

§ 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Remission or mitigation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any claim when he or she definitely determines that the act or omission forming the basis of any claim of penalty or forfeiture did not occur.

(c) *When violation is result of vessel in distress.* The Fines, Penalties, and Forfeitures Officer may remit without payment any penalty which arises for violation of the coastwise laws if he or she is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

TITLE 19--CUSTOMS DUTIES

CHAPTER 4--TARIFF ACT OF 1930

SUBTITLE III--ADMINISTRATIVE PROVISIONS

Part V--Enforcement Provisions

Sec. 1618. Remission or mitigation of penalties

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, before the sale of such vessel, vehicle, aircraft, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: Provided, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

(June 17, 1930, ch. 497, title IV, Sec. 618, 46 Stat. 757; 1946 Reorg. Plan No. 3, Secs. 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 91-271, title III, Sec. 301(hh), June 2, 1970, 84 Stat. 291; Pub. L. 98-473, title II, Sec. 321, Oct. 12, 1984, 98 Stat. 2056; Pub. L. 98-573, title II, Sec. 213(a)(16), Oct. 30, 1984, 98 Stat. 2988.)

References in Text

The customs laws, referred to in text, are classified generally to this title.

The navigation laws, referred to in text, are classified generally to Title 33, Navigation and Navigable Waters.

Prior Provisions

Provisions similar to those in this section were contained in act Sept. 21, 1922, ch. 356, title IV, Sec. 618, 42 Stat. 987. That section was superseded by section 618 of act June 17, 1930, comprising this section, and was repealed by section 651(a)(1) of the 1930 act.

Provisions for a petition to the judge of the district, a summary investigation before the judge or a United States Commissioner, and transmission of the facts appearing thereon, with a certified copy of the evidence, to the Secretary of the Treasury, and provisions authorizing the Secretary to remit fines and penalties, etc., were contained in act June 22, 1874, ch. 391, Secs. 17, 18, 20, 18 Stat. 189, 190, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, Sec. 643, 42 Stat. 989.

Amendments

1984--Pub. L. 98-573 and Pub. L. 98-473 inserted reference to aircraft in two places.

1970--Pub. L. 91-271 substituted ``customs officer" for ``customs agent, collector, judge of the United States Customs Court, or United States commissioner".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

Transfer of Functions

Substitution in text of references to Commandant of the Coast Guard and Commissioner of Customs for ``the Secretary of Commerce" under the authority of Reorg. Plan No. 3 of 1946, see note set out under section 1613 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1448, 1509, 1592, 1592a, 1593a, 1595a, 1600, 1641, 2254 of this title.

5 CFR § 1320.5 General requirements.

(a) An agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information—

(1) The agency has—

(i) Conducted the review required in §1320.8;

(ii) Evaluated the public comments received under §1320.8(d) and §1320.11;

(iii) Submitted to the Director, in accordance with such procedures and in such form as OMB may specify,

(A) The certification required under §1320.9,

(B) The proposed collection of information in accordance with §1320.10, §1320.11, or §1320.12, as appropriate,

(C) An explanation for the decision that it would not be appropriate, under §1320.8(b)(1), for a proposed collection of information to display an expiration date;

(D) An explanation for a decision to provide for any payment or gift to respondents, other than remuneration of contractors or grantees;

(E) A statement indicating whether (and if so, to what extent) the proposed collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and an explanation for the decision;

(F) A summary of the public comments received under §1320.8(d), including actions taken by the agency in response to the comments, and the date and page of the publication in the Federal Register of the notice therefor; and

(G) Copies of pertinent statutory authority, regulations, and such related supporting materials as OMB may request; and

(iv) Published, except as provided in §1320.13(d), a notice in the Federal Register—

(A) Stating that the agency has made such submission; and

(B) Setting forth—

(1) A title for the collection of information;

(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

- (4) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;
 - (5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;
 - (6) Notice that comments may be submitted to OMB; and
 - (7) The time period within which the agency is requesting OMB to approve or disapprove the collection of information if, at the time of submittal of a collection of information for OMB review under §1320.10, §1320.11 or §1320.12, the agency plans to request or has requested OMB to conduct its review on an emergency basis under §1320.13; and
- (2) OMB has approved the proposed collection of information, OMB's approval has been inferred under §1320.10(c), §1320.11(i), or §1320.12(e), or OMB's disapproval has been voided by an independent regulatory agency under §1320.15; and
 - (3) The agency has obtained from the Director a control number to be displayed upon the collection of information.
- (b) In addition to the requirements in paragraph (a) of this section, an agency shall not conduct or sponsor a collection of information unless:
- (1) The collection of information displays a currently valid OMB control number; and
 - (2)(i) The agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.
 - (ii) An agency shall provide the information described in paragraph (b) (2)(i) of this section in a manner that is reasonably calculated to inform the public.
- (A) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents (other than in an electronic format), the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency includes it either on the form, questionnaire or other collection of information, or in the instructions for such collection.
- (B) In the case of forms, questionnaires, instructions, and other written collections of information sent or made available to potential respondents in an electronic format, the information described in paragraph (b)(2)(i) of this section is provided "in a manner that is reasonably calculated to inform the public" if the agency places the currently valid OMB control number in the instructions, near the title of the electronic collection instrument, or, for on-line applications, on the first screen viewed by the respondent.
- (C) In the case of collections of information published in regulations, guidelines, and other issuances in the Federal Register, the information described in paragraph (b)(2)(i) of this section is provided "in a manner

that is reasonably calculated to inform the public” if the agency publishes such information in the Federal Register (for example, in the case of a collection of information in a regulation, by publishing such information in the preamble or the regulatory text, or in a technical amendment to the regulation, or in a separate notice announcing OMB approval of the collection of information). In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, publication of such information in the Code of Federal Regulations constitutes an alternative means of providing it “in a manner that is reasonably calculated to inform the public.” In the case of a collection of information published in an issuance that is also included in the Code of Federal Regulations, OMB recommends for ease of future reference that, even where an agency has already provided such information “in a manner that is reasonably calculated to inform the public” by publishing it in the Federal Register as a separate notice or in the preamble for the final rule (rather than in the regulatory text for the final rule or in a technical amendment to the final rule), the agency also publish such information along with a table or codified section of OMB control numbers to be included in the Code of Federal Regulations (see §1320.3(f)(3)).

(D) In other cases, and where OMB determines in advance in writing that special circumstances exist, to use other means that are reasonably calculated to inform the public of the information described in paragraph (b)(2)(i) of this section.

(c)(1) Agencies shall submit all collections of information, other than those contained in proposed rules published for public comment in the Federal Register or in current regulations that were published as final rules in the Federal Register, in accordance with the requirements in §1320.10. Agencies shall submit collections of information contained in interim final rules or direct final rules in accordance with the requirements of §1320.10.

(2) Agencies shall submit collections of information contained in proposed rules published for public comment in the Federal Register in accordance with the requirements in §1320.11.

(3) Agencies shall submit collections of information contained in current regulations that were published as final rules in the Federal Register in accordance with the requirements in §1320.12.

(4) Special rules for emergency processing of collections of information are set forth in §1320.13.

(5) For purposes of time limits for OMB review of collections of information, any submission properly submitted and received by OMB after 12:00 noon will be deemed to have been received on the following business day.

(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) Is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) Is not duplicative of information otherwise accessible to the agency; and

(iii) Has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.

(2) Unless the agency is able to demonstrate, in its submission for OMB clearance, that such characteristic of the collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information—

(i) Requiring respondents to report information to the agency more often than quarterly;

(ii) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

(iii) Requiring respondents to submit more than an original and two copies of any document;

(iv) Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

(v) In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

(vi) Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

(vii) That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

(viii) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

(e) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria set forth in paragraph (d) of this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under §1320.11 or §1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(f) Except as provided in §1320.15, to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(g) An agency may not make a substantive or material modification to a collection of information after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under this Part.

(h) An agency should consult with OMB before using currently approved forms or other collections of information after the expiration date printed thereon (in those cases where the actual form being used contains an expiration date that would expire before the end of the use of the form).