his designee determines that the articles are not piratical copies prohibited from entry under Section 602 of the Copyright Act (17 U.S.C. § 602). The amount of the bond is generally set at 110 percent (110%) of the value of the detained articles, plus the duty and entry fees. However, factors including but not limited to the value of the merchandise or relevant market factors may be considered by the area/port director in setting the amount of the bond.

6.5.8.2 Upon detaining and/or seizing suspected piratical or possibly piratical copies, contact the local Office of Investigations before initiating the requisite disclosure procedures.

6.5.8.3 A sample "Notice of Detention of Possibly Piratical Goods, Recorded with Customs" initial letter, to be sent to the copyright holder is attached to this Directive at Appendix 4.

6.5.8.4 Any time after presentation of the merchandise for examination, but prior to seizure, Customs MAY provide a sample to the copyright owner for exam, testing, etc. If a request for sample is made, the copyright owner MUST provide Customs with a bond as required in 19 CFR § 133.43(c). Prior to release of the sample, Customs officers should remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer, including all bar codes or otherwise identifying marks.

6.5.8.5 The amount of bond required to obtain release of the sample is to be specified by the area/port director. The bond is normally set at 120 percent (120%) of the CIF value of

6.5.1 "Possibly Piratical" (protected copyright recorded with Customs). Under 19 CFR § 133.43, possibly piratical copies shall be detained and the process outlined in that Section is to be followed. Please refer to 19 CFR § 133.43 for specific instructions. If determined to be piratical, the goods are to be seized pursuant to 17 U.S.C. § 603.

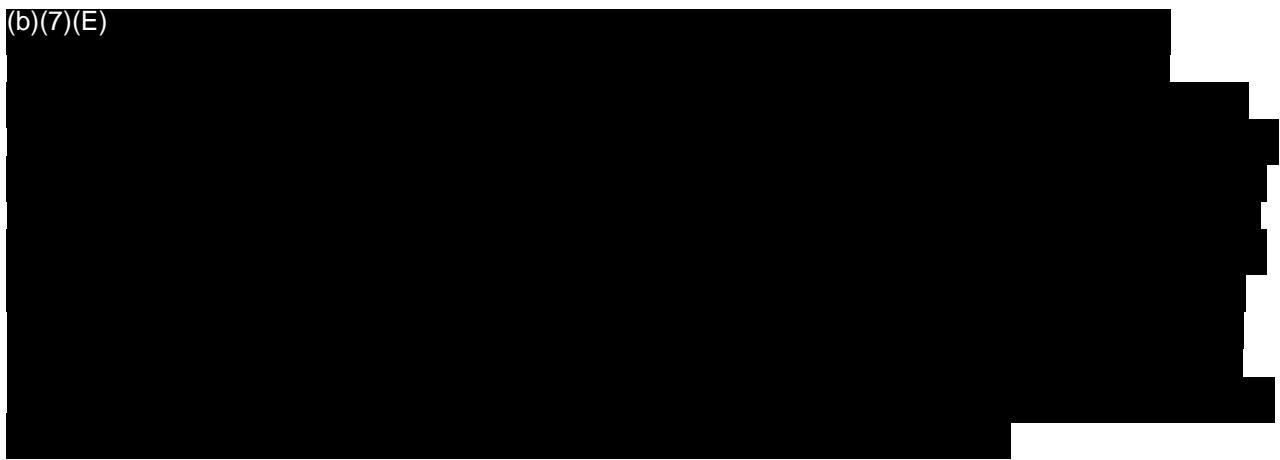
6.5.2 "Possibly Piratical" (protected copyright not recorded with Customs). Customs policy is to neither detain nor seize goods bearing such works.

6.5.3 Possibly Piratical, Detention: In general: In accordance with Customs policy, if a Customs officer can articulate a basis for having such "reasonable suspicion" with respect to copies of copyrighted works recorded with Customs at the time of presentation to Customs, he may detain the goods at that time. Although 19 CFR § 133.43 is silent as to when a detention notice is to be issued with respect to possibly piratical merchandise, 19 U.S.C. § 1499 provides that Customs has five (5) working days from the date the merchandise is presented for examination, to decide whether the merchandise should be released or detained.

6.5.4 19 U.S.C. § 1499 further provides that "merchandise which is not released within such five-day period shall be considered detained." Thus, where a Customs officer is unsure whether such "reasonable suspicion" exists at the time presentation to Customs, he may detain the goods for a 5-day period pursuant to 19 U.S.C. § 1499 to determine whether such "reasonable suspicion" exists. If Customs determines that such "reasonable suspicion" exists, Customs shall issue a formal letter of detention to the importer.

6.5.5 The issuance of the formal detention letter may take place before the expiration of the initial 5-day period, or between the 5th day and the 10th day after presentation, but in no case after the 10th day.

(b)(7)(E)



6.5.7 Notice of importer. If a Customs officer has reason to believe that an imported article may be a piratical copy of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact a piratical copy. In the absence of receipt within 30 days of such a denial by the importer, the article in question shall be considered to be such a copy and shall be subject to seizure and forfeiture under 19 CFR § 133.42. A

133.42. Clear-cut copies, controlling decisions issued by the OR&R, IPR Branch, or (in specifically authorized instances only) decisions or orders issued by a court of law may form the basis for this determination. A sample "Notice of Seizure, Clearly Piratical Goods, Recorded with Customs" letter, to be sent to the importer is attached to this Directive at Appendix 1.

6.4.2 "Clearly Piratical" (protected copyright not recorded with Customs). Where administratively feasible and appropriate, such goods may be seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 501 incorporating 17 U.S.C. §106(3) and/or 17 U.S.C. § 602, or 17 U.S.C. §§ 506 and 509. No corresponding Customs regulations exist. Cases involving suspected criminal copyright actions should be referred to the Office of Investigations.

6.4.3 Disclosure: Clearly Piratical cases. When articles are subject to restrictions set forth in 19 CFR § 133.42, Customs officers SHALL disclose to the copyright owner in writing the following information within 30 business days of the date of the seizure as required in 19 CFR § 133.42(c).

Date of Importation:

Port of Entry:

Description of Merchandise:

Quantity:

Name and address of Manufacturer:

Name and address of Exporter:

Name and address of Importer (Note: If importer of record is broker or nominal consignee, provide the ultimate consignee if known):

Country of Origin:

6.4.4 Any time after seizure of the merchandise for examination, Customs MAY provide a sample to the copyright owner for exam, testing, etc. If a request for a sample is made, the copyright owner MUST provide Customs with a bond as required in 19 CFR § 133.42(e).

6.4.5 The amount of bond is to be specified by the area/port director. The bond is normally set at 120 percent (120%) of the CIF value of the sample, plus duty and entry fees (but not lower than \$100). In cases where the value of the sample is less than \$100, a cash deposit may be accepted by Customs. Customs may demand return of the sample at any time.

6.4.6 The owner must return the sample after exam, testing, etc. If the sample is damaged, lost or destroyed, in lieu of its' return, the owner must certify to Customs that "the sample described as (full description) and provided pursuant to 19 CFR § 133.21(d) was damaged, destroyed or lost during examination, testing or other use." If the sample is not returned, Customs officers should proceed to forfeit the bond.

6.5 Processing the case: Possibly Piratical. Customs policy mandates that suspect possibly piratical copyright violative goods can only be detained upon a "reasonable suspicion" that said goods constitute possibly piratical copies of protected works.

6.3 Characterizing copyright violations. Generally, the test of whether a copyrighted work has been infringed is, "Whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same." Another way of stating the substantial similarity test is, "Whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work." The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by employing the tactic of making deliberate, but trivial, variations of specific features of the copyright protected work.

6.3.1 Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the general ideas, but the expression of those ideas as well. Access to the copyrighted work may be presumed even without direct evidence in cases where it is apparent that the importer has ample opportunity to view the copyrighted work, and the substantial similarities between the works are so striking as to preclude the possibility that they were arrived at independently. Since, in most cases, access will be presumed, substantial similarity of expression will be the critical factor of analysis.

6.3.2 As a general matter, Customs recognizes two standards of copyright infringement in its enforcement of registered copyrights: "Clearly Piratical" and "Possibly Piratical." The first of these, "Clearly Piratical" is defined as overwhelming and substantial similarity between the copyrighted elements of the protected work and the imported item so as to clearly indicate that one work was based upon the other. The second, "Possibly Piratical" encompasses those situations in which articles are suspected of constituting piratical copies, but are not clearly deemed to be such at the time of presentment.

6.3.3 Upon presentation, or at the time of detention or seizure of suspect violative goods, it is incumbent upon the acting officer to characterize the nature of the alleged violation, and should be ascribed to one of the following four characterizations:

6.3.3.1 Clearly Piratical copyright violation: protected copyright recorded with Customs;

6.3.3.2 Clearly Piratical copyright violation; protected copyright not recorded with Customs;

6.3.3.3 Possibly Piratical copyright violation; protected copyright recorded with Customs;

6.3.3.4 Possibly Piratical copyright violation; protected copyright not recorded with Customs.

6.3.4 Each of these is discussed in detail below:

6.4 Processing the case: Clearly Piratical

6.4.1 "Clearly Piratical" (protected copyright recorded with Customs). Articles constituting "clearly piratical" copies of copyrights recorded with Customs shall be seized, and forfeiture proceedings instituted under 17 U.S.C. § 603, as implemented by 19 CFR §

5.1.9 Title 19 U.S.C. § 1595a(a) - Provides for seizures and forfeiture of conveyances or other thing used “in, or aid in, or to facilitate, the importation of any article contrary to law.”

5.1.10 Title 19 U.S.C. § 1595a(b) - Provides Customs with the authority to issue civil penalties equal to the value of the merchandise attempted to be introduced contrary to law.

5.1.11 Title 19 U.S.C. § 1595a(c)(2)(C) - Provides seizure and forfeiture authority for articles introduced or attempted to be introduced which violate trademarks or copyrights.

5.2 CODE OF FEDERAL REGULATIONS

5.2.1 Customs Regulations 19 CFR §§ 133.31 – 133.37 - Recordation of copyrights with Customs.

5.2.2 Customs Regulations 19 CFR § 133.42 - Seizure of articles constituting clearly piratical copyright violations.

5.2.3 Customs Regulations 19 CFR § 133.43 - Procedures for cases involving possibly-piratical copyright violations.

5.2.4 Customs Regulations 19 CFR § 133.44 - Decisions rendered in disputed claims of infringement.

5.2.5 Customs Regulations 19 CFR § 133.45 - Demand for Redelivery of released merchandise.

6 PROCEDURES. In general, Customs policy dictates that U.S. Customs focuses its enforcement efforts on copyrights that are "recorded" with Customs. Unrecorded copyrights, while not a priority, may be enforced when possible so long as the sound administration of Customs laws is not compromised. While Customs may pursue such cases, Customs policy dictates that the majority of resources and emphasis should be placed upon the enforcement of recorded copyrights.

6.1 Prior to the initiation of any intellectual property right action, the IPR Module should be consulted to ascertain whether the copyright in question is in fact recorded with Customs, and if so, the extent to which the copyright should be protected. The “IPR Module” is a computer function located within the Automated Commercial System (ACS) which contains individual records and information relative to all IPRs recorded with U.S. Customs.

6.2 When undertaking a copyright enforcement action, officers should accurately note the copyright recordation number(s) involved and accurately record same in records of the case. Similarly, officers seeking OR&R, IPR Branch assistance in arriving at infringement determinations are expected to have consulted the IPR Module prior to seeking assistance and should be prepared to accurately cite specific information from the relevant IPR recordation.

3 **AUTHORITY.** Relevant statutory and regulatory citations associated with Customs enforcement of copyrights are listed below. The narratives listed below are synopses of the statutory/regulatory mandates; care should be used to cite actual language of statutory/regulatory provisions in the course of enforcement actions. Prior to initiating enforcement actions, officers should undertake to review the descriptions of laws and regulations contained within this directive in order to gain a comprehensive understanding of their intent and purpose.

4 **RESPONSIBILITIES.** The Assistant Commissioner, Office of Regulations and Rulings, is responsible for formulating policy and procedures pertaining to Customs enforcement of copyrights. Area/Port directors, assistant port directors (trade operations), supervisory import specialists, and supervisory inspectors are responsible for ensuring that their staffs are aware of the content of this Directive and adhere to the guidelines provided.

5 **DEFINITIONS.**

5.1 **UNITED STATES CODE**

5.1.1 Title 17 U.S.C. § 501 - Infringement of copyright.

5.1.2 Title 17 U.S.C. § 506 - Provides for criminal copyright offenses.

5.1.3 Title 17 U.S.C. § 509 - Provides for seizure and forfeiture of copyright violative goods under 17 U.S.C. § 506.

5.1.4 Title 17 U.S.C. § 602 - Provides right of action regarding importation of infringing copies of phonorecords. Prohibits gray market enforcement of copyright. Authorizes Customs to prescribe regulations and procedures relative to recordation of copyrights and notification of apparent violations.

5.1.5 Title 17 U.S.C. § 603 - Provides for specific seizure and forfeiture of importations of copyright violative merchandise in same manner as property imported in violation of the Customs laws.

5.1.6 Title 18 U.S.C. § 2318 - Provides criminal sanctions for trafficking in counterfeit labels for phonorecords, copies of computer programs, motion pictures or other audio-visual works.

5.1.7 Title 18 U.S.C. § 2319 - Provides criminal fines and prison terms for criminal infringement of copyright .

5.1.8 Title 18 U.S.C. § 2319A - Provides criminal fines and prison terms, as well as seizure, forfeiture, and destruction authority for the unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances, also known as "Bootleg" works.

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 2310-005B, 12/12/01)**

ORIGINATING OFFICE: OR&R

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO: 2310-005A

SUPERSEDES: 2310-005 9/28/89

DATE: APRIL 7, 2000

SUBJECT: COPYRIGHT PROTECTION

1 PURPOSE. To provide relevant information and guidelines on Customs policies and procedures with respect to copyright protection.

2 POLICY. In order to fulfill its statutory, regulatory, and treaty-based obligations of preventing the importation of merchandise which violates certain claims to copyright [hereinafter, copyrights] which have been registered with the U.S. Copyright Office, U.S. Customs is vested with the authority to detain and/or seize, piratical copies of protected copyrighted works. For Customs purposes, "piratical copies" are actual or substantially similar copies of a registered copyrighted work, produced and imported in contravention of the rights of the copyright owner.

2.1 In general, a copyright protects original works of authorship, including written music, computer programs, video games, toy designs and other intellectual creations against unauthorized reproductions, derivations, distribution or display. This protection is available to both published and unpublished works. It is the actual, tangible expression, not the concept, which is copyrighted. The Copyright Office is merely the office which records the claim; it does not create or bestow copyright. Some products are protected under both copyright and trademark laws.

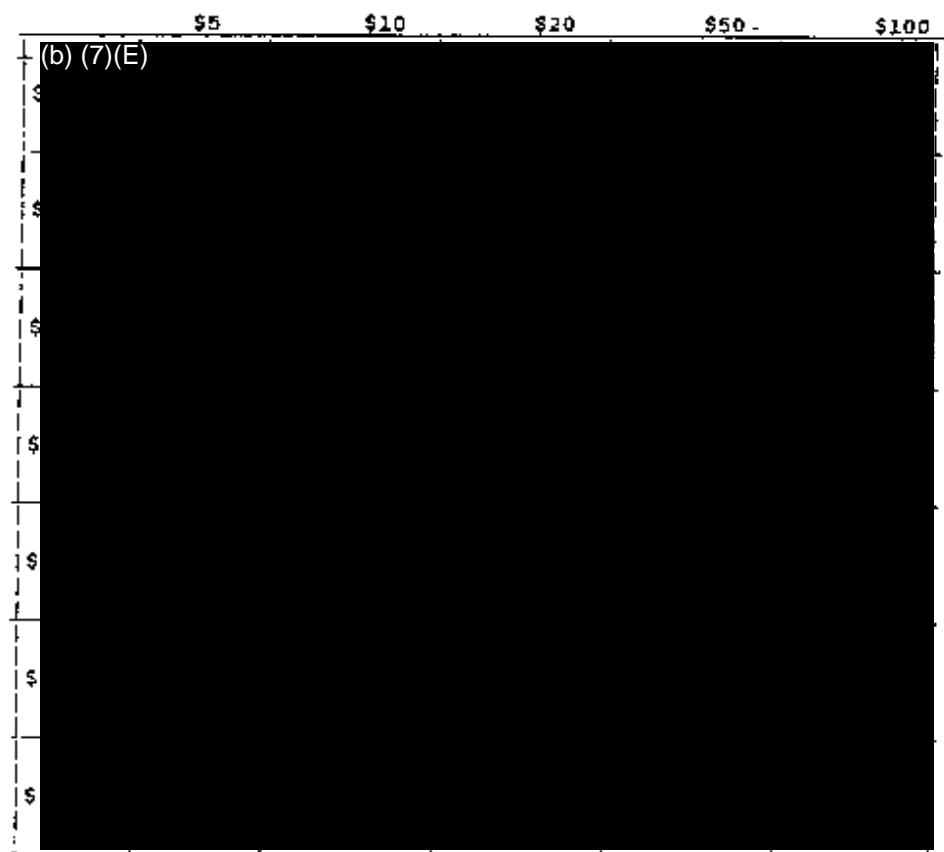
2.2 In order to most effectively provide protection against such violative imports, Customs has established an intellectual property rights (IPR) enforcement regime, which offers rights holders, a two-tiered enforcement option, while providing Customs officers with up-to-date, detailed information about the rights being protected.

2.3 The first tier of this two-tiered approach involves Customs "recordation" process. Under this system, copyright holders, once having duly registered their claim(s) to copyright with the U.S. Copyright Office, may request that Customs collect and retain information relative to those rights for a specified time, during which Customs shall, either of its own initiative, or with the assistance of the copyright holder, proactively monitor imports in order to prevent the importation of violative articles.

2.4 The second tier is Customs "application" process. Under this system, copyright holders, once having duly registered their claim(s) to copyright with the U.S. Copyright Office and recorded same with U.S. Customs, may provide Customs with information relative to specific importations of violative imports so that Customs can prevent such importation.

CD 3300-08; November 9, 1989

(b) (7)(E)



Dimensions of U.S. Currency = 6 1/8" long x 2 5/8" wide

U.S. Government Printing Office : 1989 - 241-041/00187

ATTACHMENT 2