

CUSTOMS DIRECTIVE

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SUBJECT: ASSESSMENT OF PENALTIES AGAINST, LIENS AGAINST, AND SEIZING CONVEYANCES OPERATED BY COMMERCIAL/Common CARRIERS - LEGAL AND PROCEDURAL GUIDELINES

1. LEGAL REFERENCE

Anti-Drug Abuse Act of 1986, P.L. 99-570, effective date October 27, 1986, in particular, amended sections 1584 and 1594 of title 19, United States Code.

2. PURPOSE

This Directive is intended to provide Customs personnel with legal and procedural guidelines for assessing penalties (which may be liens) against common carriers, as well as guidelines for seizing conveyances operated by common carriers. It contains a summary law, as well as information about agency policy for early release, forfeitures and/or remission thereof, and mitigation or remission of penalties.

3. LEGAL GUIDELINES

I. Seizure of common carriers, while in the transaction of business as a common carrier, for violations related to merchandise contained:

- On the person, or
- In baggage belonging to and accompanying a passenger being lawfully transported on a common carrier, or
- In the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest,

May only occur when:

- The owner or operator, or
- The master, pilot, conductor, driver or other person in charge,

Did the following:

- Participated in the violation, or
- Had knowledge of the violation, or

- Was grossly negligent in preventing or discovering the violation.

The legal authority for this action is contained in 19 USC 1594(b).

II. After preliminary investigation (i.e. initial determination of the facts by the Office of Enforcement), seizure of a common carrier, while in the transaction of business as a common carrier, is authorized if prohibited merchandise is found to be or has been:

A. On board in one or more packages or containers:

- that are not manifested or not shown on bills of lading or air waybills, or
- whose marks, numbers, weight or quantities disagree with the manifest or with the bills of lading or air waybills.

B. Concealed in or on the conveyance but not in the cargo,

Unless:

C. The owner or operator, the master or pilot, and any other employee responsible for maintaining and insuring the accuracy of the cargo manifest,

Established the following:

D. that he did not know that such merchandise was on board, or could not have known, by the exercise of the highest degree of care and diligence, that such merchandise was on board.

Prior to the actual seizure, the conveyance may be detained pending the investigation by the Office of Enforcement Reference Customs Memorandum dated May 27, 1987, file CO:R:E:M / 621996 HDB; subject "48 Hour Rule."

The legal authority for this action is contained in 19 USC 1594(c).

NOTE: For purposes of 19 USC 1594, the term owner or operator includes a lessee or person operating a conveyance under a rental agreement or charter party; corporate officers and directors; station managers and similar supervisory ground personnel employed by airlines; one or more partners of a partnership; representative of the owner or operator in charge of the passenger or cargo operations at a particular

location; and other persons with similar responsibilities. The term master and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported on the conveyance.

III. A penalty for failure to manifest controlled substances, as noted below, imported on board a common carrier while in the transaction of business as a common carrier, may be assessed against:

- the master or person in charge, or
- the owner, or
- any person directly or indirectly responsible,

In the amount of:

- \$1,000 for each ounce of heroin, morphine, cocaine, isonipecaine or opiate,
- \$500 for each ounce of smoking opium, opium prepared for smoking, or marijuana.
- \$200 for each ounce of crude opium.

The penalty may be assessed against the master or person in charge of a common carrier, and shall serve as a lien against the conveyance unless it appears that:

- the master or any of the officers, and
- the owner

Did not know, or could not have known, by the exercise of the highest degree of care and diligence that the controlled substances were on board.

The legal authority for this action is contained in 19 USC 1584.

4. OPERATIONAL AND PROCEDURAL GUIDELINES

The following factors should be considered in ascertaining whether a common carrier may be seized; appropriate mitigation; and if/when to effect an early release.

- Are there any prior violations by the carrier in question? Have they entered into a carrier agreement with the U.S. Customs Service, agreeing to take specific counter-measures to deter the use of their vessel/aircraft as a conveyance for smuggling narcotics? If so, are they complying

with the provisions? Do they routinely conduct searches on high risk flights/voyages from high-risk locations? Are search checklists used and provided or available to U.S. Customs officials? Do they use canines in narcotics detection, and provide U.S. Customs with related information?

- Does the carrier cooperate with the U.S. Customs Service, and have clearly defined points of contact and open lines of communication at all levels of management?
- Has the carrier sponsored or participated in the U.S. Customs Service Air or Sea Carrier Enforcement Awareness Training Program?
- Has the carrier taken appropriate security enhancement measures in the following areas: terminal, carrier, cargo and personnel?
- Does the carrier provide Customs with advance copies of manifests?

If the common carrier is not complying with the aforementioned operational and procedural guidelines, this may indicate that he is not exercising the highest degree of care and diligence. If not exercising such care and diligence, the common carrier may be seized under the provisions of title 19, United States Code, section 1594(c), for transporting controlled substances under the conditions noted above. Or, it may be seized to secure a lien when a penalty has been assessed under the provisions of title 19, United States Code, section 1584, when controlled substances have not been manifested on the other hand, in order to seize and forfeit under the provisions of title 19, United States Code, section 1594(b), Customs must be able to articulate factors evidencing that the owner participated in or had knowledge of the violation or was grossly negligent in preventing or discovering the violation. If seizure of a commercial conveyance is contemplated prompt notification must be given to the carrier. District/Area Directors should consult with the Assistant Commissioner, Office of Inspection and Control, prior to making a decision to seize a common carrier.

5. EARLY RELEASE OF SEIZED COMMON CARRIERS

- I. When a common carrier has been seized to secure a penalty incurred for failure to manifest controlled substances (19 USC 1584), District and Area Directors may grant or deny early release using the following guidelines:
 - A. When there has been a finding of negligence, the conveyance may be released, pending a final decision, upon the deposit of not less than 10 percent and up to 25 percent of the penalty assessed under 19 USC 1584.
 - B. When there has been a finding of gross negligence, the conveyance may be released, pending a final decision, upon the deposit of not less than 25 percent and up to 50 percent of the penalty assessed under 19 USC 1584.

- C. When there has been an intentional violation, no early release will be permitted.

NOTE: See FP&F Handbook, Section VES pages 5 – 8 for specific definitions of negligence, gross negligence, and intentional failure. Also, commercial narcotic quantities are defined.

These early release amounts represent the highest mitigated penalty that would be assessed upon mitigation. The deposit may be in the form of an irrevocable letter of credit or cash.

- II. In lieu of cash or letter of credit, the penalty may be secured by the International Carriers Bond (19 CFR 113.64). In view of the increased penalties provided for in the Anti-Drug Abuse Act, District and Area Directors should advise all carrier that the minimum International Carrier Bond amount will be raised from \$25,000 to \$100,000. Once a penalty has been incurred by a carrier, District and Area Directors are to require a minimum bond of \$250,000. A bond in the amount of \$250,000 will also be required even where a penalty action has not taken place, but the carrier has refused to enter into a cooperative agreement after having been presented one for joint signature by the carrier and the U.S. Customs Service. Continued repeat offenders will be subject to even higher bond amounts, to be determined on a case by case basis, by District/Area Directors.

District and Area Directors are responsible and will be accountable for communicating these changes in bond requirements to the carriers and insuring that a sufficient bond is on file. This should be completed within 60 days from the date of this directive.

NOTE: Existing delegation orders apply when a common carrier is seized under the provisions of 19 USC 1594. In such cases, early release may be authorized by District and Area Directors only in the unlikely event that the value of the conveyance is \$100,000 or less. Customs Headquarters (Miscellaneous Penalties Branch, FTS 566-5746) must be contacted for early release of conveyances valued at more than \$100,000.

6. PUBLICITY AND PRESS RELEASES - Concerning Common Carrier Seizures

The seizure of a commercial vessel/aircraft is a newsworthy item, and is critical publicity for U.S. Customs, especially in light of the anti-drug climate mounting in the United States. The Public Affairs Office will issue a statement concerning seized vessels or aircraft, and District and Area Directors if questioned, can relate to the press that a vessel or aircraft has been seized, including information

on the type and amount of controlled substances seized. Initial assessed penalty amounts should not be disclosed; only upon payment of a final mitigated penalty amount will information about an amount be disclosed. Any questions or further clarification should be referred to the appropriate Regional Public Affairs Office.

7. SUMMARY FORFEITURE PROCEDURES FOR COMMON CARRIERS

The Anti-Drug Abuse Act of 1986 amended 19 USC 1594 to permit the use Customs summary forfeiture procedures, where applicable (i.e., value of seized merchandise is \$100,000 or less, merchandise is prohibited, or the seized conveyance was used to import, export transport, or store any controlled substances). 19 USC 1607 et seq. Specifically, 19 USC 1607 and 19 CFR 162.45 require that all known parties-in-interest be informed by mail of the intent to forfeit and that a notice of seizure and intent to forfeit be published in a newspaper of general circulation for three successive weeks. 19 USC 1608 and 19 CFR 162.47 provide that any interested party within 20 days from the date of first publication may file a claim (CF-4615) and cost bond for costs (\$5000 or 10 percent of value of seized property, whichever is lower), and such claim shall be transmitted to the U.S. Attorney for the institution of judicial forfeiture (condemnation) proceedings. These timeframes may be extended by District and Area Directors to allow for a petitioning period or additional time for filing. 19 CFR 171.15.

If a seizure is contemplated, you are advised to contact the District/Area Fines, Penalties and Forfeitures Office, Headquarters Miscellaneous Penalties Branch (FTS 566-5746), or Regional Counsel. Your Regional Counsel will act as liaison with the U.S. Attorney's Office.

8. RESPONSIBILITIES

District and Area Directors are responsible for implementing this Directive and disseminating the information herein to all interested Customs parties. Regional Commissioners are responsible for monitoring compliance by District and Area Directors with this Directive. This document is exempt from public disclosure.

Assistant Commissioner
Office of Inspection and Control

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