

## **IMITATION FIREARM IMPORTS – 15 U.S.C. 5001(A)**

### **I. Background**

#### **A. Statutory authority**

Pursuant to the provisions of title 15, United States Code, section 5001(a), (15 U.S.C. 5001(a)), it is unlawful for any person to manufacture, enter into commerce, ship, transport or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce. These firearms shall have, as an integral part or permanently affixed, a blaze orange plug inserted in the barrel (as required by 15 C.F.R. 1150.3(a)) or a blaze orange marking on the barrel (as required by 15 C.F.R. 1150.3(b)).

#### **B. Exceptions**

As provided in 15 U.S.C. 5001(b)(2), the Secretary of Commerce may waive the marking requirement for any toy, look-alike or imitation firearm that will only be used in the theatrical, movie or television industry. The provisions of 15 U.S.C. 5001(c) define the term "lookalike firearm" as any imitation or any original firearm which was manufactured, designed and produced since 1898. It does not include any non-firing collector replica of an antique firearm developed prior to 1898 or any traditional BB, paint-ball or pellet firing air gun that expels a projectile through the force of air pressure.

### **II. Seizure**

A. In general, when a Customs officer discovers the importation or transportation subsequent to importation of any toy, look-alike or imitation firearms that are not marked in accordance with the above-noted regulations, the firearms shall be seized under the provisions of title 19, United States Code, section 1595a(c), for violation of the provisions of title 15, United States Code, section 5001(a).

B. Constructive seizures shall not be permitted unless extraordinary circumstances require storage at a place other than that provided by the seized property contractor or directly under Customs custody.

#### **C. Commingled Shipments**

1. When a Customs officer discovers a shipment containing toy, look-alike or imitation firearms which are improperly marked commingled with either toy, look-alike or imitation firearms which are adequately marked or commingled with other merchandise which is not violative of any admissibility laws, the violative imitation firearms may be segregated from the shipment and

seized, with the cost and expense of such segregation being borne by the claimant to such property.

2. Segregation of the violative merchandise from non-violative merchandise will only be allowed if, in the opinion of the seizing officer, the non-violative merchandise was not being used to conceal or otherwise facilitate the importation of the violative merchandise.
3. If the seizing officer determines that the non-violative merchandise was packaged in a manner to conceal the importation of the improperly marked toy, look-alike or imitation firearms, the non-violative merchandise may be seized under the provisions of 19 U.S.C. 1595a(a). The forfeiture of that merchandise shall be remitted in accordance with guidelines published herein.

#### D. Detentions

If there is a question as to the adequacy of the marking of a shipment of toy, look-alike or imitation firearms, the shipment shall be detained in accordance with regulation. See, 19 C.F.R. 151.16. Decisions as to adequacy of marking of detained shipments shall be made by the Department of Commerce, Chief Counsel for Technology, Room 4824, Washington, D.C. 20230.

### III. Forfeiture Remission Guidelines

#### A. If the petition for relief establishes any of the following:

1. The merchandise was adequately marked, or
2. The merchandise does not belong to the class or category of merchandise that requires marking under 15 U.S.C. 5001, or
3. The marking has been waived because the imitation firearm will be used only in the theatrical, movie or television industries, and such waiver was received prior to the seizure of the merchandise, then the forfeiture will be remitted upon the payment of the expenses of seizure and the execution of a hold harmless agreement.

#### B. If the claimant receives a waiver of the marking requirement subsequent to seizure of the merchandise, the forfeiture shall be remitted upon payment of an amount between one and ten percent of the domestic value of the merchandise, but no less than \$100, plus the expenses of seizure and execution of a hold harmless agreement.

- C. If the claimant can show that he or she had no reasonable grounds to believe that the importation of the merchandise constituted a violation of law, the district director may permit the claimant to export the merchandise under Customs supervision to a non-contiguous country. This relief would be conditioned upon payment of the expenses of seizure and execution of a hold harmless agreement.
- D. If the claimant can show that it is a first-time violation and that the merchandise can be reconditioned under Customs supervision to comply with the provisions of the statute, the forfeiture may be remitted upon payment of an amount between 10 and 30 percent of the transaction value of the merchandise and reconditioning under Customs supervision. The claimant to the merchandise shall bear all the expenses of reconditioning. Remission of the forfeiture is also conditioned upon execution of a hold harmless agreement.
- E. For second or subsequent violations where the claimant can show that the merchandise can be reconditioned under Customs supervision to comply with the provisions of the statute, the forfeiture may be remitted upon payment of an amount that is no less than 25 percent of the transaction value of the merchandise and reconditioning of the merchandise under Customs supervision. The claimant to the merchandise shall bear all the expenses of reconditioning of the merchandise. Remission of the forfeiture is also conditioned upon execution of a hold harmless agreement.
- F. The forfeiture of any merchandise which is seized under the provisions of 19 U.S.C. 1595a(a) for concealing, aiding or abetting the importation of toy imitation firearms shall be remitted in accordance with the above two paragraphs based upon whether the seizure is a first or subsequent violation.

#### **IV. Claims for Liquidated Damages**

- A. If merchandise is released to the importer's premises under a single entry bond equal to three times the value of the merchandise and it is later determined that the toy imitation firearms are not marked in compliance with law, the importer shall be required to recondition such merchandise. If it is discovered that the importer distributed the toy imitation firearms into the commerce before approval of any reconditioning, a notice of redelivery on a CF-4647 shall be issued. If the importer fails deliver that merchandise to customs custody, liquidated damages shall be assessed in the full amount of the bond.
- B. All claims for liquidated damages that arise shall be cancelled in accordance with guidelines published in T.D. 94-38, relating to claims issued for failing to redeliver visa-violative merchandise (See, section IV.F. of the guidelines).

## **V. Referral of Petitions for Relief**

If the petition raises an issue of adequacy of marking, the petition, plus any samples from the shipment of seized merchandise, may be forwarded to the Department of Commerce, Chief Counsel for Technology, Room 4824, Washington, D.C. 20230, for an opinion as to the adequacy of the marking. Customs shall retain all forfeiture remission authority for purposes of these seizures.

## **VI. Disposition of Forfeited Merchandise**

Toy, either look-alike or imitation as well as firearms which are seized and forfeited under these provisions of law shall be summarily destroyed.

### **DOG AND CAT FUR PRODUCTS - 19 U.S.C. 1308**

#### **I. In General**

The importation, exportation, transportation, distribution or sale of any product consisting or comprised in whole or in part, of any dog fur, cat fur or both, is prohibited. Any such product which is so imported, exported, transported, distributed or sold will be seized and forfeited. This prohibition does not apply to the importation, exportation or transportation, for noncommercial purposes, of a personal pet that is deceased, including a pet preserved through taxidermy.

#### **II. Forfeiture Remission**

There will be no remission of any forfeiture of this product if the product is found to be comprised of dog or cat fur.

#### **III. Disposition of Forfeited Merchandise**

Dog and cat fur products which are seized and forfeited under this provisions of law shall be summarily destroyed.

### **AIRCRAFT REGISTRATION AND CERTIFICATION - 49 U.S.C. 46306**

Under the provisions of 49 U.S.C. 46306(d), an aircraft which is in violation of the provisions of section 46306(b) may be seized by Customs, subject to forfeiture under the Customs laws.

#### **I. Violations/Remission Guidelines**

The following are violations, which may be the basis for seizure of an aircraft. The section of law for each violation is provided. Forfeiture remission guidelines for each type of violation are also included. It is unlawful for any person to: