

CUSTOMS DIRECTIVE

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CUSTOMS DIRECTIVE NO. 4410-013
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SUBJECT: CLARIFICATION OF THE REVISED DEFINITION OF "FRAUD"
UNDER 19 USC 1592

1. REFERENCES:

Title 19, United States Code, Section 1592
Title 19, Code of Federal Regulations, Part 171,
App. B Fines, Penalties & Forfeitures Handbook, Chap. FRD
Federal Register, Vol. 54, Pg.36906 (Sept. 6,1989)
Customs Bulletin, Vol. 23, No.38 (Sept. 20,1989)

2. PURPOSE

To clarify the use of the new definitions of "fraud" and "gross negligence" in the mitigation guidelines for violations of 19 USC 1592 which are contained in Appendix B to Part 171 of the Customs Regulations.

3. BACKGROUND

On September 6, 1989, Customs published an amendment to its mitigation guidelines for violations of 19 USC 1592 which revised the definitions for "fraud" and "gross negligence." The new definitions became effective on October 6, 1989. Previously, the mitigation guidelines provided that:

A violation is determined to be fraudulent if it results from an act or acts (of commission or omission) deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence.

The Department of Justice requested Customs to consider changing its definition to one which Justice believed was the correct court test. Justice believed that Customs internal mitigation definitions impaired its ability to argue a broader definition in the Court of International Trade, where all elements of the alleged violation, including the degree of culpability were subject to the court's de novo review. In 1986, after considering Justice's request and researching the issue, the Customs Service published a proposed definition in the Federal Register for public comment, even though such proposal and comment are normally not required for internal mitigation guidelines.

After considering the comments received, a revision to the definition of fraud was published which provides:

A violation is determined to be fraudulent if the material false statement or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence.

Although the definition of fraud was revised, Customs did not intend major changes in the handling of 19 USC 1592 cases by Customs officers. As Customs stated in the Federal Register, Customs officers will still be required to show that the violator knew that the material statement or act was false or that a material omission had occurred. The Customs Service will also be required to show that an act was done with an intent to deceive, to mislead, or to convey a false impression. The Customs Service will not be required to show that the violator specifically intended to defraud the revenue or violate U.S. laws.

In addition to revising the definition of fraud, the Customs Service revised the definition of gross negligence to conform to the new fraud definition. The revised definition provides:

A violation is determined to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

The major difference between the knowledge requirements of the two standards is that gross negligence does not require that a violator knew that there was a falsity. In addition, gross negligence does not require an intent to deceive, mislead or convey a false impression.

4. ACTION

The Customs Service did not intend to make any major changes in the manner in which the prepenalty or penalty notices or mitigator, decisions are handled in the field. Customs officers should not allege a fraudulent violation unless a material false statement or act in connection with a transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence. Customs officers will be required to show that the violator knew that the material statement or act was false or that a material omission had occurred, and that there was an intent to deceive, mislead or convey a false impression.

5. RESPONSIBILITIES

Area and District Directors will be responsible for ensuring that the revised definitions are properly applied to penalty cases within their jurisdictions.

Guidance concerning the application of this Directive may be requested from the Chief, Penalties Branch, Headquarters (FTS) 566-8317 or the local Regional/District Counsel.

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.

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Commissioner of Customs

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