Issued in Jamaica, New York on March 12, 2001.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 01–7418 Filed 3–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AEA–13FR]

Establishment of Class E Airspace: Harrisonburg, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Harrisonburg, VA. This action is necessitated by the development of a Helicopter Point in Space Approach to the Rockingham Memorial Hospital Heliport, Harrisonburg, VA. Controlled airspace extending upward from 700 feet to 1200 feet Above Ground Level (AGL) is needed to contain aircraft executing the Point in Space approach to the Rockingham Memorial Hospital Heliport.

EFFECTIVE DATE: 0901 UTC April 9, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On February 2, 2001 a document proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace extending upward from 700 feet to 1200 feet Above Ground Level (AGL) for the Helicopter Point in Space approach to the Rockingham Hospital Heliport, Harrisonburg, VA, was published in the **Federal Register** (66 FR 8773). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before March 5, 2001. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000 and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations at the Rockingham Memorial Hospital Heliport, Harrisonburg, VA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

AEA VA E5 Harrisonburg, VA [NEW]

Rockingham Memorial Hospital Heliport.
(Lat. 38°26′53.88″ N/long. 78°52′40.98″ W)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Rockingham Memorial Hospital Heliport.

* * * * *

Issued in Jamaica, New York on March 12, 2001.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 01–7417 Filed 3–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 113 and 141

[T.D. 01–26]

RIN 1515–AC45

Assessment of Liquidated Damages Regarding Imported Merchandise That Is Not Admissible Under the Food, Drug and Cosmetic Act

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed amendment to the Customs Regulations intended to discourage the illegal sale of imported food. This amendment provides for the assessment of liquidated damages equal to the domestic value of the merchandise in the case of merchandise that is not admissible under the provisions of the Food, Drug and Cosmetic Act and that is not treated or otherwise disposed of in accordance with that Act. The document also adopts, without change, proposed amendments to various provisions of the Customs Regulations pertaining to customs bonds to provide, as a general rule when a different amount is not prescribed by law or regulation, for liquidated damages of three times the appraised value of the merchandise in the case of merchandise that is prohibited from entry. Finally, the document adopts a proposed editorial correction within one of the sections of the Customs Regulations pertaining to customs bonds. The substantive changes reflected in this final rule document will enhance the effectiveness of the affected regulatory provisions by increasing and clarifying

the potential liability for the payment of liquidated damages by principals and sureties on customs bonds.

EFFECTIVE DATE: April 27, 2001.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch (202–927–2344).

SUPPLEMENTARY INFORMATION:

Background

Section 801 of the Food, Drug and Cosmetic Act, as amended (21 U.S.C. 381), and the regulations promulgated under that statute, provide the basic legal framework governing the importation of foodstuffs into the United States. Under 21 U.S.C. 381(a), the Secretary of Health and Human Services is authorized to refuse admission of, among other things, any article that is adulterated or misbranded or that has been manufactured, processed or packed under insanitary conditions. The Secretary of the Treasury is required by section 381(a) to cause the destruction of any article refused admission unless the article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of the refusal or within such additional time as may be permitted pursuant to those regulations.

Under 21 U.S.C. 381(b), pending decision as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of that article to the owner or consignee upon the execution of a good and sufficient bond providing for the payment of liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. In addition, section 381(b) allows the owner or consignee in certain circumstances to take action to bring an imported article into compliance for admission purposes, under such bonding and other requirements as the Secretary of the Treasury may prescribe by regulation.

Based upon the above statutory authority, imported foodstuffs are conditionally released under bond while determinations as to admissibility are made; *see* § 12.3 of the Customs Regulations (19 CFR 12.3). Under § 141.113(c) of the Customs Regulations (19 CFR 141.113(c)), Customs may demand the return to Customs custody of most types of merchandise that fail to comply with the laws or regulations governing their admission into the United States (also referred to as the redelivery procedure). The condition of the basic importation and entry bond contained in § 113.62(d) of the Customs Regulations (19 CFR 113.62(d)) sets forth the obligation of the importer of record to timely redeliver released merchandise to Customs on demand and provides that a demand for redelivery will be made no later than 30 days after the date of release of the merchandise or 30 days after the end of the conditional release period, whichever is later. Failure to meet the obligation to redeliver contained in § 113.62(d) will create a potential liability for the payment of liquidated damages under the terms of the bond.

Proposed Regulatory Change Regarding Use of the Domestic Value Standard for Liquidated Damages

In an April 1998 report to the Chairman of the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, on the subject of food safety, the United States General Accounting Office (GAO) determined that federal efforts to ensure the safety of imported foods were inconsistent and unreliable. Among its specific conclusions, the GAO report indicated that a weakness existed in the customs bond structure in that liquidated damages arising from breach of obligations to redeliver merchandise for which admission was refused did not represent a deterrent to the importation of unsafe products. The GAO reported that liquidated damages of three times the entered value (the existing standard) may not discourage the illegal sale of imported food because the value of the food on the domestic retail market (''domestic value'') may be far greater than three times the entered value.

In response to this study, Customs on August 2, 1999, published a notice of proposed rulemaking in the **Federal Register** (64 FR 41851) to amend § 12.3 of the Customs Regulations (19 CFR 12.3) by designating the existing text as paragraph (a) and adding a new paragraph (b) that referred specifically to the assessment of liquidated damages with regard to any food, drug, device or cosmetic that is not redelivered into Customs custody or otherwise treated or disposed of within the time period prescribed by law after the merchandise has been found to be inadmissible pursuant to the provisions of the Food, Drug and Cosmetic Act. This proposed new paragraph (b) provided for the assessment of liquidated damages in an amount equal to the ''domestic value'' of the merchandise at the time of entry as if it had not been refused admission or otherwise found to be noncompliant. For purposes of calculating the liquidated damages, the new paragraph (b) text specifically referred to § 162.43(a) of the Customs Regulations (19 CFR 162.43(a)) which defines ''domestic value'' as ''the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade.''

Customs also notes that a Presidential memorandum dated July 3, 1999, directed the Secretaries of the Treasury and Health and Human Services to undertake a comprehensive plan to better protect the American consumer from unsafe imported foods. One of the recommended actions involved increasing the amount of the bond posted for imported foods when necessary to deter premature and illegal entry into the United States. Although the preamble portion of the August 2, 1999, notice of proposed rulemaking did not specifically discuss this recommendation, the stated reason behind the proposed new paragraph (b) text of § 12.3 was entirely consistent with that recommendation.

Proposed Regulatory Change Regarding use of the ''Three Times'' Value Standard for Prohibited Merchandise

The conditions of the basic importation and entry bond set forth in § 113.62 of the Customs Regulations (19 CFR 113.62), the conditions of the basic custodial bond set forth in § 113.63 of the Customs Regulations (19 CFR 113.63), the conditions of the international carrier bond set forth in § 113.64 of the Customs Regulations (19 CFR 113.64), the conditions of the commercial gauger and commercial laboratory bond as set forth in § 113.67 of the Customs Regulations (19 CFR 113.67), and the conditions of the foreign trade zone operator bond as set forth in § 113.73 of the Customs Regulations (19 CFR 113.73) prescribe, as a consequence of default, the assessment of liquidated damages equal to three times the appraised value of the merchandise involved in the default if that merchandise is ''restricted merchandise or alcoholic beverages.'' Similar language is also used in § 141.113(h) of the Customs Regulations (19 CFR 141.113(h)), which recites the liquidated damages that may be assessed for failure to comply with a demand for return of merchandise to Customs custody.

A question had arisen whether the ''three times'' standard for liquidated damages would be appropriate when the merchandise involved in the default is prohibited from entry. While it remained Customs position that the regulatory provisions referred to above permitted the assessment of three times the appraised value of the merchandise

when the merchandise involved in the default was prohibited, the August 2, 1999, notice of proposed rulemaking proposed to amend each of those regulatory provisions to provide explicitly for the assessment of three times the appraised value of the merchandise when the merchandise involved is restricted ''or prohibited.''

Proposed Editorial Correction

Finally, the August 2, 1999, notice of proposed rulemaking included a proposed editorial correction to the first sentence of § 113.62(l)(1), (19 CFR 113.62(l)(1)), which sets forth the consequences of default. This correction involved the addition of a reference to condition ''(k)'' of § 113.62 in the exceptions to the general rules regarding the amount of liquidated damages that may be assessed (that is, the value of, or three times the value of, the merchandise involved in the default), because a different level of liquidated damages (that is, $100 per thousand board feet of the imported lumber) is prescribed for condition (k) in paragraph (l)(5) of that section.

The notice of proposed rulemaking invited the submission of public comments on the proposed amendments, and the public comment period closed on October 1, 1999. A total of 13 commenters responded to the solicitation of comments. A discussion of those comments follows.

Discussion of Comments

Comment

One commenter suggested that proposed paragraph (b) of § 12.3 should be incorporated into the bond cancellation standards that were published in T. D. 94–38. The commenter also suggested that the conditional release language of the bond should be eliminated inasmuch as it does not comport with commercial reality.

Customs Response

Customs does not believe that the suggestions of this commenter should be adopted. Elimination of the conditional release period falls outside the scope of this rulemaking action. Additionally, the bond cancellation standards to which the commenter referred do not govern liquidated damages assessment. Liquidated damages amounts are included in bond terms and conditions which are prescribed in Part 113 of the Customs Regulations.

Comment

Numerous commenters indicated that assessment of liquidated damages in an amount equal to the domestic value of merchandise refused admission might actually serve to reduce the amount of liquidated damages assessed. One of these commenters indicated that Customs has historically calculated domestic value of merchandise to be two times the entered value plus the duty. As such, the proposed regulation will actually reduce liquidated damages amounts. Such an anomalous result would serve to undermine the purpose of the proposed regulation. Another commenter suggested that, to correct this problem, Customs should reword the regulation to provide for the assessment of liquidated damages of up to three times the value or the domestic value of the refused product, whichever is greater.

Customs Response

Customs agrees with the commenters that the proposed language might actually serve to reduce liquidated damages, clearly contrary to the intent of the GAO and the Presidential memorandum of July 3, 1999, as discussed above. Accordingly, in this final rule document a new paragraph (b) has been added to the revised § 12.3 text and proposed paragraph (b) has been modified and redesignated as paragraph (c) in order to provide for a bond, and thus the assessment of liquidated damages, either in an amount equal to the domestic value of the merchandise or in an amount equal to three times the (appraised) value of the merchandise.

Comment

One commenter was of the view that Customs has mistakenly considered merchandise that has been refused admission by the Food and Drug Administration (FDA) to be considered ''prohibited or restricted merchandise'' for purposes of liquidated damages assessment. The commenter would like to see the rule clarified to indicate that restricted or prohibited merchandise does not refer to merchandise refused admission by the FDA.

Customs Response

Customs disagrees with the commenter. By definition, merchandise that has been refused admission by the FDA is prohibited merchandise and should be treated as such.

Comment

Several commenters stated that proposed paragraph (b) of § 12.3 substantially increases liquidated damages assessments without providing sureties sufficient information to determine the amount of their increased exposure. As a consequence, all importers likely will be charged increased amounts for bonds. Numerous other commenters claimed that the proposed regulation was an undue burden on trade, and they also concluded that increased charges to importers will unnecessarily result because of the proposed change. These commenters stated that the majority of compliant importers will be forced to subsidize the costs incurred because of a very few recalcitrant importers. One of the commenters additionally noted that the GAO report adopted the position that bonds were inadequate as a result of anecdotal evidence that certain foods were resold at prices up to 15 times their entered value. The commenter argued that this anomalous situation should not be the basis for raised potential liquidated damages for all.

Customs Response

Customs acknowledges that the majority of importers of FDA-regulated merchandise comply with the laws governing the importation of food, drugs and cosmetics. In recognition of that fact and in response to the concerns raised by the commenters with regard to the incurring of risk and with regard to the potential economic impact of the regulation on compliant importers as proposed, the text of new paragraph (b) of § 12.3 as mentioned above gives the port director a choice as regards the bond amount to be prescribed (that is, an amount based on either the domestic value standard or the three-times-the-value standard), with the choice to be made according to the circumstances of the individual case. The bond amount thus would be importer-specific rather than being standard for all importers of FDA-regulated products. Sureties would then be in a better position to evaluate their risk and Customs would be better able to adjust the bond amount for those importers whose track records would require a higher bond.

Comment

Some commenters suggested that liquidated damages at the proposed domestic value amount are deterrents designed to punish violators, not to recompense the government for loss. They stated that section 1592 penalties are noted as being the appropriate vehicle to punish an importer who would attempt the importation of refused merchandise.

Customs Response

Customs disagrees with the commenters that assessment and collection of the liquidated damages claim amount of domestic value is punitive. When articles that have been refused admission by the FDA are not

redelivered to Customs, but are distributed into commerce, the exact amount of damages incurred by the public is difficult to quantify. Customs takes the view that the domestic value standard of liquidated damages is reasonable under the circumstances. It is well settled that liquidated damages are not penalties if they are reasonable and the exact amount of the damages sustained would be difficult to prove. See, *U.S.* v. *Imperial Food Imports*, 834 F.2d 1013 (Fed. Cir. 1987); *Fraser* v. *United States*, 261 F.2d 282 (9th Cir. 1958); *Ely* v. *Wickham,* 158 F.2d 233 (10th Cir. 1946).

Comment

Numerous commenters objected to the use of ''domestic value'' as a method of determining an adequate bond amount. They claimed that this term is imprecise. They were of the view that the three-times-entered-value liquidated damages amount is clear and that reference to domestic value only confuses the issue.

Customs Response

Customs notes that the term ''domestic value'' is currently defined in, and has been successfully administered under, the Customs Regulations. Customs also believes that any objection to the domestic value standard will be mitigated by the fact that the regulatory texts adopted in this final rule document will not require all importers to post bonds based on a higher domestic value standard. Rather, as indicated above, it is anticipated that a higher bonding level will only be required of those importers who have a history of failing to redeliver or export, destroy or otherwise dispose of inadmissible imported food, drugs and cosmetics.

Comment

Numerous commenters claimed that the raising of liquidated damages amounts does not serve to stop unsafe products from entering the commerce. These commenters suggested that release of the products be withheld or that immediate delivery privileges be withdrawn.

Customs Response

The assertion of these commenters regarding the effectiveness of raising liquidated damages amounts appears to be at variance with the conclusions reached by the GAO as discussed above. Other remedies such as those suggested by these commenters fall outside the scope of this document.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes as discussed above and as set forth below. Finally a number of additional minor, editorial-type changes have been made to the regulatory texts set forth in this final rule document. These changes principally involve the replacement of legalistic wording with simple or more direct phraseology, consistent with prevailing plain English drafting principles and without any substantive change.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. The regulatory amendments will not require any additional action on the part of the public, will affect only a small number of importers, and are intended to facilitate Customs enforcement efforts involving existing import requirements. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Labeling, Marking, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture, Trade agreements.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry procedures, Imports, Prohibited merchandise, Release of merchandise.

Amendment to the Regulations

For the reasons stated in the preamble, Parts 12, 113 and 141, Customs Regulations (19 CFR Parts 12, 113 and 141), are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read, and the specific authority citation for § 12.3 is revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS), 1624.

* * * * *

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381;

* * * * *

2. Section 12.3 is revised to read as follows:

§ 12.3 Release under bond; liquidated damages.

(a) *Release.* No food, drug, device, cosmetic, pesticide, hazardous substance or dangerous caustic or corrosive substance that is the subject of § 12.1 will be released except in accordance with the laws and regulations applicable to the merchandise. When any merchandise that is the subject of § 12.1 is to be released under bond pursuant to regulations applicable to that merchandise, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, will be required.

(b) *Bond amount.* The bond referred to in paragraph (a) of this section must be in a specific amount prescribed by the port director based on the circumstances of the particular case that is either:

(1) Equal to the domestic value (see § 162.43(a) of this chapter) of the merchandise at the time of release as if the merchandise were admissible and otherwise in compliance; or

(2) Equal to three times the value of the merchandise as provided in § 113.62(l)(1) of this chapter.

(c) *Liquidated damages.* Whenever liquidated damages arise with regard to any food, drug, device or cosmetic subject to § 12.1(a) for failure to redeliver merchandise into Customs custody or for failure to rectify any noncompliance with the applicable provisions of admission, including the failure to export or destroy the merchandise within the time period prescribed by law after the merchandise has been refused admission pursuant to the provisions of the Food, Drug and Cosmetic Act, those liquidated damages will be assessed pursuant to § 113.62(l)(1) of this chapter in the

amount of the bond prescribed under paragraph (b) of this section.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.62 [Amended]

2. In § 113.62, paragraph (l)(1) is amended by removing the words ''conditions (a), (g), or (i)'' and adding, in their place, the words ''conditions in paragraphs (a), (g), (i), or (k) of this section'' and by adding the words ''or prohibited'' after the word ''restricted''.

§ 113.63 [Amended]

3. In § 113.63, paragraph (h)(1) is amended by adding the words ''or prohibited'' after the word ''restricted''.

§ 113.64 [Amended]

4. In § 113.64, the second sentence of paragraph (b) is amended by adding the words ''or prohibited'' after the word ''restricted''.

§ 113.67 [Amended]

5. In § 113.67, paragraphs (a)(2)(i) and (b)(2)(i) are amended by adding the words ''or prohibited'' after the word ''restricted''.

§ 113.73 [Amended]

6. In § 113.73, the second sentence of paragraph (a)(2) is amended by adding the words ''or prohibited'' after the word ''restricted''.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.113 [Amended]

2. In § 141.113, the first sentence of paragraph (h) is amended by adding the words ''or prohibited'' after the word ''restricted''.

Raymond W. Kelly,

Commissioner of Customs.

Approved: March 8, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–7659 Filed 3–27–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 24

[T.D. 01–25]

RIN 1515–AC82

Amended Procedure for Refunds of Harbor Maintenance Fees Paid on Exports of Merchandise

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim regulation.

SUMMARY: This document amends the Customs Regulations to provide a new procedure for requesting refunds of export harbor maintenance fees collected by Customs since 1987. The United States Supreme Court held these fees to be unconstitutional in 1998. Customs has received numerous requests for refunds from exporters who paid these export fees. The new procedure will simplify the refund process by relieving exporters from documentary requirements in most cases. This amendment is being made on an interim basis in order to expedite the process for exporters entitled to refunds of fees held unconstitutional and no longer required under the Customs Regulations.

DATES: The interim regulation is effective on March 28, 2001. Written comments must be received on or before April 27, 2001.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Accounts Receivable Branch, Accounting Services Division, (317) 298–1200 (ext. 4003).

SUPPLEMENTARY INFORMATION:

Background

The Harbor Maintenance Fee (HMF) was created by the Water Resources Development Act of 1986 (Pub. L. 99–622; codified at 26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). Imposition of the HMF is intended to require those who benefit from the maintenance of U.S. ports and harbors to share in the cost of that maintenance. Pursuant to the Act and as implemented by the regulations, the HMF became effective on April 1, 1987.

The HMF has been assessed on port use associated with imports, exports, foreign trade zone admissions, passengers, and movements of cargo between domestic ports. Currently, the fee is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation. In 1998, the U.S. Supreme Court held the fee unconstitutional as applied to exports (*United States Shoe Corporation* v. *United States,* 118 S. Ct. 1290, No. 97–372 (March 31, 1998)). Subsequently, by a notice published in the **Federal Register** (63 FR 24209) on May 1, 1998, Customs announced that, as of April 25, 1998, the HMF for cargo loaded on board a vessel for export will no longer be collected. On July 31, 1998, Customs published in the **Federal Register** (63 FR 40822) an amendment to § 24.24 of the Customs Regulations, removing the requirement that exporters loading cargo at ports subject to the HMF are liable for payment of the fee. Thus, currently, application of the HMF continues but only for imports, domestic shipments, foreign trade zone admissions, and passengers.

On August 28, 1998, the U.S. Court of International Trade (CIT) ordered an immediate refund of undisputed export fee payments to exporters who had filed complaints with the court seeking recovery of these payments (*United States Shoe Corp.* v. *United States,* No. 94–11–00668, slip op. 98–126 (C.I.T. Aug. 28, 1998)). The order applied to payments received by Customs within two years of an exporter's filing of a complaint with the court. The order required these exporters to file a claim with Customs (attaching a copy of the filed complaint) and required that Customs would: (1) Conduct an initial search of its database for all export fee payments subject to refund (made during the prescribed two-year period) that were received from the exporter; (2) notify the exporter of that amount; and (3) unless disputed by the exporter, submit a stipulated judgment to the court for the court to enter judgment and order Customs to issue refunds to the exporter in the determined amount. Again, this court-ordered procedure applied only to exporters who filed a complaint with the court. Accordingly, Customs issued refunds only to exporters who received judgments from the court. All refund claims made under the court-ordered procedure have been processed.

Subsequently, on February 28, 2000, the U.S. Court of Appeals for the Federal Circuit, noting that the Customs Regulations do not impose a time limit on requests for refunds of the HMF (see current 19 CFR 24.24(e)(4)), held that