

Register on October 7, 2010, FR Doc. 2010–25220, (75 FR 61933) on page 61994, column 1, is corrected as follows:

§ 71.1 [Amended]

Paragraph 6004—Class E airspace areas designated as an extension to a class D or class E surface area

* * * * *

AWP RM E4 Kwajalein Island, Marshall Islands, RMI [Amended]

Kwajalein Island, Bucholz AAF, RMI
(Lat. 08°43'12" N., long. 167°43'54" E.)
Kwajalein RBN

(Lat. 08°43'15" N., long. 167°43'40" E.)

That airspace extending upward from the surface within 2.2 miles each side of the Bucholz AAF 249° bearing, extending from the 4.3-mile radius of Bucholz AAF to 5.2 miles west of the Bucholz AAF, and within 3 miles each side of the 077° bearing from the Kwajalein RBN, extending from the 4.3-mile radius to 9.6 miles east of the RBN. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Pacific Chart Supplement.

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Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

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AWP RM E5 Kwajalein Island, Marshall Islands, RMI [Amended]

Kwajalein Island, Bucholz AAF, RMI
(Lat. 08°43'12" N., long. 167°43'54" E.)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Bucholz AAF. That airspace extending upward from 1,200 feet above the surface within a 100-mile radius of Bucholz AAF.

Issued in Washington, DC, on January 12, 2011.

Edith V. Parish,

Manager, Airspace, Regulation and ATC Procedures Group.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 145, 159, 173 and 174

[CBP Dec. 11–02]

Technical Corrections: Matters Subject to Protest and Various Protest Time Limits

AGENCIES: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends title 19 of the Code of Federal Regulations (19 CFR) by making technical corrections to certain protest provisions within part 174. The technical corrections are necessary to conform 19 CFR to reflect amendments to part 174's underlying statutory authority effected by the Customs Modernization provisions of the North American Free Trade Agreement (NAFTA) Implementation Act, the Miscellaneous Trade and Technical Corrections Act of 1999, and the Miscellaneous Trade and Technical Corrections Act of 2004. This document also makes related conforming changes to other provisions within 19 CFR, as necessitated by these statutory amendments, as well as non-substantive editorial and nomenclature changes.

DATES: The final rule is effective on January 14, 2011.

FOR FURTHER INFORMATION CONTACT: Julia H. Rieper, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, Tel. (202) 325–0226.

SUPPLEMENTARY INFORMATION:

Background

This document amends title 19 of the Code of Federal Regulations (19 CFR) by making technical corrections to certain protest provisions within part 174 and certain related provisions in parts 145, 159 and 173. The technical corrections are necessary to conform 19 CFR to reflect amendments to part 174's underlying statutory authority effected by the Customs Modernization (Mod Act) provisions of the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182, 107 Stat. 2057), the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36, 113 Stat. 127), and the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429, 118 Stat. 2434). Any amendments to the CBP regulations, including regulations amended by this notice, that require statutory interpretation will not be included in this technical corrections document and will be published in a separate proposed rulemaking.

The statutory amendments affect, in pertinent part, the types of matters subject to protest, the time required for allowing or denying an application for further review of a protest, and various other protest time limits. This document also makes non-substantive editorial and nomenclature changes to reflect the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of

Homeland Security (DHS) and the subsequent renaming of the agency as U.S. Customs and Border Protection.

Statutory Changes

Section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), provides that certain specified decisions made by CBP can be protested before becoming final. Section 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1515), sets forth standards governing the administrative review of protests filed under section 514. Section 504 of the Tariff Act of 1930, as amended (19 U.S.C. 1504), prescribes the limitations on liquidation. Regulations implementing these statutes are contained in parts 159 and 174 of title 19 of the CFR.

The Mod Act

Section 645 of the Mod Act amended section 514(c)(1) (19 U.S.C. 1514(c)(1)) by recasting the first sentence in order to, among other things, permit the transmission of a protest to CBP “electronically pursuant to an electronic data interchange system.” Section 618 of the Mod Act also repealed section 521 (19 U.S.C. 1521), which provided for the reliquidation of an entry on account of fraud.

The Miscellaneous Trade and Technical Corrections Act of 1999

Section 2408(b) of the Miscellaneous Trade and Technical Corrections Act of 1999 (“Trade Act of 1999”) amended section 514(a)(7) by the addition of a reference to subsection (d) of section 520 of the Tariff Act of 1930, as amended (19 U.S.C. 1520(d)), thereby including as a protestable decision a refusal to reliquidate an entry in response to a post-importation NAFTA claim.

The Miscellaneous Trade and Technical Corrections Act of 2004

The Miscellaneous Trade and Technical Corrections Act of 2004 (“Trade Act of 2004”) amended several statutes that impact the manner by which CBP administers protests. In this regard, the following is noted:

1. Section 2105 of the Trade Act of 2004 repealed section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)), thereby removing CBP's authority, in situations where a valid protest has not been filed, to reliquidate an entry to correct clerical errors, mistakes of fact, and other inadvertences for entries made on or after December 18, 2004;

2. Section 2103 of the Trade Act of 2004 amended 19 U.S.C. 1514 and 1515:

- i. To clarify that filing a protest is necessary to challenge clerical errors,

mistakes of fact and other inadvertences for entries made on or after December 18, 2004.

ii. To extend the time to file and amend a protest from 90 days to 180 days after the date of liquidation or reliquidation, or date of the decision, order, or finding being protested for entries made on or after December 18, 2004;

iii. To extend the time for a surety to file a protest from 90 days to 180 days from the date of mailing of the notice of demand for payment against its bond for entries made on or after December 18, 2004; and

iv. To change the time to file a request for accelerated disposition of a protest from after 90 days of the filing of the protest to any time concurrent with or following the filing of a protest for entries made on or after December 18, 2004;

3. Section 1563(e) of the Trade Act of 2004 amended 19 U.S.C. 1504(a) to more specifically describe “entries” as “entries for consumption” and identify “entries or claims for drawback” as subject to liquidation by operation of law.

Explanation of Amendments

CBP has determined that the amendments to 19 U.S.C. 1504, 1514, and 1515, and repeal of 19 U.S.C. 1520(c) and 1521, as discussed above, require conforming technical corrections to the regulations. These changes are discussed in more detail below.

I. Part 174—Protests

Section 174.11

Section 174.11 (19 CFR 174.11) identifies matters that are subject to protest. Existing paragraphs (a) through (g) set forth protestable decisions that are administrative in nature.

This document revises the overall structure of this provision to reflect the amendments to 19 U.S.C. 1514 effected by section 2103 of the Trade Act of 2004. Specifically, § 174.11 is restructured to clarify that clerical errors, mistakes of fact, and other inadvertences are protestable under section 1514 in addition to the existing administrative matters that are currently identified as being subject to protest pursuant to the statute. The changes are described below:

1. This document adds a new paragraph (a) entitled, “[C]lerical errors, mistakes of fact, and other inadvertences,” to accurately reflect the scope of matters subject to protest under this section. While the amendments to 19 U.S.C. 1514 effected by section 2103

of the Trade Act of 2004 only apply to merchandise entered, or withdrawn from warehouse for consumption, on or after December 18, 2004, protests filed under paragraph (a) are applicable to any entries, liquidations, or reliquidations made before or after this date. However, any entries, liquidations, or other customs transactions made prior to December 18, 2004, also remain subject to reliquidation under § 173.4 which implemented section 520(c) of the Tariff Act of 1930.

2. This document creates a new heading text for paragraph (b) entitled “[A]dministrative Decisions” and existing paragraphs (a) through (g) are redesignated as paragraphs (b)(1) through (b)(7) and a new paragraph (b)(8) is added to reflect the amendment of 19 U.S.C. 1514(a)(7) made by section 2408(b) of the Trade Act of 1999 regarding post-importation NAFTA claims. The following additional amendments to these redesignated paragraphs are noted:

i. In newly redesignated paragraph (b)(3), a reference to the “Secretary of Homeland Security” is added to reflect the delegation of authority over certain revenue functions from the Secretary of the Treasury to the Secretary of Homeland Security, effected by Treasury Department Order 100–16, dated May 15, 2003; and

ii. In paragraph (b)(4), the words “or a demand for redelivery to CBP custody” and the words “except a determination that may be appealed under 19 U.S.C. 1337” are added to the text to reflect the full terms of 19 U.S.C. 1514(a)(4).

Section 174.12

Section 174.12 (19 CFR 174.12), which sets forth the standards for the filing of protests, is amended as follows:

1. Paragraph (b) is amended to conform the text to the Mod Act section 645 amendment of 19 U.S.C. 1514 which authorizes the electronic transmission of protests. As a consequence of this change, this paragraph is amended to state that electronic submissions are not required to be filed in quadruplicate; and

2. Pursuant to section 2103 of the Trade Act of 2004, the introductory text to paragraph (e) is amended by changing the time for filing a protest from 90 days to 180 days for all merchandise entered, or withdrawn from warehouse for consumption, on or after December 18, 2004. This document also amends paragraph (e)(1) to reflect the statutory changes to 19 U.S.C. 1514 effected by section 2103(2)(B)(ii) of the Trade Act of 2004, which state that the aforementioned 180-day protest period runs from the date of liquidation or

reliquidation, and not from the date of notice. Paragraph (e)(2) is amended by adding the words “or demanding redelivery to CBP custody” to conform to the change in newly redesignated § 174.11(b)(4), and by clarifying that protest of a denial of a petition filed pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), must be made within 90 days of the denial and only for those denials that pertain to entries made before December 18, 2004.

Section 174.14

Section 174.14, which prescribes standards for the amendment of protests, is amended as follows:

1. Paragraph (a), which prescribes the time for filing an amendment to a protest, is amended by changing the time to any time prior to the expiration of the 180-day period within which the protest may be filed pursuant to § 174.12(e), but only for amendments to protests involving entries or other customs transactions made on or after December 18, 2004; and

2. Paragraph (b) is amended to provide for the electronic amendment of protests (similar to the approach taken for the electronic filing of protests in § 174.12(b), discussed above).

Section 174.22

Section 174.22, which concerns the accelerated disposition of protests, is amended to reflect the statutory amendment to 19 U.S.C. 1515(b) effected by section 2103 of the Trade Act of 2004. The amendment removes the 90-day time limit for filing a request for accelerated disposition (which applies to protests of decisions relating to entries made before December 18, 2004) and replaces it with the opportunity to file concurrent with or any time following the filing of a protest of a decision relating to an entry made on or after December 18, 2004.

Section 174.32

This section, which sets forth the time frame in which CBP must publish or otherwise make available protest review decisions, is amended to conform to the 90-day deadline for publication/availability set forth in 19 U.S.C. 1625 as amended by section 623 of the Mod Act. We also are updating the reference to the rules that CBP follows on Freedom of Information Act requests in § 174.32 since CBP has been organizationally aligned under the Department of Homeland Security since March 1, 2003. We are removing the reference to the Treasury Department’s disclosure regulations in title 31 of the CFR and adding in its place the DHS’s

disclosure regulations of title 6 of the CFR. We note, however, that the publishing requirements of 5 U.S.C. 552(a) referenced in § 174.32 are found in part 103 of title 19 CFR (*see* 19 CFR 103.4) rather than in title 6 CFR part 5.

II. Part 173—Administrative Review in General

Part 173 of title 19 of the Code of Federal Regulations (19 CFR part 173) provides for, in pertinent part, the authority to correct a clerical error, mistake of fact, or other inadvertence in any entry, liquidation, or other CBP transaction under section 520(c)(1), Tariff Act of 1930, as amended.

As noted above, section 2105 of the Trade Act of 2004 repealed section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)), effective as of December 18, 2004, for merchandise entered or withdrawn from warehouse for consumption. Accordingly, this document amends §§ 173.0 and 173.4 to reflect this fact and to state that authority exercised under 19 U.S.C. 1520(c) only applies to any entry, liquidation, or other CBP transaction made before December 18, 2004. This document also amends § 173.0 by removing the language “and the power to reliquidate an entry on account of fraud” to reflect the repeal of 19 U.S.C. 1521 effected by section 618 of the Mod Act.

III. Part 145—Mail Importations

The provisions of part 145 pertain to the importation of merchandise through the mails. Sections 145.22 and 145.23 (19 CFR 145.22 and 145.23), which respectively set forth the procedures for obtaining administrative review of the duty assessed on mail importations and the applicable time limits for such review, are amended to reflect the new time periods within which to file a protest for mail entries made on or after December 18, 2004, as well as prior to that date.

IV. Part 159—Liquidation of Duties

Section 159.1 sets forth the definition of liquidation as the final computation or ascertainment of the duties (not including vessel repair duties) or drawback accruing on an entry. This provision is amended to conform to the amendments to 19 U.S.C. 1504 effected by section 1563(e) of the Trade Act of 2004, which more specifically describe “entries” as “entries for consumption” and identify “entries or claims for drawback” as subject to liquidation by operation of law.

Section 159.6 sets forth the regulations applicable to situations where there is a difference between

liquidated duties and estimated duties. Paragraph (b)(1) prescribes the terms applicable to reliquidation at the importer’s request. Due to the repeal of section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)) effected by section 2105 of the Trade Act of 2004, paragraph (b)(1) is amended to reflect that reliquidation at the importer’s request for correction under 19 U.S.C. 1520(c) is only permitted for entries made before December 18, 2004.

Section 159.9 prescribes the manner by which notice of liquidation of formal entries is provided to importers. Paragraph (c)(2) sets forth notice requirements applicable to entries that are liquidated by operation of law, as prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504). The existing text of paragraph (c)(2)(iii) provides that a protest under 19 U.S.C. 1514 and part 174 of this chapter must be filed within 90 days from the date the bulletin notice of liquidation of an entry by operation of law is posted or lodged in the customhouse. As noted above, the amendments to 19 U.S.C. 1514 made by the Miscellaneous Trade Act of 2004 extend the protest period for an entry made on or after December 18, 2004, from 90 to 180 days commencing from the date of liquidation of an entry, and not from the date of notice of liquidation. For an entry made before December 18, 2004, the protest period remains at 90 days commencing from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof is posted or lodged in the customhouse. This document makes conforming changes to paragraph (c)(2)(iii) to reflect the scope of section 1514, as amended.

Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document are necessary to conform parts 145, 159, 173 and 174 of title 19 of the CFR to reflect amendments to 19 U.S.C. 1514 and 1515 effected by the Customs Modernization (Mod Act) provisions of the North American Free Trade Agreement (NAFTA) Implementation Act, the Miscellaneous Trade and Technical Corrections Act of 1999, and the Miscellaneous Trade and Technical Corrections Act of 2004, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary. For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

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

Executive Order 12866

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

Signing Authority

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

List of Subjects

19 CFR Part 145

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 159

Customs duties and inspection, Entry procedures, Imports, Liquidation of entries for merchandise.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 174

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Protests, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 145, 159, 173 and 174 (19 CFR parts 145, 159, 173 and 174) are amended as set forth below.

PART 145—MAIL IMPORTATIONS

■ 1. The general authority citation for part 145 and the sectional authority citations for §§ 145.22 through 145.23 are revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States, 1624.

* * * * *

Sections 145.22 through 145.23 also issued under 19 U.S.C. 1501, 1514;

* * * * *

■ 2. In § 145.22:

■ a. The introductory text is amended by adding, after the word “entry”, the

following language, “made before December 18, 2004”;

■ b. Paragraphs (a) and (b) are amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”; and

■ c. Paragraph (c) is amended by adding, after the first sentence, two sentences to read as follows:

§ 145.22 Procedures for obtaining administrative review.

* * * * *

(c) * * * For mail entries made before December 18, 2004, a protest must be filed no later than 90 days after payment of the duties by the addressee. All other mail entries must be protested within 180 days after payment of the duties by the addressee.

■ 3. In § 145.23:

■ a. The first sentence is amended by adding, after the word “entry” the following language, “made before December 18, 2004”;

■ b. The second sentence is amended by removing the word “shall” and adding in its place the word “must”; and

■ c. The third sentence is removed and two sentences are added in its place to read as follows:

§ 145.23 Time limits.

* * * For a mail entry made before December 18, 2004, protests under § 145.22(c) of this chapter must be filed no later than 90 days after payment of the duties by the addressee, but may be acted upon by CBP after expiration of that 90-day period. For a mail entry made on or after December 18, 2004, protests under § 145.22(c) of this chapter must be filed no later than 180 days after payment of the duties by the addressee, but may be acted upon by CBP after expiration of that 180-day period.

PART 159—LIQUIDATION OF DUTIES

■ 4. The general authority citation for part 159 and the sectional authority citation for § 159.6 continue to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

Section 159.6 also issued under 19 U.S.C. 1321, 1505;

* * * * *

§ 159.1 [Amended]

■ 5. Section 159.1 is amended by removing the text following the word “of” and adding in its place the language, “duties on entries for consumption or drawback entries”.

§ 159.6 [Amended]

■ 6. In § 159.6:

■ a. Paragraph (a) is amended by removing the word “shall” each place it appears and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”.

■ b. The introductory text to paragraph (b) is amended by removing the word “shall” and adding in its place the word “will”;

■ c. Paragraph (b)(1) is amended by adding, after the word “or”, the following language, “, for entries made before December 18, 2004,”; and by removing the word “shall” and adding in its place the word “will”;

■ d. Paragraph (b)(2) is amended by removing the word “shall” and adding in its place the word “will”;

■ e. Paragraph (c) is amended by removing the word “shall” each place it appears and adding in its place the word “will”; and

■ f. Paragraph (d) is amended by removing the word “shall” each place it appears and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the word “customs”.

§ 159.7 [Amended]

■ 6. In § 159.7:

■ a. Paragraphs (a) and (c) are amended by removing the word “shall” each place it appears and adding the word “will”; and

■ b. Paragraph (b) is amended by removing the word “shall” and adding in its place the word “will”, and by removing the words “Customs duty” each place it appears and adding in their place the words “customs duty”, and by removing the term “Customs custody” and adding in its place the words “CBP custody”.

§ 159.8 [Amended]

■ 7. Section 159.8 is amended by removing the word “shall” and adding in its place the word “will”.

■ 8. In § 159.9:

■ a. Paragraph (a) is amended by removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”;

■ b. Paragraph (b) is amended by removing the word “shall” each place it appears and adding in its place the word “will”; and by removing the word “Customs” each place it appears and adding in its place the word “customs”;

■ c. Paragraph (c)(1) is amended by removing the word “shall” each place it appears and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”;

■ d. Paragraphs (c)(2)(i) and (ii) are amended by removing the word “shall” each place it appears and adding in its place the word “will”;

■ e. Paragraph (c)(2)(iii) is revised; and

■ f. Paragraph (d) is amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”; and by removing the word “shall” and adding in its place the word “will”.

The revisions to § 159.9(c)(2)(iii) read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

* * * * *

(c) * * *

(2) * * *

(iii) Pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof is posted or lodged in the customhouse, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

* * * * *

§ 159.10 [Amended]

■ 9. Section 159.10 is amended by removing the word “shall” each place it appears and adding in its place the word “will”; and by removing the word “Customs” each place it appears and adding in its place the term “CBP”.

§ 159.11 [Amended]

■ 10. Section 159.11 is amended by removing the word “shall” each place it appears and adding in its place the word “will”; and by removing the word “Customs” each place it appears and adding in its place the term “CBP”.

§ 159.12 [Amended]

■ 11. Section 159.12 is amended by removing the word “shall” each place it appears and adding in its place the word “will”; and by removing the word “Customs” each place it appears and adding in its place the term “CBP”.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

■ 12. The authority citation for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

§ 173.0 [Amended]

■ 13. Section 173.0 is amended by adding after the word “amended,” the language, “for entries made before December 18, 2004, and”; and by removing the language “, and the power to reliquidate an entry on account of fraud”.

§ 173.3(b) [Amended]

■ 14. Section 173.3(b) is amended by removing the word “shall” and adding in its place the word “will”.

■ 15. Section 173.4 is revised to read as follows:

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) *Authority to review and correct entries of merchandise made, or withdrawn from warehouse for consumption, before December 18, 2004.* Even though a valid protest was not filed, the port director, upon timely application and for entries of merchandise made, or withdrawn from warehouse for consumption, before December 18, 2004, may correct pursuant to section 520(c)(1), Tariff Act of 1930, as amended, a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (a)(1) of this section, by reliquidation or other appropriate action.

(1) *Transactions that may be corrected.* Correction may be made to any entry, liquidation, or other customs transaction made before December 18, 2004, if the clerical error, mistake of fact, or other inadvertence:

- (i) Does not amount to an error in the construction of a law;
- (ii) Is adverse to the importer; and
- (iii) Is manifest from the record or established by documentary evidence.

(2) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (a)(1) of this section must be brought to the attention of the director of the port of entry or other appropriate CBP officer within 1 year after the date of liquidation or exaction. The party requesting reliquidation under this section must state, to the best of his or her knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and 191.81(b) of this chapter).

(b) *Entries of merchandise made, or withdrawn from warehouse for consumption, on or after December 18, 2004.* For merchandise entered, or

withdrawn from warehouse for consumption, on or after December 18, 2004, CBP does not have the authority, in situations where a valid protest has not been filed, to reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence. For merchandise entered or withdrawn from warehouse for consumption on or after December 18, 2004, and except as provided for in sections 501 (relating to voluntary reliquidations), 516 (relating to petitions by domestic interested parties), and 520 (related to refunds) of the Tariff Act of 1930, as amended, a CBP decision involving any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic submission, that is adverse to the importer in any entry, liquidation or reliquidation, may be corrected by protest only. See 19 CFR 174.11.

(c) *“Liquidation” includes reliquidation.* “Liquidation,” as used in this section, includes reliquidation of an entry.

§ 173.5 [Amended]

■ 16. In § 173.5:

- a. The first sentence is amended by adding, after the word “if”, the following language, “entry was made before December 18, 2004 and”; and
- b. The second sentence is amended by removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”.

PART 174—PROTESTS

■ 17. The authority citation for part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

■ 18. Section 174.11 is revised to read as follows:

§ 174.11 Matters subject to protest.

The following decisions of CBP, including the legality of all orders and findings entering into those decisions, may be protested under the provisions of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514):

(a) *Clerical errors, mistakes of fact, and other inadvertences.* Except as provided for in sections 501 (relating to voluntary reliquidations), 516 (relating to petitions by domestic interested parties), and 520 (related to refunds) of the Tariff Act of 1930, as amended, any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic submission, that is adverse to the importer in any entry, liquidation or reliquidation is subject to protest. In addition, any entry, liquidation, or other

CBP transaction that occurred prior to December 18, 2004, also may be the subject of a reliquidation request made pursuant to the terms set forth in § 173.4 (19 CFR 173.4).

(b) *Administrative decisions.* CBP administrative decisions involving the following subject matters are subject to protest:

- (1) The appraised value of merchandise;
 - (2) The classification and rate and amount of duties chargeable;
 - (3) All charges or exactions of whatever character, including the accrual of interest, within the jurisdiction of the Secretary of Homeland Security or the Secretary of the Treasury;
 - (4) The exclusion of merchandise from entry, delivery, or a demand for redelivery to CBP custody under any provision of the customs laws except a determination that may be appealed under 19 U.S.C. 1337;
 - (5) The liquidation or reliquidation of an entry, or any modification of an entry;
 - (6) The refusal to pay a claim for drawback;
 - (7) The refusal to reliquidate an entry made before December 18, 2004, under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)); or
 - (8) The refusal to reliquidate an entry under section 520(d), Tariff Act of 1930, as amended (19 U.S.C. 1520(d)).
- 19. Section 174.12, paragraphs (b), (e) introductory text, (e)(1), and (e)(2), are revised to read as follows:

§ 174.12 Filing of protests.

* * * * *

(b) *Form and number of copies.* A written protest against a decision of CBP must be filed in quadruplicate on CBP Form 19 or a form of the same size clearly labeled “Protest” and setting forth the same content in its entirety, in the same order, addressed to CBP. All schedules or other attachments to a protest (other than samples or similar exhibits) must also be filed in quadruplicate. A protest against a decision of CBP may also be transmitted electronically pursuant to any electronic data interchange system authorized by CBP for that purpose. Electronic submissions are not required to be filed in quadruplicate.

* * * * *

(e) *Time of filing.* Protests must be filed, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 90 days of a decision relating to an entry made before December 18, 2004, or within 180 days of a decision relating to an entry

made on or after December 18, 2004, after any of the following:

(1) The date of notice of liquidation or reliquidation, or the date of liquidation or reliquidation, as determined under §§ 159.9 or 159.10 of this chapter;

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (for example: The date of an exaction; the date of written notice excluding merchandise from entry, delivery or demanding redelivery to CBP custody under any provision of the customs laws; the date of written notice of a denial of a claim filed under section 520(d), Tariff Act of 1930, as amended (19 U.S.C. 1520(d)), or; within 90 days of the date of denial of a petition filed pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), relating to an entry made before December 18, 2004); or

* * * * *

■ 20. Section 174.14, paragraphs (a) and (b) are revised to read as follows:

§ 174.14 Amendment of protests.

(a) *Time for filing.* A protest may be amended at any time prior to the expiration of the period within which the protest may be filed under § 174.12(e). The amendment may assert additional claims pertaining to the administrative decision that is the subject of the protest, or may challenge an additional administrative decision relating to the same category of merchandise that is the subject of the protest. For the presentation of additional grounds or arguments in support of a valid protest after the applicable protest period set forth in § 174.12(e) has expired, see § 174.28.

(b) *Form and number of copies of amendment.* If the protest was not filed electronically, an amendment to the protest must be filed in quadruplicate on CBP Form 19 or on a form of the same size, clearly labeled "Amendment to Protest" at the top of the form. Schedules or other attachments (other than samples or similar exhibits) must also be filed in quadruplicate. A protest that was transmitted to CBP electronically may be amended only through an electronic data interchange system authorized by CBP for that purpose. Electronic submissions are not required to be filed in quadruplicate.

* * * * *

■ 21. Section 174.22, paragraph (a) is revised to read as follows:

§ 174.22 Accelerated disposition of protest.

(a) *Request for accelerated disposition.* Accelerated disposition of a

protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) may be obtained at any time after 90 days from the filing of such protest for entries made before December 18, 2004, or at any time concurrent with or following the filing of the protest for entries made on or after December 18, 2004, by filing by registered or certified mail a written request for accelerated disposition with the port director or other CBP officer with whom the protest was filed.

* * * * *

■ 22. Section 174.32 is revised to read as follows:

§ 174.32 Publication.

Within 90 calendar days after issuing a protest review decision, CBP will publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 6 CFR part 5 and 19 CFR part 103.

Dated: January 10, 2011.

Alan Bersin,

Commissioner, U.S. Customs and Border Protection.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in February 2011. Interest assumptions are also published on PBGC's Web site (<http://www.pbgc.gov>).

DATES: Effective February 1, 2011.

FOR FURTHER INFORMATION CONTACT:

Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in

Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

PBGC uses the interest assumptions in Appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for February 2011.¹

The February 2011 interest assumptions under the benefit payments regulation will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for January 2011, these interest assumptions represent an increase of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during February 2011, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

¹ Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.