

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

[TD 00-37]

RIN 1515-AC60

Summary Forfeiture of Controlled Substances

AGENCY: Customs Service, Treasury. ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect an amendment to 21 U.S.C. 881 made by the Anti-Drug Abuse Act of 1986. The statutory amendment added Schedule II controlled substances to the Schedule I controlled substances already subject to summary forfeiture and destruction under subsection (f) of 21 U.S.C. 881. The amendment set forth in this document brings the Customs Regulations into conformance with the statute.

EFFECTIVE DATE: May 23, 2000.

FOR FURTHER INFORMATION CONTACT: Todd Schneider, Office of Regulations and Rulings (202-927-1694).

SUPPLEMENTARY INFORMATION:

Background

Subsection (a)(1) of 21 U.S.C. 881 provides that all controlled substances that have been manufactured, distributed, dispensed or acquired in violation of subchapter 1, chapter 13, title 21, United States Code, are subject to forfeiture to the United States and no property right shall exist in them. Subsection (f) of 21 U.S.C. 881 provides that all controlled substances in Schedule I and Schedule II will be deemed contraband, seized and summarily forfeited to the United States if they are possessed, transferred, sold or offered for sale in violation of the subchapter. Also, subsection (f) provides that all substances in Schedule I and Schedule II that are seized or come into the possession of the United States, the owners of which are unknown, will be deemed contraband and summarily forfeited to the United States.

Prior to 1986, 21 U.S.C. 881(f) applied only to Schedule I controlled substances. Section 1006(c)(1) of the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, 100 Stat. 3207, October 27, 1986) amended 21 U.S.C. 881(f) to include Schedule II controlled substances.

Section 162.45a of the Customs Regulations (19 CFR 162.45a), which implements the seizure and summary forfeiture procedure of 21 U.S.C. 881(f),

does not reflect the current statute in that it only discusses Schedule I controlled substances (as defined in 21 U.S.C. 802(6) and 812). Accordingly, § 162.45a is amended in this document to include Schedule II controlled substances. This document also makes conforming changes to §§ 162.45(b) and 162.63.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that notice and public procedures for this regulation are unnecessary. The regulatory change in this document conforms the Customs Regulations to the terms of a law that is already in effect. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service.

List of Subjects in 19 CFR Part 162

Administrative practice and procedure, Drug traffic control, Imports, Inspection, Law Enforcement, Penalties, Prohibited merchandise, Seizures and forfeitures.

Amendment to the Regulations

For the reasons stated in the preamble, part 162 of the Customs Regulations (19 CFR Part 162) is amended as set forth below.

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for part 162 continues to read in part, and a new authority citation for § 162.45a is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

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Section 162.45a also issued under 21 U.S.C. 881;

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2. Section 162.45 is amended by revising the section heading, amending the first sentence of paragraph (b)(1), and revising paragraph (b)(2), to read as follows:

§ 162.45 Summary forfeiture: Property other than Schedule I and Schedule II controlled substances. Notice of seizure and sale.

* * * * *

(b) Publication. (1) If the appraised value of any property in one seizure from one person, other than Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812), exceeds \$2,500, the notice will be published for at least three successive weeks in a newspaper circulated at the Customs port and in the judicial district where the property was seized. * * *

(2) In all other cases, except for Schedule I and Schedule II controlled substances (see § 162.45a), the notice will be published by posting it in the customhouse nearest the place of seizure. It will be posted in a conspicuous place that is accessible to the public, with the date of posting noted thereon, and will be kept posted for at least three successive weeks. Articles of small value of the same class or kind included in two or more seizures will be advertised as one unit.

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3. The heading and text of section 162.45a is revised to read as follows:

§ 162.45a Summary forfeiture of Schedule I and Schedule II controlled substances.

The Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 et seq.) provides that all controlled substances in Schedule I and Schedule II (as defined in 21 U.S.C. 802(6) and 812) that are possessed, transferred, sold or offered for sale in violation of the Act will be deemed contraband, seized and summarily forfeited to the United States (21 U.S.C. 881(f)). The Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) incorporates by reference this contraband forfeiture provision of 21 U.S.C. 881. See 21 U.S.C. 965. Accordingly, in the case of a seizure of Schedule I or Schedule II controlled substances, the Fines, Penalties, and Forfeitures Officer or his designee will contact the appropriate Drug Enforcement Administration official responsible for issuing permits authorizing the importation of such substances (see 21 CFR part 1312). If upon inquiry the Fines, Penalties, and Forfeitures Officer or his designee is notified that no permit for lawful importation has been issued, he will declare the seized substances contraband and forfeited pursuant to 21

U.S.C. 881(f). Inasmuch as such substances are Schedule I and Schedule II controlled substances, the notice procedures set forth in § 162.45 are inapplicable. When seized controlled substances are required as evidence in a court proceeding, they will be preserved to the extent and in the quantities necessary for that purpose.

4. Section 162.63 is revised to read as follows:

§ 162.63 Arrests and seizures.

Arrests and seizures under the Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 *et seq.*), and the Controlled Substances Import and Export Act (84 Stat. 1285, 21 U.S.C. 951 *et seq.*), will be handled in the same manner as other Customs arrests and seizures. However, Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812) imported contrary to law will be seized and forfeited in the manner provided in the Controlled Substances Act (21 U.S.C. 881(f)). See § 162.45a.

Raymond W. Kelly,

Commissioner of Customs.

Approved: March 24, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00-12922 Filed 5-22-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD 05-99-097]

RIN 2115-AA97, AA98, AE46

OPSAIL 2000, Port of Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations in the Port of Baltimore, Maryland for OPSAIL 2000 activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2000 events. This action will restrict vessel traffic in portions of the Inner Harbor, the Northwest Harbor, the Patapsco River, and the Chesapeake Bay.

DATES: This rule is effective from 6 a.m. on June 23, 2000 to 11:30 p.m. on June 29, 2000.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of

docket CGD05-99-097 and are available for inspection or copying at Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 28, 2000 we published a notice of proposed rulemaking (NPRM) entitled OPSAIL 2000, Port of Baltimore, MD, in the **Federal Register** (65 FR 16355). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

Sail Baltimore is sponsoring OPSAIL 2000 activities in the Port of Baltimore, Maryland. Planned events include the arrival of 27 Tall Ships and other vessels on June 23, 2000 and a Parade of Sail and scheduled departure of those vessels on June 29, 2000.

The Coast Guard anticipates a large spectator fleet for these events. Operators should expect significant vessel congestion along the arrival and parade routes.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Baltimore and the waters of the Chesapeake Bay immediately prior to, during, and after the scheduled events. The regulations will provide for clear parade routes for the participating vessels, establish no wake zones along the parade routes, provide a safety buffer around the participating vessels while they are in transit, and in certain anchorage areas, modify existing anchorage regulations for the benefit of participants and spectators. The regulations will impact the movement of all vessels operating in the specified areas of the Port of Baltimore and the Chesapeake Bay.

It may be necessary for the Coast Guard to establish additional safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying

passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term "passenger for hire" is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term "passenger" is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to \$25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Port of Baltimore for this event obtain up to date editions of National Ocean Service Charts 12278 and 12281 to avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2000 and spectator vessels in the Port of Baltimore for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Discussion of Rule

The OPSAIL 2000 vessels are scheduled to arrive on June 23, 2000 and will follow a parade route of approximately 3 nautical miles that includes specified waters of the Inner Harbor and Northwest Harbor. The