Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages

U.S. CUSTOMS

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NOTICE:

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "***informed compliance***" and "***shared responsibility***," which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the International Trade Compliance Division, ORR, is a compilation of all mitigation, remission, and cancellation guidelines issued by the Customs Service with respect to its assessments of claims for fines, penalties, forfeitures and liquidated damages, under a wide variety of laws. **Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages** represents part of a series of informed compliance publications regarding Customs procedures. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve voluntary compliance with Customs laws and to understand the relevant Customs administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Douglas M. Browning,
Acting Assistant Commissioner
Office of Regulations and Rulings

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SEIZURES

INTRODUCTIONS CONTRARY TO LAW - 19 U.S.C. 1595a(c)

I. In General

Section 1595a(c) is the primary seizure and forfeiture statute Customs uses to enforce a myriad of civil laws – both Customs laws and laws and regulations of other agencies. Many laws define what constitutes prohibited merchandise or behavior but do not provide a remedy to be enforced regarding that prohibited merchandise or as a consequence of that behavior. Section 1595a(c), on the other hand, actually provides for the seizure and forfeiture of the violative property.

Section 1595a(c) can be broken down into two distinct categories. First, subsection 1595a(c)(1) describes those instances where seizure is mandatory. It requires that Customs seize and subject to forfeiture merchandise that is:

- Stolen
- Smuggled
- Clandestinely imported or introduced
- A contraband article as defined in section 781 of the Appendix to Title 49 (which has since been re-codified as section 80302 of Title 49)
- A plastic explosive as defined in section 841(q) of Title 18.

In contrast, subsections 1595a(c)(2) and (c)(3), describe those instances where the seizing officer is provided authority and discretion in deciding whether seizure is the most appropriate enforcement action. Subsection 1595a(c)(2) provides merchandise may be seized and forfeited if:

- its importation or entry is subject to any restriction or prohibition that is imposed by law relating to health, safety, or conservation, and the merchandise is not in compliance with the applicable rule, regulation or statute
- its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license or permit
- it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved
- it is trade dress merchandise involved in the violation of a court order citing 15 U.S.C. 1125
- it is merchandise which is marked intentionally in violation of 19 U.S.C. 1304
- it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of 19 U.S.C. 1304.

Subsection 1595a(c)(3) provides merchandise may be seized and forfeited if:

- the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement and such visa, permit license or similar document or stamp which is presented with the importation or entry of the merchandise is counterfeit.

Pursuant to subsection 1595a(c)(3) and 1595a(c)(4), seizure **may not be affected**:

- if the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement and that visa, permit, license or other similar document or stamp is not presented (as opposed to presentation of a counterfeit, as described above). The merchandise rather, shall be subject to detention under 19 U.S.C. 1499
- if the merchandise is imported or introduced contrary to a provision of law which governs the classification or value of merchandise <u>and</u> there are no issues as to the admissibility of the merchandise into the United States.

II. Guidelines for remission of seized property

A. Scope

1. These guidelines are applicable only upon the filing of a petition pursuant to 19 U.S.C. 1618 for remission of the forfeiture.

2. Upon granting relief from forfeiture, the following conditions must be met:

   - Satisfaction of all costs of seizure (storage and appraisal); and
   - Submission of an executed HOLD HARMLESS AGREEMENT

   NOTE: If required, the party granted relief must bring the merchandise into compliance, or export the merchandise under Customs supervision. However, exportation or remission for export may not be permitted, if that release would adversely affect health, safety or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

3. The disposition set forth in these guidelines may be applied in determining the criteria for early release of merchandise seized under 19 U.S.C. 1595a(c). The Fines, Penalties and Forfeitures Officer may

authorize early release for less than the domestic value of the merchandise, where such does not exceed $100,000. If the domestic value exceeds $100,000, such request for early release must be approved by the Chief, Penalties Branch.

4. Extraordinary factors not specified in these guidelines may justify deviation from the specific dispositions set forth herein.

B. DISPOSITIONS

1. First Offense

   No aggravating factors – remission upon payment of:
   10 – 30% of the dutiable value of the seized goods

2. Second Offense

   No aggravating factors – remission upon payment of:
   30 –50% of the dutiable value of the seized goods

3. Third or Subsequent Offense

   Remission upon payment of 50 - 80% of the dutiable value of the seized goods

4. First Offense

   Aggravating factors – remission upon payment of:
   30 – 50% of the dutiable value of the goods

5. Second Offense (and subsequent offenses)

   Aggravating factors – remission upon payment of:
   50 – 80% of the dutiable value of the seized goods

C. SPECIAL CIRCUMSTANCES

The disposition set forth below shall apply to any seizure under section 1595a(c) (or penalty under section 1595a(b) for violation of a statute other than 19 U.S.C. 1448 or 19 U.S.C. 1499, the guidelines for which are found in T.D. 99-29 and the Penalties section of this Handbook), when the circumstances prescribed below are found to exist. Thus, when applicable, these dispositions will apply instead of the “Normal Dispositions” set forth above.

1. MISTAKE OF FACT OR CLERICAL ERROR (as defined under 19 C.F.R. 162.71(c), (d)). If the sole cause of the introduction or attempted introduction contrary to law results from either mistake of fact or clerical error, remit the seizure in full.

2. EXTENUATING CIRCUMSTANCES: Remission may be granted in full, when justified by the equities relating to the violation for which seizure was made.

3. CRIMINAL CONVICTION OF OWNER OF SEIZED MERCHANDISE IN CONNECTION WITH TRANSACTION LEADING TO SEIZURE: No remission. Deny petition for relief and seek forfeiture of seized merchandise.

4. PRE-COLUMBIAN ART/ARTIFACTS SEIZURES: Contact the Penalties Branch, OR&R, for action to be taken on seizure. This action is necessary due to the status of such merchandise under various treaties with foreign governments or federal law.

D. DEFINITIONS OF FACTORS UTILIZED UNDER NORMAL DISPOSITIONS

1. HOW TO DETERMINE SECOND, THIRD, OR SUBSEQUENT OFFENSES:

a. The shipment currently under seizure has been imported by or on behalf of a person or entity whose merchandise has been seized under section 1595a(c) within a 1-year period prior to the instant seizure, and such prior forfeiture claim was not remitted in full.

EXAMPLE:

Larry's Lingerie introduced, on August 19, 1999, a shipment of ladies' braziers that were manufactured in Cambodia. The seizing inspector, through conducting a thorough examination, determined that the visas included in the entry packet were counterfeit. Accordingly, the shipment was seized under 19 U.S.C. 1595a(c)(3). The merchandise was later remitted to Larry, for export only, after he complied with the conditions of release set forth by the FP&F office.

On December 27, 1999, Larry, thinking lightning could not strike twice, attempted to import a shipment of tie-die tee shirts, which he intended to sell at the upcoming Neil Diamond concert. An ever-inquisitive inspector examined the shirts and discovered that they were marked "Made In The U.S.A," although all of the entry

documents indicated that they were made in India. The inspector seized the shipment under 19 U.S.C. 1595a(c)(2)(E).

b. Under these facts, Larry was twice unlucky, and, under the mitigation guidelines, the prior offense will cost him dearly. The seizure of August 1999, represents the first offense, thus elevating the mitigated amount for the latter seizure.

2. MITIGATING FACTORS

a. Prior Good Record of the violator
b. Inexperience in importing
c. Cooperation with Customs (or agency officials) in ascertaining the facts establishing the violation

3. AGGRAVATING FACTORS

a. Criminal Conviction relating to the subject transaction. The criminal violation relating to the transaction resulting in the seizure need not have been committed by the petitioner for this aggravating factor to exist.
b. Repetitive violations of the same import restriction involved in the seizure. This includes violations for which no seizures had been made.
c. Evidence of intentional importation contrary to law.

EXAMPLE:

Importer introduces scarves from India under textile quota visa applicable to tablecloths. Evidence established that the scarves were introduced under a visa applicable to tablecloths because the shipper could not obtain a visa for scarves. Thus, Importer directed Shipper to have the scarves described in the invoices as tablecloths and introduced under the visa applicable for such in order to avoid the quota visa restriction applicable to scarves.
There exists an AGGRAVATING FACTOR since the evidence establishes that the introduction of the scarves contrary to the laws implementing the Bilateral Textile Agreement between the United States and India was intentional.

NOTE: 19 U.S.C. 1595a(a) REMISSION OF SEIZED MERCHANDISE USED TO FACILITATE IMPORTATIONS CONTRARY TO LAW.

If it is determined that the merchandise was **ACTUALLY** used to conceal violative property, proceed with mitigation under the guidelines applicable to 1595a(c) seizures.

CONVEYANCES (VESSELS, VEHICLES AND AIRCRAFTS)

19 U.S.C. 1595a(a); 21 U.S.C. 881; 49 U.S.C. 80302/80303; 19 U.S.C. 1703;
19 U.S.C. 1590; 19 U.S.C. 1594

The above-noted statutes provide for the seizure and forfeiture of conveyances (vessels, vehicles, and aircrafts), which have been used in the importation or transportation of merchandise (including contraband) contrary to law. It also includes seizure and forfeiture of conveyances which are the proceeds from the sale of contraband or which have been outfitted for the purpose of smuggling. As a general rule, such conveyances are returned to owners who demonstrate lack of complicity in the violation. Also, in addition to the seizure and forfeiture of conveyances, the provisions of 19 U.S.C. 1595a(a) permit the seizure and forfeiture of any thing used to facilitate the importation contrary to law.

NOTE: The seizure and forfeiture of any conveyance is subject to the applicability of any exceptions to seizure of a common carrier as provided for under 19 U.S.C. 1594 and as noted in subsection II of this section.

I. Statutory Authority for Seizure and Forfeiture

A. 19 U.S.C. 1595a(a) – Importations contrary to law

1. Provides for the seizure and forfeiture of vessels, vehicles, and aircraft**, or other thing** used in, to aid in, or to facilitate:

   a. importation or bringing in,

   b. unlading, landing, or removal,

   c. concealing or harboring or,

   d. subsequent transportation,

2. Of any article which is:

   a. being or has been introduced into the United States contrary to law, or

   b. attempted to be introduced into the United States contrary to law.

3. A conveyance for purposes of this section is not limited to a traditional conveyance but could include any merchandise used to transport or conceal merchandise being introduced contrary to law.

B. 21 U.S.C. 881 – Transportation and facilitation of controlled substances; proceeds of sale of such substances

1. Provides for the seizure and forfeiture of vessels, vehicles, and aircraft used or intended for use:

   a. to transport, or

   b. to facilitate the transportation, sale, receipt, possession, or concealment of,

2. The following:

   a. Controlled substances which have been manufactured, dispensed or acquired illegally, or

   b. Raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance illegally.

C. 49 U.S.C. 80302 and 49 U.S.C. 80303 – Transportation of contraband

1. 49 U.S.C. 80302 prohibits a person from:

   a. transporting contraband in an aircraft, vehicle or vessel;

   b. concealing or possessing contraband on an aircraft, vehicle or vessel; or

   c. using an aircraft, vehicle or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of any contraband article.

2. Contraband article means:

   a. Any narcotic drug which

      i. is possessed with intent to sell or offer for sale in violation of the laws or regulations of the United States, or

      ii. is acquired, is possessed, sold, transferred, or offered for sale in violation of those laws, or

iii. is acquired by theft, robbery, burglary and transported within or between states, territories, possessions, or D.C., or

iv. does not bear legally required tax-paid internal revenue stamps.

b. Any firearm with respect to which there has been committed any violation of the National Firearms Act.

c. Any forged, altered, or counterfeit coin or obligation or other security of the U.S. or any foreign government, or any material or apparatus used or intended to make such coin, etc.

d. A cigarette involved in a violation of chapter 114 of title 18 or a regulation prescribed under chapter 114 (regarding trafficking in contraband cigarettes, meaning a quantity in excess of 60,000 cigarettes which bear no evidence of the payment of applicable State cigarette taxes in the state where such cigarettes are found and which are in the possession of a person other than a person holding an IRS permit, a common carrier transporting the cigarettes under a proper bill of lading, a person who is licensed or authorized by the State where the cigarettes are found to account for an pay cigarette taxes, or an officer, employee or other agent of the U.S. or State Department agency having possession of such cigarettes in connection with official duties.

e. A counterfeit label for a phonograph record, copy of a computer program or computer program documentation or packaging, or copy of a motion picture or other audio/visual work, a phonorecord or copy or a fixation of a sound recording or music video of a live musical performance or any good bearing a counterfeit mark.

3. 49 U.S.C. 80303 provides for seizure and forfeiture of any conveyance used to transport, conceal, possess or facilitate the transportation, concealment, possession or sale of contraband.

D. 19 U.S.C. 1703 – Vessels outfitted for smuggling

1. Provides for the seizure and forfeiture of vessels that have been built, purchased, fitted out in whole or in part, or held, in the U.S. or elsewhere, for the purpose of being used:

a. to defraud the revenue, or

b. to smuggle any merchandise into the United States, or

c. to smuggle any merchandise into a foreign country in violation of the laws thereof.

2. Have been used or attempted to be used within the United States to defraud the revenue or to smuggle or assist therein.

3. Note that this statutory provision does not include seizure of **vehicles** that are outfitted for smuggling.

E. 19 U.S.C. 1590 – Aviation Smuggling

1. It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

2. It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary of the Treasury to make such transfer and the aircraft is owned by a citizen of the United States or is registered in the United States, or the vessel is a vessel of the United States, or (without regard to vessel or aircraft nationality) such transfer is made under circumstances indicating the intent to make it possible for such merchandise or any part thereof to be introduced into the United States unlawfully.

3. Such conveyance is subject to seizure and forfeiture. In addition any person who violates this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than $10,000.

4. For purposes of this section, “merchandise” means merchandise whose importation is prohibited or restricted.

5. The following acts provide *prima facie* evidence of a violation under this section:

a. operation of an aircraft or a vessel without appropriate lights

b. presence on an aircraft of an auxiliary fuel tank not installed in accordance with law

c. failure to identify the vessel by name or country of registration or aircraft by registration number and country of registration

d. external display of false registration numbers

e. presence on board of unmanifested restricted or prohibited merchandise

f. presence on board of controlled substances which are not manifested

g. presence of any compartment or equipment which is built or fitted out for smuggling

h. failure of a vessel to stop when hailed by a customs officer or other government authority

6. A vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this statute may be seized and forfeited in accordance with the customs laws whether or not any person is charged in connection with such a violation.

7. A vessel or aircraft may not be seized and forfeited under this statute if it is determined that such vessel or aircraft is a common carrier.

F. 19 U.S.C. 1594 – Seizure of conveyances when any vessel, vehicle or aircraft or any owner, operator, master, pilot, conductor, driver or other person in charge of a vessel, vehicle or aircraft is subject to a penalty for violation of the Customs laws.

1. Whenever a vessel, vehicle or aircraft or the owner, operator, master, pilot, conductor, driver, or other person in charge of the vessel, vehicle or aircraft is subject to a penalty for violation of the customs laws, the conveyance **shall be held** for the payment of such penalty.

a. The claimant to the property shall be afforded a reasonable period of time to settle any penalty for purposes of return of the conveyance.
b. If the penalty is not settled in that reasonable period of time, the conveyance may be seized subject to forfeiture and sale.

2. Proceeds of any sale in excess of an assessed penalty and

expenses of seizing, maintaining, and selling the conveyance shall be held for the account of any interested party.

3. The seizure and forfeiture of any conveyance under this statute is conditioned upon the applicability of any exceptions to seizure of a common carrier, as provided for under 19 U.S.C. 1594 and as noted in subsection II. of this section.

II. Common Carriers

A. Definition – a carrier owning or operating a railroad, steamship, airline or other transportation line or route which undertakes to transport goods or merchandise for all of the general public who choose to employ him. "The salient characteristic of a common carrier is that "[h]e must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for persons generally.... [and] undertakes for all persons indifferently." See, U.S. v. One (1) Liberian Refrigerator Vessel, 447 F.Supp. 1053 (M.D. Fla. 1977) (quoting, United States v. Stephen Brothers Line, 384 F.2d 118 (5th Cir. 1967)).

B. Common carriers are exempted from seizure and forfeiture while being used in the transaction of business as a common carrier, unless

1. under the Customs laws, it appears that the owner, at the time of the illegal act, either had knowledge of drugs being smuggled aboard his conveyance, or was grossly negligent in preventing or discovering the drugs, or failed to exercise the highest degree of care and diligence in the case of illicit drugs found in unmanifested cargo; or

2. under 49 U.S.C. 80303, the owner, conductor, driver, pilot, or other person in charge of the aircraft or vehicle, or the master or owner of the vessel, or the owner of the rail car or engine, consents to, or knows of the alleged violation when the violation occurs.

III. Immediate Administrative Forfeiture Proceedings

A. These are to be used when conveyances are seized for the illegal importation or transportation, or the facilitation thereof, of:

1. Any heroin

2. One (1) pound or more of cocaine

3. Five (5) pounds or more of hashish, or

4. Fifty (50) pounds or more of any other controlled substance.

B. If sufficient controlled substances are found, as noted above (unless the conveyance falls within one of the exceptions below) consider petitions for relief only with regard to claims for refund of sale proceeds.

C. Exceptions to the immediate forfeiture procedure:

1. Common carriers.

2. Conveyances which have been reported as stolen to any federal, state, or local law enforcement agency prior to the time of seizure.

3. Foreign flag vessels seized beyond the 12-mile limit, unless the country of registry has consented to U.S. forfeiture jurisdiction.

4. Do not forfeit U.S. documented vessels with a preferred ship's mortgage granted under title 46, U.S. Code without contacting the Penalties Branch, Headquarters (202-927-2344).

IV. General Considerations When Reviewing Petitions for Relief

A. A petitioner must demonstrate that he has a petitionable interest in the property, (e.g., as owner or lienholder).

B. The granting of administrative relief is discretionary. Therefore, the burden of proving that relief is warranted lies with a petitioner.

C. Examples of exculpatory evidence that may be submitted when seized property is in possession of another at the time of the seizure.

1. Evidence as to the manner in which the property came into the possession of such other person;

2. That before parting with the property petitioner did not know, or have reasonable cause to believe, that the property would be used to violate Customs laws or other laws;

3. That the petitioner did not know, or have reasonable cause to believe, that the violator had a criminal record or general reputation for commercial crime, and

4. That the petitioner took reasonable steps to prevent the conveyance from being used in violation of Customs or other laws.

D. Evidence to be submitted by petitioner who is holder of chattel mortgage or conditional sales contract, lessor who has executed long-term lease, or one who allows another to use the conveyance without cost.

1. That petitioner has an interest acquired in good faith,

2. That petitioner, at no time, had any knowledge or reason to believe that the property was being or would be used in violation of Customs laws or other laws, and

3. That petitioner at no time had any knowledge or reason to believe that the owner of the beneficial interest in the property had a criminal record or general reputation for commercial crime.

E. Straw purchase transactions

1. Definition - purchase property in one's name for another who has a criminal record or general reputation for crime.

2. If lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, evidence described in D above shall be presented as to both the purchaser of record and the real purchaser.

F. Evidence to be considered in determining if administrative relief is warranted when property is in possession of another at the time of the seizure:

1. Whether petitioner asked the person in possession if he had a criminal record,

2. Whether petitioner asked for and was provided with business, financial, personal references,

3. Whether petitioner contacted references,

4. Whether there was an agreement that the property would be used only in accordance with law, and

5. Whether petitioner contacted Federal, State or local enforcement authorities as to the criminal record or reputation of the person taking possession.

V. Forfeiture Remission Guidelines - 19 U.S.C. 1595a(a), 21 U.S.C. 881, and 49 U.S.C. 80303

A. **NOTE:** THESE ARE TO BE USED ONLY WHEN THE IMMEDIATE FORFEITURE PROCEEDING DESCRIBED IN SECTION III. ABOVE IS NOT APPROPRIATE

B. Petition Submitted by Conveyance Owner

1. If owner is in possession at the time of the seizure, presume that he had knowledge of the illegal activities,

   a. Deny relief from the forfeiture unless the controlled substances are in a small quantity and apparently for personal use only.

   b. If it is determined that the controlled substances are for personal use, and the immediate forfeiture guidelines above do not apply, remit upon the payment of:

      i. Seizure expenses plus

      ii. Any amount shown in Customs Directive 4410-010A, dated June 22, 2000 entitled ENFORCEMENT ACTIONS: PERSONAL USE QUANTITIES OF CONTROLLED SUBSTANCES.

2. If conveyance is in possession of an individual other than the owner, e.g., a lessee, at the time of the seizure,

   a. Deny relief if owner fails to sustain the burden of proving he had neither knowledge nor reason to believe the conveyance would be used in violation of Customs or other laws.

   b. If it is determined that the owner had neither knowledge nor reason to believe that the conveyance would be used in violation of Customs or other laws, but that the owner was negligent in that he, for example:

      i. Failed to take precautions to prevent a violation; or

      ii. Failed to check references of those employed to drive, pilot, master, or otherwise take control of, or assist in the control of, the conveyance outside of the owner's direct supervision,

iii. Then remit the forfeiture upon the payment of seizure expenses plus a baseline of 15 percent of the domestic value of the conveyance, up to as much as 25 percent if aggravating factors are found, and down to as low as 5 percent if mitigating factors are found.

Examples of aggravating factors are: owner has not cooperated with Customs in the past; owner's conveyance(s) has been used in previous violation(s); owner has failed to periodically monitor use of the conveyance.

Examples of mitigating factors are: owner has traditionally cooperated with Customs; first violation involving any conveyance of owner; owner carefully checked references; owner periodically monitored use of the conveyance.

3. Co-owners

Relief may be granted to a co-owner of a vehicle, whether or not subject to a lien or encumbrance, if the co-owner meets the requirements for remission described in paragraph 2 above.

C. Petition Submitted by Lienholder

1. Consider such a petition only if immediate forfeiture is not appropriate, and owner has not petitioned or owner's petition has been denied.

2. If lienholder submits sufficient evidence that there was no knowledge or reason to believe the conveyance would be used illegally, remit the forfeiture upon the payment of the larger of the two following amounts:

   a. Expenses of seizure, or

   b. The amount by which the appraised value exceeds the net equity in the conveyance.

   c. If petitioner fails or declines to comply with decision, forfeit and sell the conveyance, and reimburse petitioner out of the proceeds of sale.

3. If lienholder fails to submit sufficient evidence that there was no knowledge or reason to believe the conveyance would be used illegally, deny relief from the forfeiture and commence appropriate

forfeiture proceedings.

VI. Mitigation Guidelines - 19 U.S.C. 1703, 19 U.S.C. 1590

A. **NOTE:** THESE ARE TO BE USED WHEN THE IMMEDIATE FORFEITURE PROCEEDING DESCRIBED ABOVE IS NOT APPROPRIATE, OR WHEN A PETITION FOR PROCEEDS OF SALE IS BEING CONSIDERED AFTER IMMEDIATE FORFEITURE HAS OCCURRED.

B. Petition Submitted by Conveyance Owner

1. If there is outfitting for smuggling and contraband on board, usually in a concealed compartment, deny relief from the forfeiture.

2. If there is outfitting for smuggling and no contraband on board, remit the forfeiture upon the payment of 20 - 30 percent of the value of the conveyance, using a baseline of 25 percent and considering the extent of any modifications to the conveyance, plus expenses of seizure.

3. If the forfeiture is to be remitted, condition remission upon removal of any modifications.

C. Petition Submitted by Lienholder

1. Consider such a petition only if immediate forfeiture is not appropriate, and owner has not petitioned or owner's petition has been denied.

2. If lienholder submits sufficient evidence that there was no knowledge or reason to believe the conveyance would be used illegally, remit the forfeiture upon the payment of the larger of the two following amounts:

   a. Expenses of seizure, or

   b. The amount by which the appraised value exceeds the net equity in the conveyance.

   c. If petitioner fails or declines to comply with decision, forfeit and sell the conveyance, and reimburse petitioner out of the proceeds of sale.

3. If lienholder fails to submit sufficient evidence that there was no knowledge or reason to believe the conveyance would be used

illegally, deny relief from the forfeiture and commence appropriate forfeiture proceedings.

VII. Mitigation Guidelines - Petitioning for Proceeds of Sale Following Immediate Forfeiture

A. Consider petitions using principles outlined above to arrive at a decision.

B. When a forfeiture would ordinarily be remitted to a petitioner, reimburse that petitioner as follows:

1. An owner in an amount up to the value of the conveyance.

2. A lienholder, in an amount up to its equity in the conveyance.

VIII. Restoration of Proceeds of Sale (19 U.S.C. 1613; 19 C.F.R. Part 171, Subpart E)

A. Any person claiming any vessel, vehicle, aircraft, merchandise or baggage which has been forfeited and sold, may at any time within 3 months after the date of sale apply for remission of the forfeiture and restoration of the proceeds of such sale.

B. Applicant must supply satisfactory proof that he did not know of the seizure prior to the declaration of forfeiture and was in such circumstances as prevented him from knowing and that the forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant.

C. If forfeited property which is the subject of a claim under this section has been authorized for official use, retention or delivery, such action will be regarded as a sale for purposes of forfeiture remission under this authority.

IMITATION FIREARM IMPORTS – 15 U.S.C. 5001(a)

I. Background

A. Statutory authority

Pursuant to the provisions of title 15, United States Code, section 5001(a), (15 U.S.C. 5001(a)), it is unlawful for any person to manufacture, enter into commerce, ship, transport or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce. These firearms shall have, as an integral part or permanently affixed, a blaze orange plug inserted in the barrel (as required by 15 C.F.R. 1150.3(a)) or a blaze orange marking on the barrel (as required by 15 C.F.R. 1150.3(b)).

B. Exceptions

As provided in 15 U.S.C. 5001(b)(2), the Secretary of Commerce may waive the marking requirement for any toy, look-alike or imitation firearm that will only be used in the theatrical, movie or television industry. The provisions of 15 U.S.C. 5001(c) define the term "lookalike firearm" as any imitation or any original firearm which was manufactured, designed and produced since 1898. It does not include any non-firing collector replica of an antique firearm developed prior to 1898 or any traditional BB, paint-ball or pellet firing air gun that expels a projectile through the force of air pressure.

II. Seizure

A. In general, when a Customs officer discovers the importation or transportation subsequent to importation of any toy, look-alike or imitation firearms that are not marked in accordance with the above-noted regulations, the firearms shall be seized under the provisions of title 19, United States Code, section 1595a(c), for violation of the provisions of title 15, United States Code, section 5001(a).

B. Constructive seizures shall not be permitted unless extraordinary circumstances require storage at a place other than that provided by the seized property contractor or directly under Customs custody.

C. Commingled Shipments

1. When a Customs officer discovers a shipment containing toy, look-alike or imitation firearms which are improperly marked commingled with either toy, look-alike or imitation firearms which are adequately marked or commingled with other merchandise which is not violative of any admissibility laws, the violative imitation firearms may be segregated from the shipment and

seized, with the cost and expense of such segregation being borne by the claimant to such property.

2. Segregation of the violative merchandise from non-violative merchandise will only be allowed if, in the opinion of the seizing officer, the non-violative merchandise was not being used to conceal or otherwise facilitate the importation of the violative merchandise.

3. If the seizing officer determines that the non-violative merchandise was packaged in a manner to conceal the importation of the improperly marked toy, look-alike or imitation firearms, the non-violative merchandise may be seized under the provisions of 19 U.S.C. 1595a(a). The forfeiture of that merchandise shall be remitted in accordance with guidelines published herein.

D. Detentions

If there is a question as to the adequacy of the marking of a shipment of toy, look-alike or imitation firearms, the shipment shall be detained in accordance with regulation. See, 19 C.F.R. 151.16. Decisions as to adequacy of marking of detained shipments shall be made by the Department of Commerce, Chief Counsel for Technology, Room 4824, Washington, D.C. 20230.

III. Forfeiture Remission Guidelines

A. If the petition for relief establishes any of the following:

1. The merchandise was adequately marked, or

2. The merchandise does not belong to the class or category of merchandise that requires marking under 15 U.S.C. 5001, or

3. The marking has been waived because the imitation firearm will be used only in the theatrical, movie or television industries, and such waiver was received prior to the seizure of the merchandise,

then the forfeiture will be remitted upon the payment of the expenses of seizure and the execution of a hold harmless agreement.

B. If the claimant receives a waiver of the marking requirement subsequent to seizure of the merchandise, the forfeiture shall be remitted upon payment of an amount between one and ten percent of the domestic value of the merchandise, but no less than $100, plus the expenses of seizure and execution of a hold harmless agreement.

C. If the claimant can show that he or she had no reasonable grounds to believe that the importation of the merchandise constituted a violation of law, the district director may permit the claimant to export the merchandise under Customs supervision to a non-contiguous country. This relief would be conditioned upon payment of the expenses of seizure and execution of a hold harmless agreement.

D. If the claimant can show that it is a first-time violation and that the merchandise can be reconditioned under Customs supervision to comply with the provisions of the statute, the forfeiture may be remitted upon payment of an amount between 10 and 30 percent of the transaction value of the merchandise and reconditioning under Customs supervision. The claimant to the merchandise shall bear all the expenses of reconditioning. Remission of the forfeiture is also conditioned upon execution of a hold harmless agreement.

E. For second or subsequent violations where the claimant can show that the merchandise can be reconditioned under Customs supervision to comply with the provisions of the statute, the forfeiture may be remitted upon payment of an amount that is no less than 25 percent of the transaction value of the merchandise and reconditioning of the merchandise under Customs supervision. The claimant to the merchandise shall bear all the expenses of reconditioning of the merchandise. Remission of the forfeiture is also conditioned upon execution of a hold harmless agreement.

F. The forfeiture of any merchandise which is seized under the provisions of 19 U.S.C. 1595a(a) for concealing, aiding or abetting the importation of toy imitation firearms shall be remitted in accordance with the above two paragraphs based upon whether the seizure is a first or subsequent violation.

IV. Claims for Liquidated Damages

A. If merchandise is released to the importer's premises under a single entry bond equal to three times the value of the merchandise and it is later determined that the toy imitation firearms are not marked in compliance with law, the importer shall be required to recondition such merchandise. If it is discovered that the importer distributed the toy imitation firearms into the commerce before approval of any reconditioning, a notice of redelivery on a CF-4647 shall be issued. If the importer fails deliver that merchandise to customs custody, liquidated damages shall be assessed in the full amount of the bond.

B. All claims for liquidated damages that arise shall be cancelled in accordance with guidelines published in T.D. 94-38, relating to claims issued for failing to redeliver visa-violative merchandise (See, section IV.F. of the guidelines).

V. Referral of Petitions for Relief

If the petition raises an issue of adequacy of marking, the petition, plus any samples from the shipment of seized merchandise, may be forwarded to the Department of Commerce, Chief Counsel for Technology, Room 4824, Washington, D.C. 20230, for an opinion as to the adequacy of the marking. Customs shall retain all forfeiture remission authority for purposes of these seizures.

VI. Disposition of Forfeited Merchandise

Toy, either look-alike or imitation as well as firearms which are seized and forfeited under these provisions of law shall be summarily destroyed.

DOG AND CAT FUR PRODUCTS - 19 U.S.C. 1308

I. In General

The importation, exportation, transportation, distribution or sale of any product consisting or comprised in whole or in part, of any dog fur, cat fur or both, is prohibited. Any such product which is so imported, exported, transported, distributed or sold will be seized and forfeited. This prohibition does not apply to the importation, exportation or transportation, for noncommercial purposes, of a personal pet that is deceased, including a pet preserved through taxidermy.

II. Forfeiture Remission

There will be no remission of any forfeiture of this product if the product is found to be comprised of dog or cat fur.

III. Disposition of Forfeited Merchandise

Dog and cat fur products which are seized and forfeited under this provisions of law shall be summarily destroyed.

AIRCRAFT REGISTRATION AND CERTIFICATION - 49 U.S.C. 46306

Under the provisions of 49 U.S.C. 46306(d), an aircraft which is in violation of the provisions of section 46306(b) may be seized by Customs, subject to forfeiture under the Customs laws.

I. Violations/Remission Guidelines

The following are violations, which may be the basis for seizure of an aircraft. The section of law for each violation is provided. Forfeiture remission guidelines for each type of violation are also included. It is unlawful for any person to:

A. Knowingly and willfully forge or alter a certificate authorized to be issued under this part or to knowingly sell, use, attempt to use or possess with the intent to use such a certificate (46306(b)(1) and (2)).

1. Certificates authorized to be issued under the Act include airman's certificates, aircraft registration certificates, certificate of modification to aircraft, etc.

2. An aircraft is presumed to have been related to a violation of, or to aid or facilitate a violation of this paragraph if the registration for the aircraft has been forged or altered. See, 46306(d)(2)(A).

3. Violations involving false aircraft registrations shall result in seizure of the falsely registered aircraft.

4. If a person who is not the owner of an aircraft operates said aircraft on the basis of a fraudulent certificate, and the owner has knowledge of the falsity, the aircraft shall be seized. If the owner does not have knowledge of the falsity and the inquiring Customs officer is satisfied that the owner does not have such knowledge, seizure would not be appropriate.

5. Forfeiture remission guidelines for violation of this subsection:

a. If the owner of the aircraft commits a knowing violation of this section, deny relief.

b. If the owner of an aircraft permits use of the aircraft by any person who has committed a knowing violation of this section and the owner was negligent in failing to police the registration and use of the aircraft so as to avoid the offense, remit the forfeiture upon payment of an amount between 1 and 10 percent of the value of the aircraft (not to exceed $100,000) depending on the presence of aggravating and mitigating factors.

c. If the owner of the aircraft was grossly negligent, i.e., displayed a wanton disregard for the requirements of this section or should have known of the violations or the violations were ongoing thereby permitting a finding of gross negligence, remit the forfeiture upon payment of an amount between 15 and 30 percent of the value of the aircraft (not to exceed $250,000) depending on the presence of aggravating and mitigating factors.

B. Obtaining a certificate by knowingly and willfully falsifying, concealing or covering up a material fact, or making a false, fictitious or fraudulent statement or representation, or making or using any false writing or document knowing

the writing to contain any false, fictitious or fraudulent statement or entry (See,, 46306(b)(4).

1. An aircraft shall be presumed to have been used in connection with, or to aid or facilitate a violation of this paragraph if:

   a. The aircraft is registered to a fictitious or false person, (See, 46306(d)(2)(C)(i)), or
   b. The application form used to obtain the aircraft registration certificate contains a material false statement. (See, 46306(d)(2)(C)(ii).

2. This violation includes provision of false statements on temporary registration form (pink slip).

3. If an airman obtains a certificate in violation of this section, and flies an aircraft based on the fraudulently obtained certificate, the aircraft should not be seized if the inquiring officer is satisfied that the owner of the aircraft did not know nor after reasonable inquiry could have known that the certificate was obtained fraudulently.

4. Forfeiture remission guidelines for violation of this subsection:

   a. If the owner of the aircraft commits a knowing violation of this section, deny relief.

   b. If the aircraft is registered to a fictitious or false person, deny relief.

   c. If the owner of an aircraft permits use of the aircraft by any person who has committed a knowing violation of this section or the owner of the aircraft commits a violation with regard to completion of his registration or application for registration and the owner was negligent in failing to police the registration and use of the aircraft so as to avoid the offense, remit the forfeiture upon payment of an amount between 1 and 10 percent of the value of the aircraft (not to exceed $100,000) depending on the presence of aggravating and mitigating factors.

   d. If the owner of the aircraft was grossly negligent, i.e., displayed a wanton disregard for the requirements of this section or should have known of the violations or the violations were ongoing thereby permitting a finding of gross negligence, remit the forfeiture upon payment of an amount between 15 and 30 percent of the value of the aircraft (not to exceed $250,000) depending on the presence of aggravating and mitigating factors.

C. As owner of an aircraft which is eligible for registration under 49 U.S.C. 44102, to knowingly and willfully operate, attempt to operate or permit any other

person to operate his aircraft if the aircraft is not registered or the certificate is suspended or revoked, if the person does not have proper authorization to operate the aircraft without registration for a period of time after transfer of ownership. See, 46306(b)(6).

1. Aircraft eligible for registration include any aircraft:

   a. owned by a citizen of the U.S. or by an individual citizen of a foreign country who has been admitted lawfully for permanent-resident status in U.S., or

   b. owned by a corporation lawfully organized and doing business under the laws of the United States or any state thereof so long as such aircraft is based and primarily used in the United States, and

   c. the aircraft is not registered under the laws of any foreign country

2. Per 14 C.F.R. 47.3(b), no person may operate on aircraft that is eligible for registration under 49 U.S.C. 44102 unless the aircraft:

   a. has been registered by its owner, or

   b. is carrying aboard a temporary authorization required by FAA regulation, or

   c. is an aircraft of the armed forces

3. Domestic operation of aircraft under a temporary authorization is permitted; however, aircraft are not authorized to be operated outside the United States when flying on that temporary authorization. If an owner has knowledge that his aircraft is being flown outside the U.S. on temporary authorization, the aircraft is subject to seizure.

4. An aircraft shall be presumed to have been used in connection with, or to aid or facilitate a violation of this paragraph if the aircraft has been operated while it is not registered under 49 U.S.C. 44102.

5. Forfeiture remission guidelines for violation of this subsection:

   a. If an owner knowingly operates or permits another to operate an unregistered aircraft or operates or permits another to operate an aircraft whose registration was revoked or suspended in violation of this section, deny relief.

b. If an owner is negligent in failing to police the operation of an unregistered aircraft, remit the forfeiture upon payment of an amount between 1 and 10 percent of the aircraft (not to exceed $100,000).

c. If the owner displays a wanton disregard to the operation of the aircraft in violation of his subsection, but actual knowledge of its use cannot be shown, remit the forfeiture of the aircraft upon payment of an amount between 15 and 30 percent of the aircraft (not to exceed $250,000).

D. To knowingly and willfully employ for service or use in any capacity as an airman an individual without a valid airman certificate authorizing such person to serve in such capacity. See, 46306(b)(8).

1. The element of knowledge for this violation extends to the airman serving without a valid airman certificate. If the airman willfully attempts to fly an aircraft for which he is not certified, seizure of the aircraft is appropriate.

2. If the owner either knew or should have known that the airman operating the aircraft or assisting in the operation of an aircraft did not have a valid airman's certificate, the aircraft is subject to seizure

3. If the airman operating the aircraft or assisting in the operation of an aircraft does not have a valid airman's certificate and has operated or assisted in the operation of the aircraft on a regular basis, the owner, for purposes of seizure under this subsection shall be presumed to have known that the airman either operated or assisted in the operation of the aircraft in violation of law.

4. If the owner had no knowledge that the airman operating the aircraft or assisting in the operation of an aircraft did not possess a valid airman's certificate and the owner had inquired as to the validity of the certificate and received false information so as to lead him to believe the certificate was valid, then seizure should not be effected.

5. Forfeiture remission guidelines for violation of this subsection:

a. If the owner of the aircraft permits an airman to operate the aircraft knowing that the airman does not possess a valid airman's certificate, remit the forfeiture upon payment of an amount between 10 and 20 percent of the value of the aircraft (not to exceed $50,000).

b. If the owner of the aircraft is negligent in failing to inquire as to whether an airman who operates his aircraft possesses a valid airman's certificate and said airman operates the aircraft without possessing such valid certificate, remit the forfeiture upon payment of an amount

between 1 and 5 percent of the value of the aircraft (not to exceed $10,000).

c. If the owner of an aircraft displays a wanton disregard to the requirements of this subsection and permits an airman not possessing a valid airman's certificate to operate his aircraft on a regular basis, remit the forfeiture upon payment of an amount between 5 and 10 percent of the value of the aircraft (not to exceed $25,000).

d. If the owner had no knowledge that the airman operating the aircraft or assisting in the operation of an aircraft did not possess a valid airman's certificate and the owner had inquired as to the validity of the certificate and received false information so as to lead him to believe the certificate was valid, remit the forfeiture upon payment of the expenses of seizure.

E. To operate an aircraft with a fuel tank or fuel system which has been installed or modified on the aircraft knowing that such tank or system or the installation or modification of such tank or system is not in accordance with regulations and requirements of the Administrator of the FAA. (See, 46306(b)(9))

1. Violations of this subsection may also be violations of the provisions of 19 U.S.C. 1590. Per 19 U.S.C. 1590(g)(2) presence of an auxiliary fuel tank which is not installed in accordance with applicable law is "prima facie evidence of aviation smuggling. Seizures notices should cite section 46306 and 19 U.S.C. 1590 (if applicable). If both 1590 and 46306 violations are discovered, the guidelines providing the higher forfeiture remission amount should be followed.

2. Per 46306(d)(2)(E), a violation is presumed when, on an aircraft on which a fuel tank or fuel system has been installed or modified, a certificate required to be issued by the Administrator of the FAA for such installation or modification is not carried aboard the aircraft.

3. Forfeiture remission guidelines for violations of this subsection:

a. If the owner of the aircraft knew that the fuel tank or fuel system was installed or modified without FAA approval and the owner knew that such approval was required, deny relief.

b. If the owner of the aircraft was negligent in failing to obtain the proper approval for installation or modification of the fuel tank or fuel system, remit the forfeiture upon payment of an amount between 10 and 20 percent of the value of the aircraft (not to exceed $25,000).

c. If the owner of the aircraft showed a wanton disregard for certification requirements for the installation or modification of the fuel tank or fuel system, remit the forfeiture upon payment of an amount between 20 and 30 percent of the value of the aircraft (not to exceed $100,000).

d. If the violation results solely because the certification documents are not present on the aircraft, remit the forfeiture upon payment of an amount equal to 1 percent of the value of the aircraft (not to exceed $1,000).

F. To knowingly and willfully display or cause to be displayed on any aircraft any marks which are false or misleading as to the nationality or registration of the aircraft. See, 46306(b)(3).

1. Violations of this subsection may also be violations of the provisions of 19 U.S.C. 1590. Per 19 U.S.C. 1590(g)(4) the external display of false registration numbers or false country of registration is "prima facie evidence of aviation smuggling. Seizure notices should cite both section 46306(b)(3) and 19 U.S.C. section 1590 (if applicable). If both 1590 and 46306 violations are discovered, the guidelines providing the higher forfeiture remission amount should be followed.

2. Per 46306(d)(2)(B), an aircraft is presumed to be in violation of the statute if there is an external display of false or misleading registration numbers or false or misleading country of registration.

3. Forfeiture remission guidelines for violation of this subsection are as follows:

a. If the owner knew that the aircraft displayed false marks as to the nationality or registration of the aircraft, deny relief.

b. If the owner was negligent in permitting the aircraft to display false marks or numbers remit the forfeiture upon payment of an amount between 15 and 30 percent of the value of the aircraft (not to exceed $250,000).

c. If the owner of the aircraft showed wanton disregard for the requirements of this subsection, remit the forfeiture upon payment of an amount between 35 and 50 percent of the value of the aircraft (not to exceed $500,000).

II. Presentation of Valid Documentation

No forfeiture shall be remitted unless all documents determined to be false, to include registration, are tendered to the FAA and a valid set of documentation is

obtained or other written authorization from the FAA to operate the aircraft is granted.

III. Seizures Resulting From Multiple Violations of the Statute

Multiple violations shall be considered an aggravating factor for forfeiture remission purposes. If a seizure occurs and multiple violations of the statute have occurred, then the guidelines providing the higher mitigated amount shall be followed.

IV. Aggravating and Mitigating Factors

A. Aggravating Factors.

1. Multiple violations of section 46306, as noted in Section III. above.

2. Claimant is uncooperative in resolution of the case, (i.e., fails to provide documents or other information necessary to conclude case).

3. Experience in aviation and general knowledge of FAA registration and certification requirements.

4. Any prior violations.

B. Mitigating Factors.

1. Inexperience in aviation or lack of knowledge of FAA registration and certification requirements.

2. Cooperation with Customs and FAA in resolution of the case.

3. Claimant to the property demonstrates that remedial action has been taken to avoid future violations of the statute.

4. Claimant took precautions against possible occurrence of violations of this statute (including background checks of airmen, seeking advice from Customs, FAA, as to their requirements so as to comply with statute and regulations).

V. Advice of FAA

The advice of the FAA shall be sought as to any issue involving registration of aircraft or certification of aircraft or airmen or any necessary interpretation of FAA law or regulation. FAA approval need not be sought as to any final remission amount.

PASSENGER FAILURE TO DECLARE - 19 U.S.C. 1497

I. In General

These provisions and procedures are applicable when passengers, either residents or non-residents, entering the United States fail to declare merchandise to Customs, even though legally required to do so. In the case of merchandise being imported from non-contiguous countries, the applicable statute is 19 U.S.C. 1497, which provides for both forfeiture and penalty liabilities.

II. Declaration Requirements

A. Technically, all merchandise brought into the United States must be declared (19 C.F.R. 148.18).

B. For purposes of penalty actions, generally look at merchandise which was acquired abroad and presume that all other merchandise was declared.

C. Oral declarations permitted if (19 C.F.R. 148.12):

1. Returning resident is bringing in no more than $400 in merchandise ($600 in the case of a direct arrival from a Caribbean Basin Initiative beneficiary country with not more than $400 of which having been acquired elsewhere than in a beneficiary country, $1,200 from American Samoa, Guam, VI, Northern Marianas) with nothing in bond or for sale.

2. Non-resident is carrying only duty-exempt merchandise.

3. Person is carrying small number of easily identifiable articles.

D. Written declarations required in all other cases.

III. Amendment of Declarations Permitted - 19 C.F.R. 148.16

A. Any time before baggage examination starts.

B. After examination starts, no undeclared article has been found and there is no fraudulent intent.

IV. Elements of the Violation

A. A failure to declare articles legally required to be declared.

B. Intent to violate the statute is not a necessary element.

V. Violator's Liability - 19 U.S.C. 1497

A. Forfeiture of undeclared merchandise, and

B. Personal penalty equal to domestic value of undeclared merchandise.

VI. Minor Violations

A. These occur through oversight, misinformation, unintentional act, and involve articles of relatively small value.

B. Concern articles acquired abroad and not declared, which are not prohibited or restricted, and

1. Which would be tax and duty-free if properly declared, or

2. Are not tax and duty-free but are valued at less than $100.

C. Action: If no fraudulent intent found, as general rule do not initiate penalty action. Collect duties due.

VII. Serious Violations

A. Several types:

1. Willful, for example, concealment.

2. Articles of considerable value involved.

3. Commercial merchandise involved.

4. Prohibited or restricted articles involved.

5. False claim about exemptions made, for example, claim that $400 exemption has not been used within 30 days.

6. Cases in which, because of the circumstances, merely collecting duty would not serve law enforcement purposes.

B. Action: Initiate a penalty action - seize merchandise and assess personal penalty in amount of its domestic value.

VIII. Guidelines for Disposition of Violations of 19 U.S.C. 1497

See, 19 C.F.R. Part 171, Appendix A

Liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (See, also part 148, Customs Regulations):

A. *Violations Involving Dutiable Articles*. For violations involving articles subject to duty and for which there is no applicable exemption from duty, the following rules apply:

1. Mitigated Penalty for First Offense. For violations which are the first offense, where there is knowledge of the declaration requirements, and where the undeclared articles are discovered by the Customs officers, the liabilities shall be remitted upon payment of Three Times the Duty (but not less than $50), or the domestic value, whichever is lower.

2. Mitigating Factors. When one or more of the following mitigating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between One and One-Half and Three Times the Duty or the domestic value, whichever is lower:

a. Communications with the violator are impaired because of language barrier, mental condition, or physical ailment;

b. Violator cooperates with Customs officers after discovery of the violation by providing additional information which facilitates conclusion of the case;

c. Violator is an inexperienced traveler;

d. There is contributory Customs error (for example, violator demonstrates he was given incorrect advice by a Customs officer).

3. Aggravating Factors. When one or more of the following aggravating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Three and Six Times the Duty (but not less than $100), or the domestic value, whichever is lower:

a. Documentary or other evidence discovered establishes violator's intent;

b. Informant provides information which tends to establish violator's intent and leads to discovery of the violation after the violator has been given an opportunity to properly declare;

c. Violator is an experienced traveler;

d. Undeclared articles are concealed to evade U.S. law;

e. There is behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted escape, which tends to demonstrate a lack of respect for law and authority.

4. Commercial Articles. When the undeclared articles are brought in for commercial purposes, the liabilities shall be remitted upon the payment of Six Times the Duty (but not less than $100), or the domestic value, whichever is lower. Mitigating factors may be used to lower this amount to as little as Three Times the Duty; aggravating factors may be used to increase this amount up to Eight Times the Duty.

5. Extraordinary Mitigating Factor.

a. When an individual who has been cleared through Customs without discovery of any undeclared article returns to the examination area and declares that article, the deciding officer may, within his discretion, remit the liabilities upon payment of One Times the Duty.

b. An individual who declares articles some time later (hours, days, weeks, etc.) may be treated similarly.

6. Extraordinary Aggravating Factors.

a. When the offense is a second or subsequent violation, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Six and Eight Times the Duty (but not less than $250), or the domestic value, whichever is lower.

b. When the offense is a second or subsequent violation, and there are aggravating factors present, generally there shall either be a denial of relief or mitigation to No Less Than Eight Times the Duty or the domestic value, whichever is lower.

c. When there is evidence of an ongoing scheme to defraud the revenue involving multiple entries without declaration of articles subject to declaration, the deciding officer shall act in accordance with the preceding paragraph.

B. *Violations Involving Absolutely or Conditionally Free Articles*. For violations involving articles either entitled to entry free of duty absolutely (classifiable under a duty-free provision in Chapters 1–97, Harmonized Tariff Schedule of the United States (HTSUS); (19 U.S.C. 1202)), or entry free of duty conditionally (entitled to

treatment under the Generalized System of Preferences (See, §§ 10.171–10.178, Customs Regulations) or Chapter 98, HTSUS), the following rules apply:

1. Mitigated Penalty for First Offense

a. For violations which are first offense, and involve articles entitled to the benefit of GSP or Chapter 98, HTSUS, the liabilities shall be remitted upon payment of One Times the Duty which would have been due if the articles had not been entitled to the benefit.

b. For violations which are first offense, and involve absolutely duty-free articles, the liabilities shall be remitted upon payment of Between One and Five Percent of the Domestic Value, but not less than $50 (or the domestic value, whichever is less) nor more than $1,000.

2. Mitigating Factors. When mitigating factors such as those outlined above are present, the deciding officer may, in his discretion, reduce the mitigated amount to a lower figure.

3. Aggravating Factors

a. When aggravating factors such as those outlined above are present, the deciding officer may, in his discretion, remit the liabilities for conditionally free articles upon the payment of Between One and Two Times the Duty (but not less than $100), or the domestic value, whichever is lower.

b. For absolutely free articles, the deciding officer may remit the liabilities upon payment of Between Five and Ten Percent of the Domestic Value, but not less than $100.

4. Commercial Merchandise.

The fact that undeclared duty-free articles are imported for commercial purposes may be considered an aggravating factor under section B.3. of these guidelines.

C. *Other Applicable Rules*.

1. These guidelines provide a framework and procedure by which violations of 19 U.S.C. 1497 are to be analyzed. They are not mandatory in the sense that they must be absolutely applied. Customs officers varying from these guidelines must provide reasons for doing so in the case record.

2. Customs officers shall document mitigating and aggravating factors found in each case in the case file. There must be a basis shown for mitigated amounts.

3. It is intended that mitigating and aggravating factors shall be considered together and used to offset each other where appropriate.

4. The rate of duty to be used in calculating the mitigated penalty shall be the appropriate rate from Chapters 1–97, HTSUS, and not the flat rate from Chapter 98, HTSUS.

5. "Duty" means Customs duties and any internal revenue taxes which would have attached upon importation (See, section 101.1(i), Customs Regulations). Therefore, multiples will also be applied to internal revenue taxes which would have been due.

6. Customs officers may, within their discretion, consider other factors not here delineated as aggravating or mitigating and apply the guidelines accordingly. These additional factors must also be documented in the case file.

7. These guidelines are not authority for admitting into the commerce of the United States articles, which are conditionally or absolutely prohibited from entry.

8. The presence of one or more extraordinary aggravating factors, including but not limited to those set forth in section I.6. of these guidelines, may within the discretion of the deciding officer be a basis for denial of relief.

CURRENCY OR MONETARY INSTRUMENT REPORT – 31 U.S.C. 5316, 5317, 5324

I. Background

The United States Customs Service enforces compliance with the Currency or monetary Instrument Report (CMIR) requirement in the Bank Secrecy Act, codified at 31 U.S.C. 5316, 5317, 5324. These reports provide information that is used in a variety of criminal, tax, or regulatory investigations or proceedings that are critical to the detection of money laundering and other forms of transnational crime. 31 U.S.C. 5311.

II. Pre-seizure and Seizure Procedures

A. All monetary instruments involved in violation of the CMIR reporting requirement are subject to seizure and forfeiture, even if a portion is reported.

B. The seizing officer or supervisor shall contact the Office of Investigations and provide any relevant information.

C. If the Office of Investigations determines that no further investigation is warranted, the Supervisory Customs Inspector shall allow a violator to amend a CMIR report (Form 4790) if the amount initially reported before verification began differs by five (5) percent or less from the amount actually possessed by the violator.

D. If the Office of Investigations determines that no further investigation is warranted, and the amount transported is $25,000 or less:

1. At the Service Port Director's discretion, in consultation with the Director FP&F/FP&F Officer, Branch Chiefs or Supervisor Customs Inspectors may be delegated authority to remit the forfeiture upon payment of a monetary amount on the site of the seizure in accordance with these guidelines if

    a. no evidence establishes a nexus to illegal activity and

    b. the violator establishes that the monetary instruments have a legitimate source and intended use.

2. The violator must sign a release/hold harmless agreement to obtain on-site-mitigation.

E. If the Office of Investigations determines that further investigation is warranted, any administrative decision concerning <u>a petition for remission</u>

will be suspended pending the completion of the investigation or a joint determination of the FP&F Officer and Office of Investigations that the investigation cannot be completed in a reasonable time (See, III(B) below).

III. Remission Upon Payment of Monetary Penalty

A. General Provisions

1. The FP&F Officer shall refer a petition for remission or mitigation to the Office of Investigations, if such an investigation is not already completed or underway.

2. The claimant bears the burden of providing credible evidence of legitimate source and intended use of the funds.

3. In all cases (criminal and civil) referred to the U.S. Attorney for litigation, the FP&F Officer shall not act on a petition, or administratively forfeit the monetary instruments without first consulting the appropriate Associate or Assistant Chief Counsel. In such cases, the Associate or Assistant Chief Counsel will also consult with the Assistant U.S. Attorney handling the case.

B. At the conclusion of any pending prosecution, open investigation, or upon the joint determination of the FP&F Officer and Office of investigations that the investigation cannot be concluded in a reasonable time, and following the timely submission of a petition, the FP&F or Headquarters Officer may:

1. Deny relief and initiate administrative forfeiture proceedings on the seized funds if (1) the totality of evidence available to Customs establishes a nexus to illegal activity, or (2) the petitioner fails to establish that the monetary instruments have a legitimate source and intended use; or

2. Grant relief as set forth in the table below after reconsideration of all the evidence on record (and any additional submissions by the claimant), if the officer concludes that the petitioner establishes that the funds have a legitimate source and intended use.

C. In any cases where either Customs denies the petitioner any relief or the petitioner fails to comply with the relief granted by Customs, the case either will be referred to the U.S. Attorney for judicial forfeiture or will be processed administratively by Customs for administrative forfeiture disposition.

D. Claims for forfeiture of monetary instruments under 31 U.S.C. §§ 5316 and 5317 are subject to the provisions of the Civil Asset Forfeiture reform Act of 2000, hereinafter referred to as "CAFRA". As is the condition for all remissions, the claimant for remission of such forfeiture must pay costs of seizure and storage (absent extraordinary circumstances), as well as paying any remission amount, execute a hold harmless agreement, and comply with any terms and conditions that are deemed appropriate.

CMIR REMISSION & MITIGATION TABLE

Amount transported (with no nexus to illegal activity)	Standard Amount
$15,000 or less	$500
$15,001 - $25,000	$1,000
$25,001 - $40,000	$2,500
$40,001 - $70,000	$5,000
$70,001 - $120,000	$10,000
$120,001 - $200,000	$20,000
$200,000 - $500,000	$30,000
$500,001 - $1,000,000	$50,000
More than $1,000,000	Decided in accordance with Customs and Treasury Department delegations and policy.

IV. Mitigating Factors

1. Officers may reduce amount sought by up to ten (10) percent of the standard amount for each factor present, but by no more than thirty (30) percent of the standard amount.

   a. Language barrier, physical ailment, or mental condition which would inhibit, rather than totally bar, the violator's understanding of the requirement;

   b. Inexperience in international travel (inapplicable to mailing or shipping of monetary instruments);

c. Cooperation with Customs officers after discovery of the violation beyond that which normally would be expected of any violator seeking to gain remission of forfeiture of the unreported funds

2. Extraordinary mitigating factors that may warrant remission of all, or a significant portion, of the standard amount:

a. Conduct as a result of clearly established contributory Customs error;

b. After being cleared through Customs, the violator subsequently voluntarily returns to the inspection area and reports the transport of monetary instruments to Customs;

c. Other special humanitarian justification.

V. No Private Rights Created

These guidelines are intended only to provide guidance for the internal operations of the U.S. Customs Service, and are not intended to create nor confer any rights, privileges, or benefits on any person or party. See, United States v. Caceres, 440 U.S. 741 (1979).

VI. Statute Of Limitations For Civil Forfeiture Actions

Under the provisions of 19 U.S.C. 1621, the statute of limitations in seizure cases is 5 years from the date of discovery of the violation or 2 years from the date that the involvement of the property in the alleged offense was discovered, whichever is later. Any time during which the property subject to forfeiture is absent from the country is not counted in the statutory period of limitation. This amendment effectively expands the reach of civil forfeiture of property whose involvement in the criminal offense is discovered after the five-year limit.

EXPORT CONTROL

I. Overview

A. Customs enforces the export/import control laws administered by the Departments of State and Commerce, DEA, BATF and other government agencies. Generally, our enforcement authority is exercised through the seizure of merchandise that is being or has been exported or imported in violation of any of the laws or implementing regulations of the other agencies.

B. Seizure is proper only if the merchandise may be physically or constructively seized, i.e., it is still in Customs, the exporter's or the carrier's possession or control. For example, goods already exported by aircraft, which are en route to the foreign country, may be constructively seized since they are within the exporting carrier's possession. If the goods have already arrived in the foreign country but have not been delivered into the foreign consignee's control, they may be constructively seized inasmuch as they are still within the exporting carrier's control.

C. If the goods may be constructively seized, Customs may, under appropriate circumstances, order the redelivery of the seized merchandise from the exporting carrier, pursuant to the provisions of 19 C.F.R. 113.64. If the goods are not redelivered, the carrier may be liable for the payment of liquidated damages in the amount of 3 times the value of the merchandise subject to the redelivery demand, under the provisions of 19 C.F.R. 113.64(f).

D. As a matter of either policy or an existing agreement, exportations of defense articles which are covered by a valid State license and are destined for NATO facilities and exportations of defense articles under the FOREIGN MILITARY SALES (FMS) program (U.S. Government to foreign government sale) are NOT subject to seizure. However, violations involving such exportations will be added to the violator's export control violation history.

II. Statutory Authorization for Seizure and Underlying Violation Citations

A. Exports in general

For intended, attempted or completed exportations, 22 U.S.C. 401 (exportation contrary to law) provides the general seizure authority.

B. Imports in general

For importations or attempted importations, 19, U.S.C. 1595a(c)(2)(B), provides the general seizure authority.

C. Underlying authorities

In addition to the seizure authority, the underlying violation of a particular statute and the applicable section of the statute's implementing regulations, which state the specific nature of the violation, should be cited in the seizure notice. The most common underlying statutory violations and regulatory violations are as follows:

1. State Department Violations

a. 22 U.S.C. 2778, the Arms Export Control Act, administered by the Department of State, primarily by the Office of Defense Trade Controls (ODTC). This Act gives the President the power to control the import and export of defense articles and services and what will be designated as such. The items designated as such are found on the U.S. Munitions List (USML), set forth in 22, C.F.R., Part 121. In general, designated defense articles, data or services may not be exported or imported without a properly issued license, unless a license exemption is applicable.

b. International Traffic in Arms Regulations, commonly referred to as the ITAR (22 C.F.R. Part 120 et seq.) The most common ITAR regulatory violations, in addition to the all-encompassing regulatory violation of 22 C.F.R. 127.1, are as follows:

i. Substantive ITAR Violations

- Failure to obtain a DSP-5 permanent export license, a DSP-61 temporary import/in-transit license, or a DSP-73 temporary export license (if no license exemptions are applicable) - 22 C.F.R. 123.1
- Failure to obtain a DSP-5 export license for unclassified technical data - 22 C.F.R. 125.2
- Quantity (not dollar value) of export merchandise is in excess of that covered by the license (violation with respect to the excess merchandise only) – 22 C.F.R. 123.1

ii. Technical ITAR Violations

- Failure of license applicant or its agent to validate export license prior to export or submit an SED for licensable

merchandise prior to export –22 C.F.R. 123.22

- Failure of license applicant or its agent to submit SED or export license at the port of exit - 22 C.F.R. 123.22. HOWEVER, if the license applicant has already validated the license and had the SED authenticated by Customs at a port of exit, and the carrier re-routes the goods to another port of exit, the license applicant is not liable for an ITAR violation and the goods should not be seized. The master of the vessel or pilot of the aircraft may be liable for a monetary penalty under 19 U.S.C. 1436(d) for the failure to properly clear outbound licensable merchandise with Customs, in the event that the master or pilot fails to present the SED citing the license to Customs at the new port of exit, prior to the carrier's departure. The carrier may also be liable for a 19 U.S.C. 1436 penalty in the event that it filed a false manifest at either port, i.e., it manifested the defense articles at the first port or failed to manifest the articles at the second port from which they were actually exported.
- Failure to cite an applicable DSP-61 license exemption on entry documentation (upon entry) or on SED (upon export) -22 C.F.R. 123.4(d)
- Failure to cite other license exemptions on the SED -22 C.F.R. 123.22(c)
- Value of licensable goods is over 10% in excess of value stated on the license – 22 C.F.R. 123.23 - Requires an amendment to the export license or a new license
- Failure to present a temporary export license on exportation or re-importation - 22 C.F.R. 123.5 and 123.22
- Failure to present a temporary import/in-transit license upon importation or re-exportation -22 C.F.R. 123.22
- Failure of license applicant to list all freight forwarders handling the defense articles -22 C.F.R. 126.13(b). Requires an amendment to license by the license applicant
- Expiration of a technical exportation license (DSP-73) while the goods are still abroad -22 C.F.R. 123.5(a). HOWEVER, a renewal of the license must be obtained in order to re-import the goods to the U.S.

2. Commerce Department Violations

a. Since Commerce Department violations occur mostly with respect to exportations, the seizure authority usually cited is 22 U.S.C. 401 for violations of the statutes and regulations cited below.

b. Violations of the Export Administration Act (50 U.S.C. 2401-2420) and the Export Administration Regulations (EAR) - (15 C.F.R. Part 730-799); Under the Export Administration Act, the Bureau of Export Enforcement (BXA) at the Department of Commerce has jurisdiction, in general, over "dual use" exports and re-exports (i.e., commodities, technology and software that can be used for both civil and military applications) and over certain activities related to the nonproliferation of weapons of mass destruction. These commodities are delineated in the Commerce Control List, Supplement I to Part 774, EAR. Unless a license exemption is applicable, licenses must be obtained from Commerce for the export or re-export of the controlled commodity.

c. Violations of the International Emergency Economic Powers Act (IEPPA) 50 U.S.C. 1701-1706). Empowers the President to regulate U.S. exports for national security, foreign policy, non-proliferation and short supply reasons.

i. Substantive Commerce Violation

Failure to obtain DOC license (if no exemption is applicable) - 15 C.F.R. 758.1.

ii. Technical Commerce Violation (BXA)

- Failure to cite applicable license or a license exemption on an SED – 15 C.F.R. 740.1(d) and 15 C.F.R. 758.3

iii. Technical Commerce Violations of the Foreign Trade Statistics Regulations, Bureau of Census (FTSR)(15 C.F.R. Part 30)- promulgated under the authority of 5 U.S.C. 301 -provides for the collection of information from the exporter for use in the compilation of the U.S. balance of trade statistics. Information regarding exports from the U.S. is collected by the Commerce Department's Bureau of the Census, mainly via the SED requirement. The most frequent FTSR violations, all of which are technical violations, are as follows:

- Failure of license applicant to submit SED for Commerce-

licensable merchandise to exporting carrier prior to exportation - 15 C.F.R. 30.12 and 15 C.F.R. 30.15 (the latter for shipments from an interior port)

- Failure of exporter to provide the correct information on the SED as to U.S. principal party in interest ("USPPI"), commodities being exported, end-use country, value of the export merchandise, etc. -- 15 C.F.R. 30.7
- Failure of exporter to submit SED for non-licensable merchandise, where such SED is required (generally, where the value of the export goods intended for a consignee is in excess of $2,500) -- 15 C.F.R. 30.1
- If there is an exception from the filing of an SED for non-licensable goods, the SED exception statement should be made on the air waybill or other loading document, for the carrier's use, unless it is obvious from the value and destination as stated on the air waybill, bill of lading or other loading document that no SED is required - - See, 15 C.F.R. 30.50
- Failure of vessel master or aircraft pilot to deliver SEDs referencing licenses or license exemptions to Customs at the port of exit – Violation of 19 U.S.C. 1436(a)(1)(3), which subjects the master or pilot to a penalty under 19 U.S.C. 1436(b)

3. Bureau of Alcohol, Tobacco and Firearms (BATF) violations

a. In general these violations occur upon permanent importation of regulated items. Therefore, the seizure authority is under 19 U.S.C. 1595a(c)(2)(B).

b. The underlying statutory violation citation is the Arms Export Control Act of 1976, sec. 38, as amended (22 U.S.C. 2778). The regulatory violation citation is the pertinent section of 27 C.F.R. Part 178 (Commerce in Firearms and Ammunition). The most frequently encountered regulatory violations are the following:

i. The failure of a licensed importer to obtain an ATF Form 6 for the importation of a regulated article -27 C.F.R. 178.112

ii. The failure of other licensees to obtain an ATF Form 6 for the importation of a regulated article -27 C.F.R. 178.113

iii. **NOTE**: Temporary importations of BATF-regulated items, such as weapons and ammunition, are within

the administrative and licensing jurisdiction of the Office of Defense Trade Controls (ODTC), Department of State.

4. Drug Enforcement Administration Violations

a. Statutory Violations

i. Chemical Diversion and Trafficking Act of 1988 ("Anti-Drug Abuse Act of 1988, Pub. Law 100-690)

ii. Comprehensive Methamphetamine "Speed" Control Act of 1996, Pub. L. 104-23 – Both regulate the importation and exportation of precursors and essential chemicals, which are used in the manufacture of narcotics and other controlled substances. (citations for these, please)

b. Regulatory Violations

i. In general - 21 C.F.R. Part 1313 ("Importation and Exportation of Precursors and Essential Chemicals"). These regulations require importers and exporters to obtain DEA's permission for the importation and exportation of controlled chemicals by submitting Form 486 to DEA 15 days before an importation or exportation. The importation or exportation is considered approved unless DEA notifies the importer or exporter to the contrary. *This 15-day advance notice period is waived for entities which qualify as "regular importers" of the listed chemicals or entities who have an established business relationship with the foreign customer, as defined in 21 C.F.R. 1300.02 (b)(12).* Such entities need only notify DEA of the importation or exportation before or on the date of importation or exportation. Further, these regulations require the importer or exporter to furnish Customs with a copy of the DEA Form 486 covering the transaction, as part of either the entry or export documentation. The regulatory citations for violation of the foregoing regulatory requirements are as follows:

ii. Failure to submit Form 486 to DEA 15 days in advance of the importation of controlled chemicals or, or a regular importer, by or on the date of importation - 21 C.F.R. 1313.12.

iii. Failure to submit Form 486 to DEA 15 days in advance of an exportation or, for an exporter dealing with an established customer, by or on the date of exportation -21 C.F.R. 1313.21

iv. Failure to submit written notification to DEA of the intent to transfer or transship "listed chemicals" that exceed the threshold reporting requirements in 21 C.F.R. 1310.04(f). Such notification (NOT on Form 486) must be given to DEA 15 days in advance of the proposed date the chemicals will transship or transfer through the U.S. - 21 C.F.R. 1313.31

v. Failure to present Form 486 to Customs upon entry of DEA-controlled chemicals (21 C.F.R. 1313.14(c)) or upon exportation of such chemicals (21 C.F.R. 1313.23)

III. Early Release Procedures

With respect to any imports or exports of controlled commodities (controlled by any Government agency), where the violation is technical and no license or license amendment must be obtained, every effort should be made to expeditiously release the goods, pursuant to a written request from the exporter, importer, or agent. Early release may be requested upon receipt by the importer or exporter, or agent thereof, of a Notice of Seizure issued by the FP&F Officer. The early release decision may be considered the final decision in the case, provided that the petitioner does not request further relief.

IV. Remission/Mitigation Considerations

A. Seizure history. The prior seizure history of the exporter, importer of record, or license holder (for licensable goods) will be considered in he mitigation decision. Only consider violations that occurred within 3 years prior to the date of the violation under consideration. Therefore, if the present violation occurred on September 30, 2001, consider only violations that occurred from September 30, 1998 to September 30, 2001.

B. Same nature violation. Also, only consider as priors the same type of violation, involving the same agency's laws and regulations. For example, if the violation in the instant case is a substantive State Department violation, such as the failure to obtain a State Department license**,** consider only previous substantive State Department violations that occurred within a 3-year period. If the violation is a technical State Department violation, such as the failure to present a State Department license or a failure to cite a license

exemption on the entry documentation or the SED, consider only previous technical State Department violations which occurred within a 3-year period. The same applies to Department of Commerce, Bureau of the Census, ATF and DEA violations.

C. Corporate divisions are considered as separate entities for violation history. If a corporate division incurs a violation, only like-nature priors by that particular corporate division, within a 3-year period of time, are considered as prior violations. For example, if MBW Aerospace Group of the MBW Industries Corporation incurs a technical violation, consider only prior technical violations by the MBW Aerospace Group within a 3-year period.

D. Mitigating Factors (these are not exhaustive):

1. Inexperienced importer or exporter

2. Importer or exporter makes a voluntary disclosure of a violation to Customs and/or the other concerned agency - In certain cases a disclosure may serve to remit the forfeiture in full, i.e., without payment of a forfeiture remission amount

3. Importer or exporter adheres to all Customs and other agency's laws and regulations but a violation occurs due to the actions of another party.

   a. For example, an exporter validates a license at the intended port of exit, but the carrier re-directs the freight to another port of exit.

   b. For a second example, goods are moved in-transit through the U.S. without knowledge or consent of foreign exporter.

E. Aggravating Factors (these are not exhaustive):

1. Related criminal conviction or other evidence of an intentional violation, for example, the exportation of controlled articles without a required license by a violator who was aware that it would not be granted a license for the articles.

2. A pattern of violations on the violator's part, which evidences its disregard for its obligations under U.S. export control laws and regulations.

V. Remission/Mitigation Guidelines

For the remission of goods subject to forfeiture in cases of **export control under 22 U.S.C. 401**, if the exporter corrects the violation Customs, generally, will release the seized property, upon payment of an amount within the following ranges for violations occurring within a three (3) year period:

A. Substantive Violations (e.g., failure to obtain a State or Commerce Department license, failure to obtain DEA permission for an in-transit movement of controlled chemicals)

1. First offense: $2,500 or the invoiced value of the violative goods, whichever is lower.

2. Second offense: $3,500 or the invoiced value of the violative goods, whichever is lower.

3. Third offense: $5,000 or the invoiced value of the violative goods, whichever is lower.

4. Fourth offense: $7,000 - $10,000 (depending on mitigating or aggravating factors), or the invoiced value of the goods, whichever is lower.

B. Technical Violations (e.g., failure to validate, present, or reference a State or Commerce Department license, failure to provide Customs with a copy of DEA Form 486)

1. First offense: $500 or invoiced value of violative goods, whichever is lower.

2. Second offense: $750 or invoiced value of violative goods, whichever is lower.

3. Third offense: $1,500 or invoiced value of violative goods, whichever is lower.

4. Fourth and subsequent offenses: $2,000-$4,000 (depending on mitigating or aggravating factors), or the invoiced value of the violative goods, whichever is lower.

VI. Claims for Liquidated Damages

A. For vessel and aircraft carrier FTSR (Census) violations, i.e., the failure to timely file SEDs for export merchandise, issue a claim for liquidated damages against the carrier for a late SED filing and utilize the liquidated damages mitigation guidelines in Section VI of the LIQUIDATED DAMAGES section of this Handbook for cancellation of the liquidated damages claim.

B. If the land border carrier has an international carrier's bond, issue a claim

for liquidated damages under the bond for a late SED filing and utilize the liquidated damages mitigation guidelines in Section VI of the LIQUIDATED DAMAGES section of the Handbook for cancellation of the liquidated damages claim.

C. Unlawful disposition of seized or detained export merchandise. 19 C.F.R. 113.64(f).

D. Amount of liquidated damages. Pursuant to 19 C.F.R. 113.64(f), a carrier, which possesses an international carrier's bond is liable for liquidated damages equal to 3 times the value of merchandise which, was not redelivered.

E. For mitigation guidelines for these claims see Section XX of the LIQUIDATED DAMAGES Section of this Handbook.

VII. Penalties

A. A civil monetary penalty is the appropriate action against a vessel master or aircraft pilot for failure to present SEDs for licensable goods prior to export. The penalty would be assessed under the provisions of 19 U.S.C. 1436. There does not have to be a seizure of the export goods in order to assess the penalty. Seizure of the goods should only occur if the **exporter** fails to have the license or other form validated prior to export.

B. For all civil monetary penalties incurred by a vessel master or aircraft pilot involving the failure to present SEDs for licensable merchandise prior to the departure of the vessel or aircraft, mitigate the 19 U.S.C. 1436 penalty consistent with the guidelines set forth in Paragraph V.B. above.

STOLEN CONVEYANCES AND PARTS

GUIDELINES FOR THE REMISSION OF FORFEITURES AND MITIGATION OF PENALTIES FOR VIOLATION OF 19 U.S.C. 1627a, FOR STOLEN CONVEYANCES AND PARTS

I. 19 U.S.C. 1627a(a)

The provisions of 19 U.S.C. 1627a(a), prohibit the importation, exportation or attempted importation or exportation of any self-propelled vehicle, vessel, aircraft or part thereof that has been stolen or has had any identification number removed, obliterated, tampered with or altered.

A. Knowing violations; altered Vehicle Identification Numbers (VINs)

1. Under the provisions of title 19, United States Code, section 1627a(a), whoever knowingly imports, exports or attempts to import or export:

   a. any stolen self-propelled vehicle, vessel aircraft or part of a self-propelled vehicle, vessel or aircraft, or

   b. any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered

   shall be subject to a civil penalty in an amount not to exceed $10,000 for each violation. Each vehicle constitutes a separate violation, e.g., if a party knowingly attempts to import 6 stolen vehicles and parts of another stolen vehicle, he would be subject to $70,000 in penalties under this statute.

2. Any violation noted above shall make the self-propelled vehicle, vessel, aircraft or part thereof subject to seizure and forfeiture.

3. Both seizure and forfeiture **and** a monetary penalty may be assessed.

B. Forfeiture Remission Guidelines

1. No relief from forfeiture shall be afforded any party who knowingly imported, exported or attempted to import or export any stolen self-propelled vehicle, vessel, aircraft or part or who has altered, obliterated, tampered with or removed any VIN.

2. Relief may be afforded to any claimant to the property who obtained an ownership interest in the property in good faith and was unaware of any theft of the property or of any alteration, obliteration, removal or tampering with any VIN.

3. Any such party described in paragraph 2 found to have a good faith interest in the property will be required to pay any costs of storage and seizure and to execute a hold harmless agreement in accordance with general forfeiture remission policy.

C. Penalty mitigation guidelines

No mitigation will be afforded from any penalty incurred by any party for violation of the provisions of 19 U.S.C. 1627a(a).

II. 19 U.S.C. 1627a(b)

The provisions of 19 U.S.C. 1627a(b) require any person attempting to export a used self-propelled vehicle to present, pursuant to regulation, to the appropriate Customs officer, both the vehicle and documentation describing such vehicle which includes the vehicle identification number, before lading if the vehicle is to be transported by vessel or aircraft or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with the regulations shall subject such person to a penalty of not more than $500 for each violation.

A. The regulations governing the procedures for the exportation of used self-propelled vehicles are found at 19 C.F.R. Part 192. By regulation, these penalties have been set at $500.

B. “Self-propelled vehicle” includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, construction equipment, special use equipment and any other self-propelled vehicle used or designed for running on land but not on rail.

1. Inasmuch as the documentation to be presented must include a vehicle identification number, certain vehicles which are designed for running on land which do not have vehicle identification numbers (such as go-karts, golf carts, etc.) would not be included under the Part 192 export requirements.

2. If penalties are assessed against parties for failing to meet requirements of Part 192 regarding vehicles not falling under the jurisdiction of that Part, they shall be mitigated without payment.

C. "Used" refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor or dealer to an ultimate purchaser.

D. "Ultimate purchaser" means the first person, other than a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

E. The provisions of 19 U.S.C. 1646c require all persons exporting used automobiles, including automobiles for personal use, by air or ship to provide to Customs at least 72 hours before export the vehicle identification number and proof of ownership of such automobile. 19 U.S.C. 1646c does not contain a penalty provision therein, but its requirements are also included in 19 C.F.R. Part 192. While there is no such statutory requirement for vehicles exported by rail, highway or under their own power, the Part 192 regulations impose such a requirement.

1. For exportation by air or ship, both the vehicle and the required documentation must be presented to Customs at least 72 hours prior to departure. See, 19 C.F.R. 192.2(c)(1).

2. For vehicles exported by rail, highway or under their own power, the required documentation must be presented to Customs at least 72 hours prior to export, but the vehicle only must be presented to Customs at the time of exportation. See, 19 C.F.R. 192.2(c)(2).

3. In the land border environment, if the documentation is presented to Customs less than 72 hours prior to exportation, a monetary penalty, subject to any appropriate mitigation in accordance with these guidelines, may be assessed. If Customs completes its examination and certifies that the documentation presented is authentic in less than 72 hours, the party exporting the vehicles may complete exportation. Customs need not require the vehicle to remain in the United States waiting for 72 hours if all appropriate checks have been completed.

F. If a penalty is assessed and the violator is a non-resident or there is other reason to believe that the penalty might not be collected, the vehicle may be detained under the provisions of 19 U.S.C. 1594 to guarantee payment of any penalty. Detention is not mandatory.

G. The penalty may be assessed against an exporter attempting to export a vehicle or an exporter who has exported a vehicle without complying with the regulations governing vehicle exportation. See, 19 C.F.R. 192.3.

H. The $500 penalty under this section of law shall be assessed per each vehicle, not each violation of the regulations governing the exportation of that vehicle. If a person violates two or more regulatory provisions in Part 192 regarding the exportation of a particular vehicle, the penalty would be $500 for the vehicle, not $500 for each regulatory breach.

I. Mitigation Guidelines

1. Personal exportation; includes any vehicle exported by a person and which is intended for his or her own individual or family use.

   a. For failure to present appropriate documentation in a manner prescribed by regulation the penalty may be mitigated upon payment of an amount between $50 and $250 depending on the facts and circumstances surrounding the violation.

   b. Authority to mitigate these penalties on-site may be delegated by the Fines, Penalties and Forfeitures Officer with the concurrence of the Port Director.

2. Commercial exportations; includes any vehicles or vehicles exported by a person or persons and which are intended for resale, commercial use or personal use by parties other than the exporting persons.

   a. For failure to present appropriate documentation in a manner prescribed by regulation the penalty may be mitigated to an amount no less than $250 depending on the facts and circumstances surrounding the violation.

   b. Authority to mitigate these penalties on-site may be delegated by the Fines, Penalties and Forfeitures Officer with the concurrence of the Port Director.

TRADEMARK, COPYRIGHT AND PATENT VIOLATIONS

MITIGATION OF TRADEMARK, COPYRIGHT AND PATENT VIOLATIONS

I. Introduction

This section includes extensive background information and a number of matrices that will help in the processing of trademark, copyright and patent violations.

II. Trademark Violations - Seizures

A. Counterfeit – 19 U.S.C. 1526(e); 19 U.S.C. 1595a(c) and 18 U.S.C. 2320

If the mark on the merchandise is identical with, or substantially indistinguishable from, the genuine trademark in question, it is then deemed counterfeit (i.e., "Ray Ban" vs. "Ray Ban"). See, sections 1-4, Trademark Matrix (this chapter) for correct citations, Customs action, and mitigation disposition.

B. Confusingly Similar – 19 U.S.C. 1595a(c)(2)(C) for violation of 15 U.S.C. 1124

If the trademark is not identical to, or indistinguishable from the genuine mark, but is likely to cause confusion or mistake by the average consumer, then it is confusingly similar (i.e., a "Ray Bane" mark on sunglasses would be considered confusingly similar to the genuine mark "Ray Ban"). See, sections 5-8, Trademark Matrix (this chapter) for correct citations, Customs action and mitigation disposition.

C. Gray Market – 19 U.S.C. 1526(b)

[If the mark is identical to the genuine mark, it may be because the mark is genuine, and as such, it may or may not be entitled to gray market protection (which is the prohibition of the importation of genuine trademarked merchandise by any person other than the trademark owner). The IPR module will tell you if the mark is entitled to gray market protection. The IPR Branch at headquarters can also assist in the determination of counterfeit versus gray market issues.] replacement language from GFM.

III. Trademark Violation – Civil Monetary Fine; 19 U.S.C. 1526(f); T.D. 99-76

A. In General

The Anticounterfeiting Consumer Protection Act provides authority to impose civil fines pursuant to 19 U.S.C. 1526(f) in addition to the seizure and forfeiture of imported merchandise bearing counterfeit trademarks. Once merchandise is found to contain a counterfeit trademark and is seized and forfeited and destroyed or otherwise disposed of pursuant to 19 U.S.C. 1526(e), then a civil fine also may be imposed under 19 U.S.C. 1526(f). See also, Section 7

regarding sample retention. **Forfeiture must be perfected before a 1526(f) fine may be imposed.**

B. Administrative Process

1. After forfeiture under 19 U.S.C. 1526(e) is completed, Notice of Penalty citing 19 U.S.C. 1526(f) as penalty authority should be issued consistent with provisions of 19 C.F.R. 162.31.

2. Petition mitigation permitted pursuant to 19 U.S.C. 1618 (see Section E below), if appropriate.

3. If the assessed or mitigated fine is not paid, refer the case to the appropriate Associate or Assistant Chief Counsel's Office for referral to the Department of Justice for collection.

C. Parties Subject to Fines

19 U.S.C. 1526(f)(1) specifically allows assessment against "any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise...." This statutory language subjects all parties who exercise control over the import transaction to its application. These individuals may be named individually or jointly and severally in penalty notices.

D. Amount of Fine

1. For any penalty that arises subsequent to a first violation incurred per 19 U.S.C. 1526(e), the fine assessed should be value of the merchandise as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure.

2. For the penalty assessed following a second or subsequent seizure (that is, where there has been a prior seizure under 19 U.S.C. 1526(e) and fine under 19 U.S.C. 1526(f)), the fine assessed shall be twice the value of the merchandise as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure.

E. Mitigation

1. In General.

Customs may consider aggravating and mitigating factors. While a lack of intent or knowledge as to the counterfeit nature of the importation(s) in question may be considered a mitigating factor in determining the mitigated amount of the fine, it does not shield the involved party from initial assessment of the fine.

2. Dispositions

   a. First offense (under 19 U.S.C. 1526(f)), with mitigating, and no aggravating factor(s):

      10-30% of the applicable MSRP of the genuine good (the assessed fine amount).

   b. First offense (under 19 U.S.C. 1526(f)), with aggravating factor(s):

      30-50% of the MSRP of the genuine good.

   c. First offense (under 19 U.S.C. 1526(f)), with evidence of knowledge as to the counterfeit nature of the goods, with no aggravating factors:

      50-80% of the MSRP of the genuine good.

   d. Second offense (under 19 U.S.C. 1526(f)), with mitigating, and no aggravating factor(s):

      10-30% of twice the MSRP of the genuine good.

   e. Second offense (under 19 U.S.C. 1526(f)), with aggravating factor(s), or third or subsequent offense (under 19 U.S.C. 1526(f)):

      50-80% of twice the MSRP of the genuine good.

   f. Second offense (under 19 U.S.C. 1526(f)), with evidence of knowledge as to the counterfeit nature of the goods:

      no mitigation.

3. Mitigating Factors

   a. Lack of knowledge of the counterfeit nature of the trademark.

   b. Prior good record of importation under 19 U.S.C. 1526.

   c. Inexperience in importing.

   d. Cooperation with Customs officers in ascertaining the facts establishing the violation.

e. Inability to pay the fine (demonstrated by documentary evidence including, but not limited to, income tax returns for the prior three years).

4. Aggravating Factors

a. More than two prior importations of merchandise seized and forfeited under 19 U.S.C. 1526(e).

b. Criminal violation relating to the subject transaction.

c. Submission of falsified documentation (i.e., false description, false country of origin, etc.), or other deceptive practices in connection with the subject importation.

Note that these fines are in addition to the seizure and forfeiture of merchandise under 19 U.S.C. 1526(e).

F. Personal Use

The statute authorizes fines only against persons (including domestic and foreign corporations) involved with the importation of merchandise "for sale or public distribution" that has been seized under 19 U.S.C. 1526(e). Therefore, fines shall not be assessed under 19 U.S.C. 1526(f) in the case of personal use importations (see also 19 C.F.R. 148.55). However, any separately imported merchandise bearing a counterfeit trademark and not covered by an exemption will still be seized, forfeited, and destroyed or otherwise disposed of under 19 U.S.C. 1526(e).

G. Sample Retention

A sample of the merchandise seized under 19 U.S.C. 1526(e) will be retained by the seizing Customs Officer, or Import Specialist, until the fine under 19 U.S.C. 1526(f) is finally resolved, insofar as the fine under 19 U.S.C. 1526(f) may become the subject of litigation after the seized merchandise has been forfeited and disposed of under 19 U.S.C. 1526(e). Any and all samples retained will be disposed of pursuant to 19 U.S.C. 1526(e) upon entry of final judgment and completion of any appeals regarding the assessed fine(s).

IV. Copyright Violations

A. In general.

Copyright violations typically pertain to movies, books, CDs, video games, etc. The issue to be determined is if there has been an unauthorized reproduction of material that is substantially similar to the copyrighted work. Many

determinations are easy to make, such as badly reproduced movies on videotape. But other determinations are more difficult, such as falling "Brick" style video games, which have similarities to Nintendo's "Tetris." Any questions concerning determinations of piracy should be sent to the IPR Branch, ORR, 202-927-2330.

B. Determination of piracy.

Once you have made a determination whether the merchandise is "Clearly Piratical," or "Possibly Piratical," and you have consulted the IPR module to determine if the copyright in question has been recorded with Customs or not, you may proceed to the attached Copyright Matrix which will instruct you as to Customs action, correct citations, and mitigation disposition.

V. Patent Infringement

Customs enforcement actions relating to patents are limited insofar as Customs is without legal authority to determine patent infringement. Customs does, however, enforce exclusion orders and seizure orders issued by the U.S. International Trade Commission ("ITC"), and we conduct patent surveys (for a fee ranging from $1,000 to $2,000 for a period of two to six months). Pursuant to 19 C.F.R. 12.39(c), seizure of merchandise is permitted under an ITC seizure order where the owner, importer or consignee has previously attempted to import the article, the article was previously denied entry, and written notice was provided to the importer that further attempts to enter the article would result in seizure and forfeiture. No relief shall be afforded from the seizure of any articles found to be within the scope of an ITC seizure order.

VI. IPR Matrices

Recommended Actions, Citations, and Dispositions of Importations

Involving Trademark Violations

(DATED: 10/10/00)* (*DESTROY ALL PREVIOUS VERSIONS THAT PRE-DATE THIS DOCUMENT)

STATUS	CUSTOMS ACTION	CITATION	RECOMMENDED DISPOSITION
1. **COUNTERFEIT MARK** ▪ **Registered** Patent & Trademark Office (PTO) trademark ▪ **Recorded** with Customs ▪ **No consent** from U.S. trademark holder ▪ **Includes** T&E/IE[1] with no valid foreign registration	SEIZE AS COUNTERFEIT PROCEED TO FORFEIT ISSUE FINE	19 U.S.C. §1526(e) 19 U.S.C.§1526(f)	NO REMISSION OF FORFEITURE: 19 C.F.R. §133.52(c)
2. **COUNTERFEIT MARK** ▪ **Registered** PTO trademark ▪ **Not recorded** with Customs ▪ **No consent** of trademark holder	SEIZE AS COUNTERFEIT PROCEED TO FORFEIT DO NOT ISSUE FINE	SEIZE: 19 U.S.C. §1595a(c)(2)(C) for violation of 18 U.S.C. § 2320	NO REMISSION OF FORFEITURE: 19 C.F.R. §133.52(c)
3. **COUNTERFEIT MARK** ▪ **Registered** PTO trademark ▪ **Recorded** with Customs ▪ **Consent** of trademark holder, obtained ***after*** seizure, prior to forfeiture	SEIZE AS COUNTERFEIT	19 U.S.C. §1526(e) 19 U.S.C. §1595(c)(2)(C)	If consent is obtained prior to forfeiture, MITIGATE based on 1595a(c) to 2% of dutiable value, plus seizure costs, and hold harmless agreement. 19 C.F.R. §133.51(b)
4. **COUNTERFEIT MARK** ▪ **Registered** PTO trademark ▪ **Recorded** with Customs ▪ **Consent** of trademark holder at time of importation,	DO NOT SEIZE AS MATTER OF POLICY		

Recommended Actions, Citations, and Dispositions of Importations

Involving Trademark Violations

(DATED: 10/10/00)* (*DESTROY ALL PREVIOUS VERSIONS THAT PRE-DATE THIS DOCUMENT)

STATUS	CUSTOMS ACTION	CITATION	RECOMMENDED DISPOSITION
5. CONFUSINGLY SIMILAR MARK ▪ **Registered** PTO trademark ▪ **Recorded** with Customs ▪ **No consent** of trademark holder	INITIALLY DETAIN, SEIZE, UNLESS EXEMPTIONS APPLY UNDER 19 CFR §133.22(c)	DETAIN: 19 C.F.R. §133.25 SEIZE: 19 U.S.C. §1595a(c)(2)(c) FOR VIOLATION OF: 15 U.S.C. §1124	REMIT FORFEITURE UPON: standard 1595a(c) mitigation guidelines of 10% –30% for first violation, and export to country of origin under Customs supervision, and removal or obliteration of the offending mark [19 C.F.R. §133.51(b)] Detention and Seizure includes T&E and IE shipments.
6. CONFUSINGLY SIMILAR MARK ▪ **Registered** PTO trademark ▪ **Recorded** with Customs ▪ **Consent**, at time of importation, of trademark holder	DO NOT SEIZE AS A MATTER OF POLICY		
7. CONFUSINGLY SIMILAR MARK ▪ **Registered** PTO trademark ▪ **Recorded** with Customs ▪ **No Consent**, at time of importation, of trademark holder, but consent obtained during detention	If **NO** consent is given ***at*** time of importation, INITIALLY DETAIN, (30 days to obtain consent) If no consent is obtained, SEIZE, UNLESS EXEMPTIONS APPLY UNDER 19 CFR §133.22(c)	DETAIN: 19 C.F.R. §133.25 SEIZE: 19 U.S.C. §1595a(c)(2)(c) FOR VIOLATION OF: 15 U.S.C. §1124 [Not 19U.S.C.§1526(e) or (f)]	REMIT FORFEITURE UPON: mitigation of 1595a(c) to 2% of dutiable value, plus seizure costs, and hold harmless agreement. 19 C.F.R. §133.51(b)
8. CONFUSINGLY SIMILAR MARK ▪ **Registered** PTO trademark ▪ **Not** recorded with Customs	DO NOT SEIZE AS A MATTER OF POLICY		

Recommended Actions, Citations, and Dispositions of Importations

Involving Trademark Violations

(DATED: 10/10/00)* (*DESTROY ALL PREVIOUS VERSIONS THAT PRE-DATE THIS DOCUMENT)

STATUS	CUSTOMS ACTION	CITATION	RECOMMENDED DISPOSITION
9. GRAY MARKET ▪ **Registered** PTO trademark ▪ **Not recorded** with Customs ▪ **No** Gray Market protection (Lack of gray market protection indicated by "**N**" in IPR module)	DO NOT SEIZE AS MATTER OF POLICY		
1. GRAY MARKET ▪ **Registered** PTO trademark ▪ **Recorded** with Customs, ▪ **Gray Market** protection (indicated by "**Y**" in IPR module)	INITIALLY DETAIN, 19 U.S.C. §133.25 **Do not detain Gray Market T&E and IE Even if protected**.	DETAIN: 19 C.F.R. §133.25 Seize: 19 U.S.C. §1526(b) and 19 C.F.R. §133.23(f)	IF PETITION FILED, REMIT FORFEITURE UPON: payment of 10% of the dutiable value for first violation, hold harmless agreement, and export to country of original exportation under Customs supervision.

NOTES:

1) Detention and Seizure provisions apply to Transportation and Exportation (T&E) and Importation and Exportation (IE) entries (except Gray Market goods which should **NOT** be detained or seized when entered under T&E or IE provisions). When goods are seized traveling under T&E and IE, and proof of valid foreign registration is made (either pre-dating U.S. registration, or a well established foreign registration), refer case to ORR, Penalties Branch for disposition.

- If the only document filed is a permit to unlade (i.e., no in-bond entry has been made), contact ORR, IPR Branch before making a seizure.
- If goods are diverted, the standard seizure and penalty provisions will apply. Contact ORR, Penalties Branch for guidance, if needed.

2) The above-recommended dispositions apply only to first violations. If there is a prior violation, call ORR, Penalties Branch for guidance. A "2nd violation" would be the second violation involving same mark, regardless of what type of merchandise the mark appears on.

3) See, the regulations regarding "personal use" exemption at 19 C.F.R. §148.55 (usually applying to only "one article of the type bearing a protected trademark").

4) Under 19 U.S.C. §1526(f), the fine, and the mitigation thereof, are based upon the Manufacturers Suggested Retail Price (MSRP) of the goods, if it were genuine. Please refer to Section III.D., above.

5) Do not separate the packaging from the goods. If there is a violation under 19 U.S.C. §1526(e), both should be seized and forfeited.

Recommended Actions, Citations, and Dispositions of Importations

Involving Copyright Violations

(Dated: 10/10/2000)* (*Destroy ALL Previous Versions that Pre-date this Document.)

STATUS	CUSTOMS ACTION	CITATION	RECOMMENDED DISPOSITION
1. Clearly Piratical copy of U.S. registered (U.S. Copyright Office) and recorded (USCS) copyright	SEIZE AND FORFEIT (pursuant to Customs Regulations)	19 U.S.C. §1595a(c)(2)(C) for violation of 17 U.S.C. §602	No Remission of Forfeiture
2. Clearly Piratical copy of U.S. registered copyright that is not recorded with USCS	SEIZE AND FORFEIT	19 U.S.C. §1595a(c)(2)(C) for violation of 17 U.S.C. §501 in civil cases, or for violation of 17 U.S.C. §506 and §509 in criminal cases.	No Remission of Forfeiture
3. Clearly Piratical copy of U.S. registered copyright, recorded or not recorded with USCS, with consent of copyright owner after seizure	SEIZE, (if no consent given prior to time of seizure)	If recorded with USCS: 19 U.S.C. §1595a(c)(2)(C) for violation of 17 U.S.C. §602 and 19 C.F.R. §133.42 If not recorded with USCS: 19 U.S.C. §1595a(c)(2)(C) for violation of 17 U.S.C. §501 in civil cases, or for violation of 17 U.S.C. §506 and §509 in criminal cases.	REMIT FORFEITURE UPON: consent of copyright owner, mitigation of 1595a(c) to 2% of dutiable value, seizure costs, and hold harmless agreement, for first violation.

Recommended Actions, Citations, and Dispositions of Importations

Involving Copyright Violations

(Dated: 10/10/2000)* (*Destroy ALL Previous Versions that Pre-date this Document.)

STATUS	CUSTOMS ACTION	CITATION	RECOMMENDED DISPOSITION
4. Possibly piratical copy of registered and recorded copyright (with no consent from copyright owner)	-DETAIN [follow 19 C.F.R. §133.43. No need for exchange of briefs if HQ IPR Branch advice obtained and seizure made within first 5 days of merchandise being presented (see Customs Directive No. 2310-005A, dated April 7, 2000)]. -SEIZE if determined to be infringing copy after exchange of briefs and HQ decision pursuant to 19 C.F.R. §133.43	-DETAIN: 19 C.F.R. §133.43 -SEIZE: 19 U.S.C. §1595a(c)(2)(C) for violation of 17 U.S.C. §602.	-If determined to be non-infringing, release pursuant to 19 C.F.R. 133.44(b) and transmit the copyright owner's bond to the importer -If infringing, no remission of forfeiture, and return bond to the copyright owner
5. Possibly piratical copy of registered copyright, which has not been recorded with U.S. Customs	DO NOT SEIZE AS A MATTER OF POLICY		

1) The importation of lawfully made copies (gray market) is not a violation (see 19 C.F.R. §133.42(b)).

2.) T&E and IE: Detention and Seizure recommendations apply to T&E and IE shipments.

3.) The above-recommended dispositions apply only to first violations. If there is a prior violation, call HQ penalties branch for guidance. A "2nd violation" would be the second violation involving same copyright, in entries which are not closely related in time (i.e. 90 days).

4.) Copyright infringement applies to the good in its entirety, and not just the packaging or exterior surface. Do not separate the packaging from the goods!

Recommended Actions, Citations, and Dispositions of Exportations

Involving Trademark & Copyright Violations

Status	Customs Action	Citation	Recommended Disposition
Trademark: Counterfeit Mark Registered Patent & Trademark Office ("PTO") trademark. Regardless of recordation with Customs. No consent from U.S. trademark holder. T&E and I.E. violations are Treated as importation violations.[1]	SEIZE AS COUNTERFEIT PROCEED TO FORFEIT NO FINE IS ISSUED	22 U.S.C. §401(a) for violation of 18 U.S.C. §2320 (need intent).	No remission of forfeiture.
Trademark: Counterfeit Mark Registered PTO trademark. Regardless of recordation with Customs. Consent of U.S. trademark holder, obtained after seizure, prior to forfeiture.	SEIZE AS COUNTERFEIT	22 U.S.C. §401(a) for violation of 18 U.S.C. §2320 (need intent).	If consent is obtained prior to forfeiture, MITIGATION/ REMISSION of seizure is made pursuant to 19 U.S.C. §1618 to 2% of dutiable value, plus seizure costs, and hold harmless agreement.
Trademark: Confusingly Similar Registered PTO trademark Recorded with Customs No consent from U.S. trademark holder. Evidence of sufficient effect on U.S. commerce.	INITIALLY DETAIN, SEIZE provided that intended sales of infringing exports in a foreign country have a sufficient effect on U.S. commerce.	22 U.S.C. §401(a) for violation of 15 U.S.C. §1125.	Proceed with forfeiture. Penalties Branch will grant substantial, if not full, mitigation or remission in cases where referring office has not provided evidentiary support for sufficient effect on U.S. commerce.
Trademark: Confusingly Similar Registered PTO trademark Recorded with Customs No consent from U.S. trademark holder. Insufficient effect on U.S. commerce.	DO NOT DETAIN AND/OR SEIZE		

[1] See Chart titled "Recommended Actions, Citations, and Dispositions of Importations Involving Trademark Violations".

Recommended Actions, Citations, and Dispositions of Exportations

Involving Trademark & Copyright Violations

Status	Customs Action	Citation	Recommended Disposition
Trademark: Confusingly Similar Registered PTO trademark. Not recorded with Customs.	DO NOT DETAIN AND/OR SEIZE		
Trademark: Gray Market Not applicable to exportations.	DO NOT DETAIN AND/OR SEIZE		
Copyright: Clearly Piratical Registered (U.S. Copyright office). Recorded copyright with Customs. No consent of copyright owner.	SEIZE AND FORFEIT	22 U.S.C. §401(a) for violation of 17 U.S.C. §506 and 17 U.S.C. §509.	No remission of Forfeiture.
Copyright: Clearly Piratical Registered (U.S. Copyright office). Recorded copyright with Customs. Consent of copyright owner after seizure.	SEIZE (if no consent given prior to time of seizure)	22 U.S.C. §401(a) for violation of 17 U.S.C. §506 and 17 U.S.C. §509.	If consent is obtained prior to forfeiture, MITIGATION/ REMISSION of seizure is made pursuant to 19 U.S.C. §1618 to 2% of dutiable value, plus seizure costs, and hold harmless agreement.
Copyright: Clearly Piratical Registered (U.S. Copyright office). Copyright NOT recorded with Customs. No consent of copyright owner.	SEIZE AND FORFEIT	22 U.S.C. §401(a) for violation of 17 U.S.C. §506 and 17 U.S.C. §509.	No remission of Forfeiture.
Copyright: Clearly Piratical Registered (U.S. Copyright office). Copyright NOT recorded with Customs. Consent of copyright owner after seizure.	SEIZE (if no consent given prior to time of seizure)	22 U.S.C. §401(a) for violation of 17 U.S.C. §506 and 17 U.S.C. §509.	If consent is obtained prior to forfeiture, MITIGATION/ REMISSION of seizure is made pursuant to 19 U.S.C. §1618 to 2% of dutiable value, plus seizure costs, and hold harmless agreement.

Recommended Actions, Citations, and Dispositions of Exportations Involving Trademark & Copyright Violations			
Status	**Customs Action**	**Citation**	**Recommended Disposition**
Copyright: Possibly Piratical Registered (U.S. Copyright office). Recorded copyright with Customs.	SEIZE AND FORFEIT	22 U.S.C. §401(a) for violation of 17 U.S.C. §506 and 17 U.S.C. §509.	No remission of Forfeiture.
Copyright: Possibly Piratical Registered (U.S. Copyright office). Copyright NOT recorded with Customs.	DO NOT DETAIN AND/OR SEIZE		

PENALTIES

COMMERCIAL FRAUD – 19 U.S.C. 1592

NEGLIGENCE, GROSS NEGLIGENCE AND FRAUD

Appendix B to Part 171—Customs Regulations, Revised Penalty Guidelines, 19 U.S.C. 1592

Appendix B to Part 171--Customs Regulations, Guidelines for the Imposition and Mitigation of Penalties for Violations of 19 U.S.C. 1592.

Introduction

A monetary penalty incurred under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592; hereinafter referred to as section 592) may be remitted or mitigated under section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there are mitigating circumstances to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of liabilities arising under section 592 within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in prepenalty proceedings and in determining the monetary penalty assessed in any penalty notice. The assessed penalty or penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to section 592(e). It should be understood that any mitigated penalty is conditioned upon payment of any actual loss of duty as well as a release by the party that indicates that the mitigation decision constitutes full accord and satisfaction. Further, mitigation decisions are not rulings within the meaning of part 177 of the Customs Regulations (19 C.F.R. part 177). Lastly, these guidelines may supplement, and are not intended to preclude application of, any other special guidelines promulgated by Customs.

I. Violations of Section 592

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax or fee thereby, a violation of section 592 occurs when a person, through fraud, gross negligence, or negligence, enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the United States by means of any document, electronic transmission of data or information, written or oral statement, or act that is material and false, or any omission that is material; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. It should be noted that the language ``entry, introduction, or attempted entry or introduction'' encompasses placing merchandise in-bond (e.g., filing an immediate transportation application). There is no violation if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent

conduct. Also, the unintentional repetition by an electronic system of an initial clerical error generally will not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the party's attention to the unintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 592. Also, the unintentional repetition of a clerical mistake over a significant period of time or involving many entries could indicate a pattern of negligent conduct and a failure to exercise reasonable care.

II. Definition of Materiality Under Section 592

A document, statement, act, or omission is material if it has the natural tendency to influence or is capable of influencing agency action including, but not limited to a Customs action regarding: (1) Determination of the classification, appraisement, or admissibility of merchandise (e.g., whether merchandise is prohibited or restricted); (2) determination of an importer's liability for duty (including marking, antidumping, and/or countervailing duty); (3) collection and reporting of accurate trade statistics; (4) determination as to the source, origin, or quality of merchandise; (5) determination of whether an unfair trade practice has been committed under the anti-dumping or countervailing duty laws or a similar statute; (6) determination of whether an unfair act has been committed involving patent, trademark, or copyright infringement; or (7) the determination of whether any other unfair trade practice has been committed in violation of federal law. The ``but for'' test of materiality is inapplicable under section 592.

III. Degrees of Culpability Under Section 592

The three degrees of culpability under section 592 for the purposes of administrative proceedings are:

A. Negligence

A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances either: (a) in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute; or (b) in communicating information in a manner so that it may be understood by the recipient. As a general rule, a violation is negligent if it results from failure to exercise reasonable care and competence: (a) to ensure that statements made and information provided in connection with the importation of merchandise are complete and accurate; or (b) to perform any material act required by statute or regulation.

B. Gross Negligence

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

C. Fraud

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

IV. Discussion of Additional Terms

1. Duty Loss Violations

A section 592 duty loss violation involves those cases where there has been a loss of duty including any marking, anti-dumping, or countervailing duties, or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to an alleged violation.

2. Non-duty Loss Violations

A section 592 non-duty loss violation involves cases where the record indicates that an alleged violation is principally attributable to, for example, evasion of a prohibition, restriction, or other non-duty related consideration involving the importation of the merchandise.

3. Actual Loss of Duties

An actual loss of duty occurs where there is a loss of duty including any marking, anti-dumping, or countervailing duties, or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to a liquidated Customs entry, and the merchandise covered by the entry has been entered or introduced (or attempted to be entered or introduced) in violation of section 592.

4. Potential Loss of Duties

A potential loss of duty occurs where an entry remains unliquidated and there is a loss of duty, including any marking, anti-dumping or countervailing duties or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to a violation of section 592, but the violation was discovered prior to liquidation. In addition, a potential loss of duty exists where Customs discovers the violation and corrects the entry to reflect liquidation at the proper classification and value. In other words, the potential loss in such cases equals the amount of duty, tax and fee that would have occurred had Customs not discovered the violation prior to liquidation and taken steps to correct the entry.

5. Total Loss of Duty

The total loss of duty is the sum of any actual and potential loss of duty attributable to alleged violations of section 592 in a particular case. Payment of any actual and/or potential loss of duty shall not affect or reduce the total loss of duty used for assessing penalties as set forth in these guidelines. The ``multiples'' set forth below in paragraph (F)(2) involving assessment and disposition of cases shall utilize the ``total loss of duty'' amount in arriving at the appropriate assessment or disposition.

6. Reasonable Care

General Standard: All parties, including importers of record or their agents, are required to exercise reasonable care in fulfilling their responsibilities involving entry of merchandise. These responsibilities include, but are not limited to: providing a classification and value for the merchandise; furnishing information sufficient to permit Customs to determine the final classification and valuation of merchandise; taking measures that will lead to and assure the preparation of accurate documentation, and determining whether any applicable requirements of law with respect to these issues are met. In addition, all parties, including the importer, must use reasonable care to provide accurate information or documentation to enable Customs to determine if the merchandise may be released. Customs may consider an importer's failure to follow a binding Customs ruling a lack of reasonable care. In addition, unreasonable classification will be considered a lack of reasonable care (e.g., imported snow skis are classified as water skis). Failure to exercise reasonable care in connection with the importation of merchandise may result in imposition of a section 592 penalty for fraud, gross negligence or negligence.

7. Clerical Error

A clerical error is an error in the preparation, assembly or submission of import documentation or information provided to Customs that results from a mistake in

arithmetic or transcription that is not part of a pattern of negligence. The mere non-intentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligence. Nevertheless, as stated earlier, if Customs has drawn a party's attention to the non-intentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 592. Also, the unintentional repetition of a clerical mistake over a significant period of time or involving many entries could indicate a pattern of negligent conduct and a failure to exercise reasonable care.

8. Mistake of Fact

A mistake of fact is a false statement or omission that is based on a bona fide erroneous belief as to the facts, so long as the belief itself did not result from negligence in ascertaining the accuracy of the facts.

V. Penalty Assessment

(1) Case Initiation--Prepenalty Notice.

(a) Generally.

As provided in Sec. 162.77, Customs Regulations (19 C.F.R. 162.77), if the appropriate Customs field officer has reasonable cause to believe that a violation of section 592 has occurred and determines that further proceedings are warranted, the Customs field officer will issue to each person concerned a notice of intent to issue a claim for a monetary penalty (i.e., the “prepenalty notice”). In issuing such a prepenalty notice, the Customs field officer will make a tentative determination of the degree of culpability and the amount of the proposed claim. Payment of any actual and/or potential loss of duty will not affect or reduce the total loss of duty used for assessing penalties as set forth in these guidelines. The “multiples” set forth in paragraphs (F)(2)(a)(i), (b)(i) and (c)(i) involving assessment and disposition of duty loss violation cases will use the amount of total loss of duty in arriving at the appropriate assessment or disposition. Further, where separate duty loss and non-duty loss violations occur on the same entry, it is within the Customs field officer's discretion to assess both duty loss and non-duty loss penalties, or only one of them. Where only one of the penalties is assessed, the Customs field officer has the discretion to select which penalty (duty loss or non-duty loss) shall be assessed. Also, where there is a violation accompanied by an incidental or nominal loss of duties, the Customs field officer may assess a non-duty loss penalty where the incidental or nominal duty loss resulted from a separate non-duty loss violation. The Customs field officer will propose a level of culpability in the prepenalty notice that conforms to the level of culpability suggested by the evidence at the time of issuance. Moreover,

the prepenalty notice will include a statement that it is Customs practice to base its actions on the earliest point in time that the statute of limitations may be asserted (i.e., the date of occurrence of the alleged violation) inasmuch as the final resolution of a case in court may be less than a finding of fraud. A prepenalty notice that is issued to a party in a case where Customs determines a claimed prior disclosure is not valid--owing to the disclosing party's knowledge of the commencement of a formal investigation of a disclosed violation--will include a copy of a written document that evidences the commencement of a formal investigation. In addition, a prepenalty notice is not required if a violation involves a non-commercial importation or if the proposed claim does not exceed $1,000. Special guidelines relating to penalty assessment and dispositions involving ``Arriving Travelers'' are set forth in section (L) below.

(b) Prepenalty Notice--Proposed Claim Amount

(i) Fraud. In general, if a violation is determined to be the result of fraud, the proposed claim ordinarily will be assessed in an amount equal to the domestic value of the merchandise. Exceptions to assessing the penalty at the domestic value may be warranted in unusual circumstances such as a case where the domestic value of the merchandise is disproportionately high in comparison to the loss of duty attributable to an alleged violation (e.g., a total loss of duty of $10,000 involving 10 entries with a total domestic value of $2,000,000). Also, it is incumbent upon the appropriate Customs field officer to consider whether mitigating factors are present warranting a reduction in the customary domestic value assessment. In all section 592 cases of this nature regardless of the dollar amount of the proposed claim, the Customs field officer will obtain the approval of the Penalties Branch at Headquarters prior to issuance of a prepenalty notice at an amount less than domestic value.

(ii) Gross Negligence and Negligence. In determining the amount of the proposed claim in cases involving gross negligence and negligence, the appropriate Customs field officer will take into account the gravity of the offense, the amount of loss of duty, the extent of wrongdoing, mitigating or aggravating factors, and other factors bearing upon the seriousness of a violation, but in no case will the assessed penalty exceed the statutory ceilings prescribed in section 592. In cases involving gross negligence and negligence, penalties equivalent to the ceilings stated in paragraphs (F)(2)(b) and (c) regarding disposition of cases may be appropriate in cases involving serious violations, e.g., violations involving a high loss of duty or significant evasion of import prohibitions or restrictions. A ``serious" violation need not result in a loss of duty. The violation may be serious because it affects the admissibility of merchandise or the enforcement of other laws, as in the case of quota evasions, false

statements made to conceal the dumping of merchandise, or violations of exclusionary orders of the International Trade Commission.

(c) Technical Violations.

Violations where the loss of duty is nonexistent or minimal and/or that have an insignificant impact on enforcement of the laws of the United States may justify a proposed penalty in a fixed amount not related to the value of merchandise, but an amount believed sufficient to have a deterrent effect: e.g., violations involving the subsequent sale of merchandise or vehicles entered for personal use; violations involving failure to comply with declaration or entry requirements that do not change the admissibility or entry status of merchandise or its appraised value or classification; violations involving the illegal diversion to domestic use of instruments of international traffic; and local point-to-point traffic violations. Generally, a penalty in a fixed amount ranging from $1,000 to $2,000 is appropriate in cases where there are no prior violations of the same kind. However, fixed sums ranging from $2,000 to $10,000 may be appropriate in the case of multiple or repeated violations. Fixed sum penalty amounts are not subject to further mitigation and may not exceed the maximum amounts stated in section 592 and in these guidelines.

(d) Statute of Limitations Considerations--Waivers.

Prior to issuance of any section 592 prepenalty notice, the appropriate Customs field officer will calculate the statute of limitations attributable to an alleged violation. Inasmuch as section 592 cases are reviewed de novo by the Court of International Trade, the statute of limitations calculation in cases alleging fraud should assume a level of culpability of gross negligence or negligence, i.e., ordinarily applying a shorter period of time for statute of limitations purposes. In accordance with section 162.78 of the Customs Regulations (19 C.F.R. 162.78), if less than 1 year remains before the statute of limitations may be raised as a defense, a shortened response time may be specified in the notice--but in no case, less than 7 business days from the date of mailing. In cases of shortened response times, the Customs field officer should notify alleged violators by telephone and use all reasonable means (e.g., facsimile transmission of a copy of the notice) to expedite receipt of the notice by the alleged violators. Also in such cases, the appropriate Customs field officer should advise the alleged violator that additional time to respond to the prepenalty notice will be granted only if an acceptable waiver of the statute of limitations is submitted to Customs. With regard to waivers of the statute of limitations, it is Customs practice to request waivers concurrently both from all potential alleged violators and their sureties.

(2) Closure of Case or Issuance of Penalty Notice.

(a) Case Closure.

The appropriate Customs field officer may find, after consideration of the record in the case, including any prepenalty response/oral presentation, that issuance of a penalty notice is not warranted. In such cases, the Customs field officer will provide written notification to the alleged violator who received the subject prepenalty notice that the case is closed.

(b) Issuance of Penalty Notice.

In the event that circumstances warrant issuance of a notice of penalty pursuant to Sec. 162.79 of the Customs Regulations (19 C.F.R. 162.79), the appropriate Customs field officer will give consideration to all available evidence with respect to the existence of material false statements or omissions (including evidence presented by an alleged violator), the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating or aggravating factors. In cases involving fraud, the penalty notice will be in the amount of the domestic value of the merchandise unless a lesser amount is warranted as described in paragraph (E)(1)(b)(i). In general, the degree of culpability or proposed penalty amount stated in a prepenalty notice will not be increased in the penalty notice. If, subsequent to the issuance of a prepenalty notice and upon further review of the record, the appropriate Customs field officer determines that a higher degree of culpability exists, the original prepenalty notice should be rescinded and a new prepenalty notice issued that indicates the higher degree of culpability and increased proposed penalty amount. However, if less than 9 months remain before expiration of the statute of limitations or any waiver thereof by the party named in the prepenalty notice, the higher degree of culpability and higher penalty amount may be indicated in the notice of penalty without rescinding the earlier prepenalty notice. In such cases, the Customs field officer will consider whether a lower degree of culpability is appropriate or whether to change the information contained in the prepenalty notice.

(c) Statute of Limitations Considerations.

Prior to issuance of any section 592 penalty notice, the appropriate Customs field officer again shall calculate the statute of limitations attributable to the alleged violation and request a waiver(s) of the statute, if necessary. In accordance with part 171 of the Customs Regulations (19 C.F.R. part 171), if less than 180 days remain before the statute of limitations may be raised as a defense, a shortened response time may be specified in the notice--but in no case less than 7 business days from the date of mailing. In such cases, the Customs field officer should notify an alleged violator by telephone and use all reasonable means (e.g.,

facsimile transmission of a copy) to expedite receipt of the penalty notice by the alleged violator. Also, in such cases, the Customs field officer should advise an alleged violator that, if an acceptable waiver of the statute of limitations is provided, additional time to respond to the penalty notice may be granted.

VI. Administrative Penalty Disposition

(1) Generally.

It is the policy of the Department of the Treasury and the Customs Service to grant mitigation in appropriate circumstances. In certain cases, based upon criteria to be developed by Customs, mitigation may take an alternative form, whereby a violator may eliminate or reduce his or her section 592 penalty liability by taking action(s) to correct problems that caused the violation. In any case, in determining the administrative section 592 penalty disposition, the appropriate Customs field officer will consider the entire case record--taking into account the presence of any mitigating or aggravating factors. All such factors should be set forth in the written administrative section 592 penalty decision. Once again, Customs emphasizes that any penalty liability which is mitigated is conditioned upon payment of any actual loss of duty in addition to that penalty as well as a release by the party that indicates that the mitigation decision constitutes full accord and satisfaction. Finally, section 592 penalty dispositions in duty-loss and non-duty-loss cases will proceed in the manner set forth below.

(2) Dispositions.

(a) Fraudulent Violation.

Penalty dispositions for a fraudulent violation will be calculated as follows:

(i) Duty Loss Violation. An amount ranging from a minimum of 5 times the total loss of duty to a maximum of 8 times the total loss of duty--but in any such case the amount may not exceed the domestic value of the merchandise. A penalty disposition greater than 8 times the total loss of duty may be imposed in a case involving an egregious violation, or a public health and safety violation, or due to the presence of aggravating factors, but again, the amount may not exceed the domestic value of the merchandise.

(ii) Non-Duty Loss Violation. An amount ranging from a minimum of 50 percent of the dutiable value to a maximum

of 80 percent of the dutiable value of the merchandise. A penalty disposition greater than 80 percent of the dutiable value may be imposed in a case involving an egregious violation, or a public health and safety violation, or due to the presence of aggravating factors, but the amount may not exceed the domestic value of the merchandise.

(b) Grossly Negligent Violation.

Penalty dispositions for a grossly negligent violation shall be calculated as follows:

(i) Duty Loss Violation. An amount ranging from a minimum of 2.5 times the total loss of duty to a maximum of 4 times the total loss of duty--but in any such case, the amount may not exceed the domestic value of the merchandise.

(ii) Non-Duty Loss Violation. An amount ranging from a minimum of 25 percent of the dutiable value to a maximum of 40 percent of the dutiable value of the merchandise--but in any such case, the amount may not exceed the domestic value of the merchandise.

(c) Negligent Violation.

Penalty dispositions for a negligent violation shall be calculated as follows:

(i) Duty Loss Violation. An amount ranging from a minimum of 0.5 times the total loss of duty to a maximum of 2 times the total loss of duty but, in any such case, the amount may not exceed the domestic value of the merchandise.

(ii) Non-Duty Loss Violation. An amount ranging from a minimum of 5 percent of the dutiable value to a maximum of 20 percent of the dutiable value of the merchandise, but, in any such case, the amount may not exceed the domestic value of the merchandise.

(d) Authority to Cancel Claim.

Upon issuance of a penalty notice, Customs has set forth its formal monetary penalty claim. Except as provided in 19 C.F.R. part 171, in those section 592 cases within the administrative jurisdiction of the concerned Customs field office, the appropriate Customs field

officer will cancel any such formal claim whenever it is determined that an essential element of the alleged violation is not established by the agency record, including prepenalty and penalty responses provided by the alleged violator. Except as provided in 19 C.F.R. part 171, in those section 592 cases within Customs Headquarters jurisdiction, the appropriate Customs field officer will cancel any such formal claim whenever it is determined that an essential element of the alleged violation is not established by the agency record, and such cancellation action precedes the date of the Customs field officer's receipt of the alleged violator's petition responding to the penalty notice. On and after the date of Customs receipt of the petition responding to the penalty notice, jurisdiction over the action rests with Customs Headquarters including the authority to cancel the claim.

(e) Remission of Claim.

If the Customs field officer believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, the Customs field officer should first seek approval from the Chief, Penalties Branch, Customs Service Headquarters.

(f) Prior Disclosure Dispositions.

It is the policy of the Department of the Treasury and the Customs Service to encourage the submission of valid prior disclosures that comport with the laws, regulations, and policies governing this provision of section 592. Customs will determine the validity of the prior disclosure including whether or not the prior disclosure sets forth all the required elements of a violation of section 592. A valid prior disclosure warrants the imposition of the reduced Customs civil penalties set forth below:

(1) Fraudulent Violation.

(a) Duty Loss Violation. The claim for monetary penalty shall be equal to 100 percent of the total loss of duty (i.e., actual + potential) resulting from the violation. No mitigation will be afforded.

(b) Non-Duty Loss Violation. The claim for monetary penalty shall be equal to 10 percent of the dutiable value of the merchandise in question. No mitigation will be afforded.

(2) Gross Negligence and Negligence Violation.

(a) Duty Loss Violation. The claim for monetary penalty shall be equal to the interest on the actual loss of duty computed from the date of liquidation to the date of the party's tender of the actual loss of duty resulting from the violation. Customs notes that there is no monetary penalty in these cases if the duty loss is potential in nature. Absent extraordinary circumstances, no mitigation will be afforded.

(b) Non-Duty Loss Violation. There is no monetary penalty in such cases and any claim for monetary penalty which had been issued prior to the decision granting prior disclosure will be remitted in full.

VII. Mitigating Factors

The following factors will be considered in mitigation of the proposed or assessed penalty claim or the amount of the administrative penalty decision, provided that the case record sufficiently establishes their existence. The list is not all-inclusive.

(1) Contributory Customs Error.

This factor includes misleading or erroneous advice given by a Customs official in writing to the alleged violator, or established by a contemporaneously created written Customs record, only if it appears that the alleged violator reasonably relied upon the information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty claim shall be canceled. If the Customs error contributed to the violation, but the violator also is culpable, the Customs error will be considered as a mitigating factor.

(2) Cooperation with the Investigation.

To obtain the benefits of this factor, the violator must exhibit extraordinary cooperation beyond that expected from a person under investigation for a Customs violation. Some examples of the cooperation contemplated include assisting Customs officers to an unusual degree in auditing the books and records of the violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the violator should

not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508-1509.

(3) Immediate Remedial Action.

This factor includes the payment of the actual loss of duty prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of duties attributable to the alleged violation. In appropriate cases, where the violator provides evidence that immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of non-compliance.

(4) Inexperience in Importing.

Inexperience is a factor only if it contributes to the violation and the violation is not due to fraud or gross negligence.

(5) Prior Good Record.

Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of importations without violation of section 592, or any other statute prohibiting false or fraudulent importation practices. This factor will not be considered in alleged fraudulent violations of section 592.

(6) Inability to Pay the Customs Penalty.

The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years, and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay).

(7) Customs Knowledge.

Additional relief in non-fraud cases (which also are not the subject of a criminal investigation) will be granted if it is determined that Customs had actual knowledge of a violation and, without justification, failed to inform the violator so that it could have taken earlier corrective action. In such

cases, if a penalty is to be assessed involving repeated violations of the same kind, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be limited to two times the loss of duty in duty-loss cases or twenty percent of the dutiable value in non-duty-loss cases if the continuing violations were the result of gross negligence, or the lesser of one time the loss of duty in duty-loss cases or ten percent of dutiable value in non-duty-loss cases if the violations were the result of negligence. This factor will not be applicable when a substantial delay in the investigation is attributable to the alleged violator.

VIII. Aggravating Factors

Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the administrative penalty decision. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be utilized to offset the presence of mitigating factors. The following factors will be considered ``aggravating factors," provided that the case record sufficiently establishes their existence. The list is not exclusive.

(1) Obstructing an investigation or audit,

(2) Withholding evidence,

(3) Providing misleading information concerning the violation,

(4) Prior substantive violations of section 592 for which a final administrative finding of culpability has been made,

(5) Textile imports that have been the subject of illegal transshipment (i.e., false country of origin declaration), whether or not the merchandise bears false country of origin markings,

(6) Evidence of a motive to evade a prohibition or restriction on the admissibility of the merchandise (e.g., evading a quota restriction),

(7) Failure to comply with a lawful demand for records or a Customs summons.

IX. Offers in Compromise ("Settlement Offers")

Parties who wish to submit a civil offer in compromise pursuant to 19 U.S.C. 1617 (also known as a ``settlement offer") in connection with any section 592 claim or potential section 592 claim should follow the procedures outlined in Sec. 161.5 of the Customs Regulations (19 C.F.R. 161.5). Settlement offers do not

involve ``mitigation'' of a claim or potential claim, but rather ``compromise'' an action or potential action where Customs evaluation of potential litigation risks, or the alleged violator's financial position, justifies such a disposition. In any case where a portion of the offered amount represents a tender of unpaid duties, taxes and fees, Customs letter of acceptance may identify the portion representing any such duty, tax and fee. The offered amount should be deposited at the Customs field office responsible for handling the section 592 claim or potential section 592 claim. The offered amount will be held in a suspense account pending acceptance or rejection of the offer in compromise. In the event the offer is rejected, the concerned Customs field office will promptly initiate a refund of the money deposited in the suspense account to the offeror.

X. Section 592(d) Demands

Section 592(d) demands for actual losses of duty ordinarily are issued in connection with a penalty action, or as a separate demand without an associated penalty action. In either case, information must be present establishing a violation of section 592(a). In those cases where the appropriate Customs field officer determines that issuance of a penalty under section 592 is not warranted (notwithstanding the presence of information establishing a violation of section 592(a)), but that circumstances do warrant issuance of a demand for payment of an actual loss of duty pursuant to section 592(d), the Customs field officer shall follow the procedures set forth in section 162.79b of the Customs Regulations (19 C.F.R. 162.79b). Except in cases where less than one year remains before the statute of limitations may be raised as a defense, information copies of all section 592(d) demands should be sent to all concerned sureties and the importer of record if such party is not an alleged violator. Also, except in cases where less than one year remains before the statute of limitations may be raised as a defense, Customs will endeavor to issue all section 592(d) demands to concerned sureties and non-violator importers of record only after default by principals.

XI. Customs Brokers

If a customs broker commits a section 592 violation and the violation involves fraud, or the broker commits a grossly negligent or negligent violation and shares in the benefits of the violation to an extent over and above customary brokerage fees, the customs broker will be subject to these guidelines. However, if the customs broker commits either a grossly negligent or negligent violation of section 592 (without sharing in the benefits of the violation as described above), the concerned Customs field officer may proceed against the customs broker pursuant to the remedies provided under 19 U.S.C. 1641.

XII. Arriving Travelers

(1) Liability. Except as set forth below, proposed and assessed penalties for violations by an arriving traveler must be determined in accordance with these guidelines.

(2) Limitations on Liability on Non-commercial Violations. In the absence of a referral for criminal prosecution, monetary penalties assessed in the case of an alleged first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited as follows:

(a) Fraud--Duty Loss Violation. An amount ranging from a minimum of three times the loss of duty to a maximum of five times the loss of duty, provided the loss of duty is also paid;

(b) Fraud--Non-duty Loss Violation. An amount ranging from a minimum of 30 percent of the dutiable value of the merchandise to a maximum of 50 percent of its dutiable value;

(c) Gross Negligence--Duty Loss Violation. An amount ranging from a minimum of 1.5 times the loss of duty to a maximum of 2.5 times the loss of duty provided the loss of duty is also paid;

(d) Gross Negligence--Non-duty Loss Violation. An amount ranging from a minimum of 15 percent of the dutiable value of the merchandise to a maximum of 25 percent of its dutiable value;

(e) Negligence--Duty Loss Violation. An amount ranging from a minimum of .25 times the loss of duty to a maximum of 1.25 times the loss of duty provided that the loss of duty is also paid;

(f) Negligence--Non-duty Loss Violation. An amount ranging from a minimum of 2.5 percent of the dutiable value of the merchandise to a maximum of 12.5 percent of its dutiable value;

(g) Special Assessments/Dispositions. No penalty action under section 592 will be initiated against an arriving traveler if the violation is not fraudulent or commercial, the loss of duty is $100.00 or less, and there are no other concurrent or prior violations of section 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties, taxes and fees will be collected. Also, no penalty under section 592 will be initiated against an arriving traveler if the violation is not fraudulent or commercial, there are no other concurrent or prior violations of section 592, and a penalty is not believed necessary to deter future violations or to serve a law enforcement purpose.

XIII. Violations of Laws Administered by Other Federal Agencies.

Violations of laws administered by other federal agencies (such as the Food and Drug Administration, Consumer Product Safety Commission, Office of Foreign Assets Control, Department of Agriculture, Fish and Wildlife Service) should be referred to the appropriate agency for its recommendation. If promptly tendered, such recommendation will be granted due consideration and may be followed, provided such recommendation does not result in a disposition inconsistent with these guidelines.

XIV. Section 592 Violations by Small Entities

In compliance with the mandate of the Small Business Regulatory Enforcement Fairness Act of 1996, under appropriate circumstances, the issuance of a penalty under section 592 may be waived for businesses qualifying as small business entities.

CONTROLLED SUBSTANCES - FAILURE TO MANIFEST - 19 U.S.C. 1584

I. FAILURE TO MANIFEST ILLEGAL DRUGS - STATUTORY LIABILITY UNDER 19 U.S.C. 1584(a)(2)

A. Pursuant to 19 U.S.C. 1584(a)(2), as amended, as implemented by 19 C.F.R. 162.65(b), the master, person in charge, or owner of a vessel, vehicle, or aircraft, any person directly or indirectly responsible for the failure to manifest *heroin, morphine, cocaine, isonipecaine, or opiate* is liable for a penalty of $1,000 per ounce. Such party is also liable for a penalty of $500 per ounce for unmanifested *smoking opium, opium prepared for smoking, or marijuana*, and $200 per ounce for *crude opium*.

B. 19 U.S.C. 1584 has been in effect since 1930. However, pursuant to The Anti-Drug Abuse Act of 1986, Congress amended subsection (a)(2) by increasing the drug manifesting penalties 2000% (penalties increased from $25 to $500 per ounce of marijuana and $50 to $1,000 per ounce of cocaine). For example:

1. Customs seizes 100 pounds of cocaine that carrier failed to manifest. Assess penalty for $1,600,000 (100 pounds x 16 ounces for each pound x $1,000 per each ounce of cocaine).

2. Customs seizes 100 pounds of marijuana that carrier failed to manifest. Assess penalty for $800,000 (100 pounds x 16 ounces for each pound x $500 per each ounce of marijuana).

C. Customs is not required to issue a prepenalty notice. (See, 19 C.F.R. 162.65(c); ARCA Airlines, LTDA v. United States, et al., 726 F. Supp. 827 (S.D. Fla. 1989); aff'd., 945 F.2d 413 (11th Cir. 1991). See also, 19 U.S.C. 1584(b)(1).

D. A written penalty notice and demand for payment of the penalty for a 19 U.S.C. 1584(a)(2) violation is issued to one of the following parties: the master of the vessel, commander of the aircraft, person in charge of the vehicle; the owner of the vessel, aircraft, or vehicle; or any person directly or indirectly responsible. In the case of a vessel, if an international carrier's bond has been given, also send the notice to the surety. 19 C.F.R. 162.65(c).

E. If the vessel, vehicle, or aircraft was being operated as a *common carrier,* there is a violation if there was either *knowledge* that narcotic drugs were on board or a *failure to exercise the highest degree of care and diligence* in preventing drugs from being placed on board.

1. Knowledge: In order to find knowledge, Customs must have evidence the master, person in charge, owner, or any person directly or indirectly responsible *knew* that narcotic drugs were on board. For example:

    a. Customs finds 1,755 pounds of cocaine on a vessel by discovering a manhole cover underneath a freshly painted, false plaster floor. The manhole cover leads to a water tank containing the cocaine. Customs investigative records show that the owner had participated in concealing and loading the cocaine onto the vessel. Thus, the knowledge requirement is met and a violation has occurred. Customs should issue a penalty in the amount of $28,080,000.

    b. Customs discovers 500 pounds of marijuana inside an unmanifested box in the cargo belly of an aircraft. Although the owner of the aircraft didn't participate in the drug smuggling incident himself, Customs has sufficient evidence that the owner knew that crewmembers were involved and failed to intervene. Again, the knowledge requirement is met and a violation has occurred. Customs should issue a penalty in the amount of $4,000,000.

2. Highest Degree of Care and Diligence: if Customs does not find knowledge, then the master, person in charge, owner, or any person directly or indirectly responsible must demonstrate that it could not, by the exercise of the *highest degree of care and diligence*, have known, that narcotic drugs were on board.

    a. There is no statutory or regulatory definition of *the highest degree of care and diligence.* There is little case law on the subject, other than general guidance such as "[i]f the owner would escape a fine, he must prove that he left *no stone unturned* to prevent the carrying of opium." (*Emphasis* added.) See, *Lancashire Shipping Co., Limited, v. United States*, 17 F. Supp. 573 (S.D.N.Y. 1936).

    b. Customs has administratively developed standards on a case-by-case basis. Customs will review the totality of the facts and circumstances of each case, looking for evidence that a carrier took affirmative measures to discover narcotics on board its vessel, vehicle, or aircraft. (*See, ARCA Airlines, LTDA v. United States, et al., supra.)*

    c. The Carrier Initiative Program Agreements and the managers of the Carrier Initiative Programs in the Anti-Smuggling Division,

Office of Field Operations at Headquarters provide guidance on the security measures carriers should take. Also review 19 C.F.R. 123.72 for particular guidance regarding land border situations.

3. Example of carrier exercising the highest degree of care and diligence:

   a. An air carrier has followed all mandatory and recommended security measures as set forth in the Air Carrier Initiative Program Agreement. However, a drug smuggler invents a novel and sophisticated approach to container seal tampering. Since the carrier has no prior experience with this new smuggling method, its standard operating procedures do not address it. In this instance, Customs will find that the carrier exercised the highest degree of care and diligence. Customs therefore will not issue a penalty, with the caveat that the carrier should refine its standard operating procedures to address this new threat.

      NOTE: If Customs seizes drugs from the same air carrier in a second incident involving the same type of container seal tampering, a penalty should be issued since Customs gave the carrier prior notice that it should reexamine its standard operating procedures in this regard.

4. Examples of a carrier's failure to exercise the highest degree of care and diligence:

   a. Customs examines an unsealed refrigerator container on a sea vessel. The carrier has manifested the container as empty, when in fact, it contains 1,576 pounds of cocaine. The cocaine is packaged in metal boxes of different sizes and concealed beneath the container floor. Access to the narcotics is available through a hole cut into the floor. The hole is clearly visible since no attempt was made to cover it. In this scenario, the carrier clearly did not exercise the highest degree of care and diligence for several reasons: 1) a carrier should inspect the interior of all empty containers prior to being loaded onto a vessel since they are highly susceptible to drug smuggling; 2) the hole in the floor is clearly visible and could have been easily detected by a visual inspection; and 3) there is no container seal. Customs should issue a penalty in the amount of $25,216,000.

   b. While inspecting baggage on a bus arriving from Mexico, Customs discovers an unclaimed suitcase without a baggage tag affixed to it. The suitcase contains 75 pounds of marijuana. By failing to have in

place adequate baggage handling and tag control procedures, the bus carrier failed to exercise the highest degree of care and diligence. Customs should issue a penalty in the amount of $600,000.

F. Strict liability and non-common carriers:

If Customs finds unmanifested drugs on board or inside the merchandise of a vessel, vehicle, or aircraft being operated as a *non-common carrier*, then the master, person in charge, owner, or any person directly or indirectly responsible is strictly liable for the violation (i.e., no need to perform the "knowledge/highest degree of care and diligence" analysis – proceed with issuing the penalty.)

G. What is a common carrier?

1. The initial determination of whether a vessel, vehicle, or aircraft is a common carrier depends upon the nature and character of the trade engaged in by the owner.

2. The salient characteristic of a common carrier is that "[h]e must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for persons generally....[and] undertakes for all persons indifferently." *U.S. v. One (1) Liberian Refrigerator Vessel*, 447 F. Supp. 1053 (M.D. Fla. 1977) (*quoting, United States v. Stephen Brothers Line*, 384 F.2d 118 (5th Cir. 1967))**.**

3. The general rule is, if a vessel, vehicle, or aircraft is being used to transport cargo or passengers for the public at large (e.g., dozens or hundreds of shipments of a wide variety of cargo), it is being operated as a common carrier and the "knowledge/highest degree of care and diligence" analysis described above should be used. However, if the carrier is transporting goods for private carriage only (e.g., time charterer or wet lease), then it is considered a non-common carrier and strict liability applies.

4. The rationale for this distinction is that courts have reasoned it is easier for a carrier engaged in private carriage to control the security of its conveyance and cargo than it is for a carrier engaged in public carriage.

5. The carrier has the burden of proving common carrier status. Customs, however, may confer common carrier status on a carrier based on its own analysis of an individual case.

H. Examples of non-common carrier and strict liability:

1. Customs discovers 150 pounds of unmanifested cocaine inside plastic trash bags on a sea vessel that arrived at Miami Customs Port. The evidence shows that at the time of arrival, the vessel was being operated under a time-charter agreement, i.e., a private contract between two parties. The vessel master does not provide any evidence that the vessel was arriving in the U.S. to transport cargo for the public at large. Thus, the carrier is strictly liable for the penalty since it was not operating as a common carrier at the time of the incident.

2. A freight truck arrives in the United States from Mexico. Customs inspectors inspect the truck and find a few boxes that are of a different color and shape than most of the cargo. At this point, the Customs inspectors bring in a narcotic detector dog to examine the cargo. The dog alerts to the different-shaped boxes. Upon further inspection of the different-shaped boxes, the inspectors discover wrapped packages containing a total of 458 pounds of marijuana. Since the truck was being used to haul cargo only for the company that owned the truck, and was not transporting goods for persons generally, it is not a common carrier. Therefore, the carrier is strictly liable for the penalty. Customs should issue a penalty in the amount of $3,664,000.

I. Section 584(a)(2) penalties constitute a lien upon a vessel, vehicle, or aircraft which may be enforced by a libel in rem *except* that the master or owner of a vessel, vehicle, or aircraft used by any person as a *common carrier* is not subject to the lien if Customs does not find either knowledge or the failure to exercise the highest degree of care.

J. Clearance of any vessel, vehicle, or aircraft may be withheld until section 584 drug penalties are paid or until a bond, satisfactory to the Customs Service, is given for the payment thereof. 19 U.S.C. 1584(a)(2); 19 C.F.R. 162.65(e).

K. The statute of limitations is five years and begins to run on the date of the violation (i.e., date of drug seizure). 19 U.S.C. 1621.

II. FP&F OFFICER'S AUTHORITY

A. All 19 U.S.C. 1584(a)(2) failure to manifest narcotic drug cases involving claims of $100,000 or less (except as noted in B. below).

B. Exception: Refer all 19 U.S.C. 1584(a)(2) petitions involving members of the Air or Sea Super Carrier Programs to the Penalties Branch, Office of

Regulations & Rulings at Headquarters for decision.

NOTE: Refer all *narcotic drug seizures* involving Air or Sea Super Carriers to the appropriate program manager in the Anti-Smuggling Division, Office of Field Operations at Headquarters for approval to issue a penalty. (*See,* subsection IV., A., *infra).*

III. PETITIONS FOR RELIEF

A. Follow the usual petitioning procedures as set forth in 19 C.F.R., Part 171.

B. Exception: Penalty Offset Program (*See,* subsection VI., *infra*).

IV. SPECIAL PROCEDURES FOR CARRIERS PARTICIPATING IN CUSTOMS INDUSTRY PARTNERSHIP PROGRAMS (IPP)

A. Cases involving members of the Air Super Carrier Initiative Program (Air SCIP) and the Sea Super Carrier Initiative Program (Sea SCIP), upon referral to the appropriate Program Manager in the Anti-Smuggling Division of the Office of Field Operations (as noted in subsection II. B. above), will be reviewed by the National Accounts Board (NAB; also known as National Accounts Review Board) and then referred to the Executive Oversight Committee (EOC).

NOTE: Cases involving Air and Sea carriers that are not formally designated as "Super Carriers" by the Anti-Smuggling Division are not eligible for National Accounts review.

1. The EOC and NAB are the established authorities to, among other things, review, determine assessment, and mitigate National Accounts cases.

2. The NAB will periodically review National Accounts cases to determine if individual cases involving a Super Carrier should be assessed and make such recommendations to the EOC.

3. For those cases that will be assessed with the final approval of the EOC, the following formula will be used:

   Total Incidents = Assists + Foreign Intercepts + Culpable Incidents.

   The resulting number will constitute the Performance Standard by which the assessment will be determined. Example:

Statutory Liability = $1,000,000.00
Performance Standard = 75.5%
Penalty assessment will = 24.5%
Actual penalty amount = $245,000.00

B. Penalties involving members of Air CIP and Sea CIP that are *not* members of the SCIP, and penalties involving members of the LBCIP or Rail CIP will be either assessed or mitigated as follows:

1. Penalties that represent the first culpable incident of 19 U.S.C. 1584(a)(2) within a two-year period for a member of either the Air CIP or Sea CIP will be assessed at no more than 50% of the statutory amount in accordance with the Air Carrier Initiative Agreement and Sea Carrier Initiative Agreement, respectively.

2. Penalties that represent the second or more culpable incident of 19 U.S.C. 1584(a)(2) within a two-year period for a member of either the Air CIP and Sea CIP will be assessed at the full statutory amount in accordance with the Air Carrier Initiative Agreement and Sea Carrier Initiative Agreement, respectively.

3. Penalties that represent the first culpable incident of 19 U.S.C. 1584(a)(2) within a two-year period for a member of the LBCIP and Rail CIP will be preliminarily mitigated (before a Penalty Notice is issued) to no more than 50% of the statutory amount in accordance with the Land Border Carrier Initiative Agreement and Rail Carrier Initiative Agreement, respectively.

4. Penalties that represent the second or more culpable incident of 19 U.S.C. 1584(a)(2) within a two-year period for a member of the LBCIP and Rail CIP will be assessed at the full statutory amount in accordance with the Land Border Carrier Initiative Agreement and Rail Carrier Initiative Agreement, respectively.

5. If at least two years have elapsed since the last culpable incident for either an Air CIP, Sea CIP, LBCIP, or Rail CIP member, the next culpable incident will be considered the first for the purposes of determining penalty assessment under this subsection.

C. Mitigation of 19 U.S.C. 1584(a)(2) penalties is to be done in accordance with the guidelines as delineated in the subsection entitled, “PENALTY MITIGATION.”

V. PENALTY MITIGATION

A. If there is sufficient evidence that any carrier had *knowledge* of the narcotics being smuggled onboard the conveyance or inside the cargo, then no mitigation is allowed.

B. If a common carrier lacked knowledge of the smuggled narcotics, *but failed to exercise the highest degree of care and diligence*, or a non-common carrier is found strictly liable, then the following mitigation guidelines apply:

1. Negligence: mitigate to 10-25% of assessed penalty;

2. Gross Negligence: mitigate to 25-50% of assessed penalty.

C. The actual mitigation amount within the above ranges depends upon the presence of mitigating and aggravating factors. Please note that the following are not exhaustive lists; other factors may be considered.

1. Mitigating Factors: 1st violation within a two-year period; immediately undertakes a thorough post-seizure analysis and implements remedial measures; active member in one of the Industry Partnership Programs; proven record of security practices and procedures; history of extraordinary cooperation with Customs.

2. Aggravating Factors: numerous violations; delayed or incomplete post-seizure analysis and fails to implement remedial measures; non-member or inactive member in one of the Industry Partnership Programs; lacks basic security practices and procedures; history of non-cooperation with Customs.

D. **NOTE**: if a common carrier lacks knowledge and exercised the highest degree of care and diligence, then there is no penalty liability (*see* subsection I., E., 2. and 3., *supra*).

VI. PENALTY OFFSETS

A. Subsequent to an initial petition penalty decision letter issued by either the port or Headquarters, any carrier (including both members and non-members of the Industry Partnership Programs) is eligible to participate in Customs "Penalty Offset Program." In effect, a carrier may receive monetary credit towards its penalty liability or recoup some or all of the penalty already paid to Customs when it purchases and installs what Customs believes to be "extraordinary security equipment."

B. The amount of the penalty offset (or refund) is equal to the cost of the security equipment ("dollar-for-dollar" match), plus 10% of that cost for administrative overhead.

C. Examples of "extraordinary security equipment" include: remote cameras, X-ray equipment, closed-circuit television (CCTV), etc.

D. The policy behind the penalty offset program is that Customs prefers to *prevent* drug smuggling instead of making seizures and issuing penalties.

E. Advise carrier to submit a "Request for Penalty Offsets." Forward the request to the appropriate program manager in the Anti-Smuggling Division, Office of Field Operations at Headquarters for decision.

F. The appropriate program manager will issue a penalty offset decision, either approving or denying (in whole or in part) the offset request. The program manager will then send a copy of the decision to the originating FP&F Officer, who in turn should forward a copy to the carrier.

G. Refer to "Industry Partnership Handbook" to be published by the Anti-Smuggling Division, Office of Field Operations, for further details of the penalty offset program.

BROKER PENALTIES - 19 U.S.C. 1641
APPENDIX C TO PART 171, CUSTOMS REGULATIONS

Overview

Per 19 U.S.C. 1641(a)(2), "Customs business" means those activities involving transactions concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on the merchandise by reason of its importation, or the refund, rebate or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs. In order to conduct such business, an individual or corporation must be a licensed Customs broker.

All licensed brokers must exercise responsible supervision and control over the Customs business that they conduct. Brokers also are required to maintain certain standards of conduct. The violation of those standards results in sanctions, which include license revocation or suspension or assessment of monetary penalties.

Under title 19, United States Code, section 1641(d)(2)(A) (19 U.S.C. 1641(d)(2)(A)), Customs may assess monetary penalties against brokers who violate the specific provisions of the statute. Customs has published guidelines as Appendix C to Part 171, Customs Regulations (19 C.F.R. Part 171, App. C).

Pursuant to 19 C.F.R. 111.92(a), Customs first will issue a written prepenalty notice that advises the broker or other person of the allegations or complaints against them. It also will explain that a person has a right to respond to allegations or complaints in writing within 30 days of the date of mailing of the notice. If the broker or other person files a timely response to the prepenalty notice, the FP&F Officer will review the response and either cancel the claim, issue a notice of penalty in an amount which is lower than that provided for in the written prepenalty notice or issue a penalty notice in the same amount. See, 19 C.F.R. 111.92(b).

19 U.S.C. 1641(b)(4) provides that a broker shall exercise responsible supervision and control over customs business it conducts. 19 U.S.C. 1641(b)(6) provides that anyone who intentionally transacts customs business, other than for their own behalf, without holding a valid license, is liable for a penalty not to exceed $10,000 for each transaction as well as for each violation of any other provision. Finally, 19 U.S.C. 1641(d)(2)(A) provides that Customs may impose a monetary penalty, not to exceed $30,000 total. This penalty is in lieu of any license revocation or suspension action that might be undertaken under 19 U.S.C. 1641(d)(2)(B). The provisions of 19 U.S.C. 1641(d)(1) allow for imposition of a monetary penalty if it is shown that a broker:

(A) made or caused to be made a material false or misleading statement or omitted a material fact in connection with any license or permit application or report filed with Customs;

(B) at any time after the filing of a license or permit application, has been convicted of any felony or misdemeanor which: involved the importation/ exportation of merchandise; arose out of the conduct of its customs business; or involved larceny, theft, robbery, extortion, embezzlement, etc.;

(C) has violated any provision of any law, or attendant rules or regulations, enforced by Customs;

(D) has counseled, commanded, induced, procured, knowingly aided or abetted another person's violations of any provision of any law, or attendant rules or regulations, enforced by Customs;

(E) has knowingly employed, or continues to employ, any person convicted of a felony without Customs' written approval; and

(F) has in the course of Customs business, with intent to defraud, willfully and knowingly deceived, misled, or threatened any client or prospective client.

The monetary penalties are subject to mitigation under normal petitioning procedures.

For recordkeeping violations, consistent with 19 U.S.C. 1509(g)(4)(B), Customs will not impose penalties, under 1509, but rather 1641.

Customs Guidelines for the Imposition and Mitigation of Penalties for Violations of 19 U.S.C. 1641

The Trade and Tariff Act of 1984 promulgated numerous changes to the current statute relating to Customs brokers. The following document attempts to define that conduct which is to be proscribed and to suggest penalty amounts to be assessed for such violations. It also chronicles procedures to be followed in assessment and mitigation of penalties.

NOTE: Assessment of a monetary penalty is an alternative sanction to revocation or suspension of the broker's license or permit.

I. Penalty Assessment Procedures – 19 C.F.R. Part 111, Subpart E

A. When a penalty against a broker is contemplated, the “appropriate Customs officer”, (i.e., the Fines, Penalties, and Forfeitures Officer) shall issue a written notice which advises the violator of the allegations which would warrant

imposition of a penalty. The written notice shall be in a format similar to a prepenalty notice that would be issued in contemplation of assessment of a penalty under section 1592 or 1584.

B. The written notice shall inform the violator that he has 30 days to respond as to why a penalty should not be issued. See, 19 C.F.R. 111.92.

C. If no response is received from the violator, or, if after receipt of the response, it is determined that the penalty should be issued as stated in the prepenalty notice, a notice of penalty CF–5955A shall be issued formally assessing a monetary penalty against the broker.

D. The Fines, Penalties, and Forfeitures Officer may reduce the amount of the contemplated penalty or cancel its issuance altogether if, after review of the violator's submission in response to the prepenalty notice, he is satisfied that the acts which are the basis for the penalty did not occur as charged or occurred in a manner that would permit a reduction in the contemplated penalty.

E. After issuance of a penalty notice, the petitioning provisions of part 171 of the Customs Regulations are in effect.

F. If the broker does not comply with a final mitigation decision within 60 days, the matter shall be referred to the Department of Justice for commencement of judicial action.

II. Penalty Assessment – Conducting Customs Business Without a License (19 U.S.C. 1641(b)(6))

A. No person may conduct Customs business, other than solely on behalf of that person, without a broker's license.

B. Penalty amount:

1. The maximum penalty for any one incident of conducting Customs business without a license is $10,000.

2. Total aggregate penalties for violation of this or any other section of the broker penalty statute is $30,000. As a general rule, $10,000 will be the maximum assessment for a violation solely involving conducting Customs business without a license, without regard to the frequency of violations. In particularly aggravated circumstances, this rule shall be suspended.

C. Customs business includes:

1. Classification and valuation.

2. Payment of duties, taxes or other charges.

3. Drawback or refund of duties.

4. Filing of entries or other documents relating to issues covered by 1–3.

D. Customs business does not include:

1. Marine transactions.

2. In-bond movement or transportation of merchandise.

3. Foreign Trade Zone admissions. See, C.S.D. 84–23.

E. Penalty amounts to be imposed for transacting Customs business without a license are as follows:

1. No penalty action when importation is conducted on behalf of a family member. For purposes of this subsection, "family member" is defined as a parent, child, spouse, sibling, grandparent or grandchild.

2. No penalty action against an individual who has a power of attorney to act as an unpaid agent on a non-commercial shipment. See, 19 C.F.R. 141.33.

3. A $250 penalty for:

a. First violation when transaction is non-commercial but is conducted on behalf of any business entity, or

b. First violation where the importation is commercial in nature (i.e., imported merchandise is for resale) or where the violator is compensated for his action, e.g., an importation of raw material or parts of merchandise that is to be manufactured, refined or assembled here before resale would be a commercial entry because the merchandise eventually would be resold, albeit in another form than that which it was entered.

4. A $1,000 penalty for repeat violation involving:

a. Commercial importation.

b. Non-commercial importation made on behalf of a business entity.

c. Non-commercial importation for which compensation is received by the violator.

5. A $10,000 penalty when:

a. Violator falsely holds himself out as being a licensed Customs broker.

b. A continuing course of conduct can be shown (determined by frequency of violations or number of entries involved) which would indicate that the violator is entering merchandise for others on a regular commercial basis, e.g., if the violator has incurred numerous penalties under subsections (3) and (4) above, but the smaller penalties have had no deterrent effect, the $10,000 penalty under this subsection should be assessed in an action separate from those smaller penalties.

F. Mitigation—No mitigation will be afforded for any violation involving conducting Customs business without a license unless the violator can show an inability to pay such penalty.

G. IMPORTANT: As a general rule, a separate penalty should not be imposed for each unlawful Customs business transaction if numerous transactions occur contemporaneously. For example:

1. If an unlicensed individual files six commercial entries at one time, that should be treated as one violation. It should not be treated as six violations because the entries were presented contemporaneously.

2. If Customs discovers that an individual has conducted Customs business without a license on numerous occasions, but such individual acted without knowledge of the prohibition on such conduct, those numerous transactions should be treated as one violation for purposes of imposition of any penalty.

H. **NOTE**: Conducting Customs business without a license is not the same violation as conducting Customs business without a permit. The latter violation is discussed later in this appendix in the section involving Violation of Other Laws or Regulations Enforced by Customs.

I. Intent to violate the law is not an element of this violation. Reference to “intentionally transacts Customs business” in subsection 1641(b)(6) relates to the intentional transaction of the business itself, not to any intentional attempt to violate the terms of the statute.

III. SECTION 1641(d)(1)(A)—MAKING A FALSE OR MISLEADING STATEMENT OR AN OMISSION AS TO MATERIAL FACT WHICH WAS REQUIRED TO BE STATED IN ANY APPLICATION FOR A LICENSE OR PERMIT

A. If the license would not have been issued but for the false statement, the proper sanction would be suspension or revocation of the license. If the false or misleading statement would not have absolutely resulted in the denial, revocation or suspension of a license, then penalty sanctions are proper.

B. Material facts include but are not limited to:

1. Facts as to identity.

2. Facts as to citizenship status of an individual.

3. Facts as to moral character of an individual which relate to his fitness to conduct Customs business.

4. The organization of any corporation, association or partnership.

5. The status of the license of a license holder who is a corporate officer or partner.

C. Penalty Amount—$5,000 for each false statement, to a maximum of $30,000.

D. Examples of situations where revocation of the license is appropriate.

1. An applicant states that he is 21 years old (as required by 19 C.F.R. 111.11) and he is not. But for the false statement, the applicant could not meet the age requirement for a license.

2. An applicant provides an alias in the application which is a material false statement as to identity.

E. Mitigation guidelines.

1. Violation due to clerical error (clerical error as defined by 19 U.S.C. 1520(c)(1)), mitigated without payment.

2. Violation due to negligence.

a. This is defined as more than clerical error, but not an intentional violation. Examples include:

i. Failing to list a new corporate office because corporate records have not been kept current.

ii. Listing an incorrect address for a reference because applicant has failed to update his records.

b. Mitigate to $500 for each $5,000 penalty assessed.

c. This category excludes cases of harmless error, i.e., a mistake which could not possibly harm the government's interests. Cases falling in this category should be mitigated in full.

3. Intentional violations—Revocation of a license which has been granted is the preferred sanction. If no license has been granted, no mitigation.

IV. SECTION 1641(d)(1)(B)—BROKER CONVICTED OF CERTAIN FELONIES OR MISDEMEANORS SUBSEQUENT TO FILING LICENSE APPLICATION

A. As a general rule, license revocation is the standard sanction for these violations. If the conviction occurs subsequent to the filing of an application, monetary penalties may be assessed according to the following criteria.

B. Unlawful conduct must relate to:

1. Importation or exportation of merchandise.

2. Conduct of Customs business (this shall include violations relating to taxes and duties and documents required to be filed with regard to such taxes and duties).

3. Relevant convictions would include:

a. 18 U.S.C. 1001—making a false statement to Customs or any other agency with regard to any relevant transaction.

b. 18 U.S.C. 545—unlawful importation of merchandise.

c. 18 U.S.C. 542—unlawful importation by means of a fraudulent act or omission.

d. 22 U.S.C. 2778—illegal exportation of munitions.

C. Monetary penalties may not be imposed in connection with convictions relating to conduct described in subsection 1641(d)(1)(B)(iii) including larceny, theft, robbery, extortion, counterfeiting, fraudulent concealment or conversion, embezzlement or misappropriation of funds. Either suspension or revocation is the appropriate penalty for these infractions.

D. Penalty amounts.

1. $15,000 for a misdemeanor conviction.

2. $30,000 for a felony conviction.

E. Mitigation.

1. For a misdemeanor conviction, mitigation to a lesser amount is permitted if the conviction related to Customs business and the domestic value of the merchandise involved is less than $15,000. In such case, mitigation to an amount equal to the domestic value of the merchandise is appropriate.

2. For other misdemeanor convictions, no relief.

3. Felony convictions, no relief.

V. SECTION 1641(d)(1)(C)—VIOLATION OF ANY LAW ENFORCED BY THE CUSTOMS SERVICE OR THE RULES OR REGULATIONS ISSUED UNDER ANY SUCH PROVISION

A. Penalties under this section may be imposed in addition to any penalty provided for under the law enforced by Customs. Exception: Penalties imposed against a broker under 19 U.S.C. 1592 at a culpability level of less than fraud or under 19 U.S.C. 1595a(b) shall not be imposed in addition to a broker's penalty.

B. Additional penalties under this section shall also be imposed against any broker where the other statute violated only moves against property, or the violator has demonstrated a continuing course of illegal conduct or evidence exists which indicates repeated violations of other statutes or regulations.

C. Conducting Customs business without a permit penalties should be assessed under this section.

1. The penalty notice should also cite 19 C.F.R. 111.19 as the regulation violated. A party operating without a permit is required to apply for one under the above-noted regulation.

2. Assessment amount—$1,000 per transaction conducted without a permit.

3. Mitigation.

a. Negligence, mitigate to $250–$500 per transaction depending on the presence of mitigating factors (lack of knowledge of permit requirement).

b. Intentional, grant no relief.

c. No mitigation if permit revoked by operation of law.

4. Generally, a separate penalty should not be assessed for each non-permitted transaction if numerous transactions occurred contemporaneously. For example, if a broker files 30 entries the day after a permit expires, the 30 filings should be treated as one violation, not 30 separate violations.

D. Penalties for failure to exercise due diligence in payment, refund or deposit of monies received from clients in connection with clients' Customs business also should be assessed under this section. This includes failure to pay over to a client, or file a written statement to a client accounting for, funds received.

1. The penalty notice should also cite 19 C.F.R. 111.29 as the regulation violated.

2. Assessment amount—an amount equal to the value of any monies up to a maximum of $30,000, to be deposited with Customs or refunded or accounted for to a client.

3. No mitigation shall be afforded until the monies are properly paid to Customs or refunded or accounted for to the clients.

4. If any claims for liquidated damages result against the client's bond from the failure to pay monies to Customs, no mitigation from the penalty shall be granted until the claim for liquidated damages is settled by the violating broker either through payment of the full claim or a mitigated amount.

5. After monies are paid or accounted for and/or liquidated damages claims are settled as stated in 3. and 4. above, mitigation may be afforded. If the violator is found to be negligent, the penalty may be mitigated to an amount between 25 and 50 percent of the assessed amount, but no lower than $250. No mitigation from an intentional violation.

E. Penalties for failure to retain powers of attorney from clients to act in their names.

1. The penalty notice should also cite 19 C.F.R. 141.46 as the regulation violated.

2. Assessment amount—$1,000 for each power of attorney not on file.

3. Mitigation—for a first offense, mitigate to an amount between $250 and $500 unless extraordinary mitigating factors are present, in which case full mitigation should be afforded. An extraordinary mitigating factor would be a fire, theft or other destruction of records beyond broker control. Subsequent offenses—no mitigation unless extraordinary mitigating factors are present.

4. Penalty should be mitigated in full if it can be established that a valid power of attorney had been issued to the broker, but it was misplaced or destroyed through clerical error or mistake.

F. If the other statute violated moves only against property, the violator shall incur a monetary penalty equal to the domestic value of such property or $30,000, whichever is less. For example, a violation of 22 U.S.C. 401 for unlawful exportation of merchandise results in seizure and forfeiture of the violative merchandise. There are no penalty provisions, which Customs enforces against parties responsible for the offense. If brokers are recalcitrant and are constantly responsible for offenses, which result in seizure of merchandise, a penalty equal to the domestic value of such merchandise (in no case to exceed $30,000) should be imposed.

G. Use of a broker's importation bond to aid an importer who has had his immediate delivery privileges revoked.

1. The broker has aided his client in avoiding the immediate delivery sanctions. The penalty notice should cite 19 C.F.R. 142.25(c) as the regulation violated. Before assessment of this penalty, the broker should be shown to have known or been negligent in not knowing of the client's sanction.

2. A penalty equal to the value of the merchandise, not to exceed $30,000, should be assessed.

3. Mitigation—The penalty shall be mitigated to an amount between 25 and 50 percent of that assessed for a first violation where negligence is shown. Any knowing violation or a subsequent negligent violation (not necessarily involving the same client) will result in no mitigation.

H. If the other statute violated provides for a personal penalty, the violator shall incur an additional monetary penalty under this section equal to such personal penalty or $30,000, whichever is less.

I. Penalties assessed under this provision are not limited to violations just involving Customs business as defined in the statute.

J. Mitigation guidelines.

1. If the other law violated moves only against property, mitigate the penalty using guidelines in effect for the other statute violated. For example, if the broker is responsible for a § 401 seizure of merchandise valued at $45,000, he incurs a penalty of $30,000. The guidelines for remission of the § 401 forfeiture are applicable to mitigation of the broker penalty. Thus, if the forfeiture is remitted upon payment of 5 percent of the merchandise's value, the penalty will be mitigated upon payment of a like amount.

2. If the other law violated provides for a personal penalty, mitigate the broker penalty using guidelines in effect for the other statute violated. For example, a broker incurs a $40,000 penalty under § 1592. The penalty amount represents eight times the loss of revenue because a preliminary finding of fraud is made (See, section V.A. of this appendix). A penalty of $30,000, in addition to the $40,000 penalty issued under § 1592, may be assessed. The 1592 penalty is later mitigated to $25,000, an amount equal to five times the loss of revenue, as the finding of fraud is upheld and it is also determined that the broker shared in the financial benefits of the violation. The broker penalty also should be mitigated to that $25,000 figure, for a total collection of $50,000.

VI. SECTION 1641(d)(1)(D)—COUNSELING, COMMANDING, INDUCING, PROCURING OR KNOWINGLY AIDING AND ABETTING VIOLATIONS BY ANY OTHER PERSON OF ANY LAW ENFORCED BY SERVICE

A. If the law violated by another moves only against property, a monetary penalty equal to the domestic value of such property or $30,000 whichever is less, may be imposed against the broker who counsels, commands or knowingly aids and abets such violation.

B. If the law violated provides for only a personal penalty against the actual violator, a penalty may be imposed against the broker in an amount equal to that assessed against the violator, but in no case can the penalty exceed $30,000.

C. If the broker is assessed a penalty under the statute violated by the other person, he may be assessed a penalty under this section in addition to any other penalties.

D. Examples of violations of this subsection:

1. A broker counsels a client that certain gemstones are absolutely free of duty and need not be declared upon entry into the United States. The client arrives in the United States and fails to declare a quantity of gemstones worth $45,000. A penalty of $30,000 may be imposed against the broker for such counseling. The client would incur a personal penalty of $45,000 under the provisions of title 19, United States Code, section 1497, but the penalty against the broker cannot exceed $30,000.

2. A client imports $15,000 worth of merchandise by vessel. The merchandise is unladen at the wharf but Customs has not appraised or released it. Customs informs the broker that the shipment must be held for an intensive examination. The broker informs the client that the merchandise can be moved and delivered to the consignee. The broker assures his client that he will handle all the necessary paperwork. The merchandise is moved from the wharf. The broker is subject to a $15,000 penalty for counseling and inducing his client to violate the provisions of title 19, United States Code, section 1448 and title 19, United States Code, section 1595a(b).

E. Mitigation—Follow guidelines applicable to the other penalty or forfeiture statute involved.

VII. SECTION 1641(d)(1)(E)—KNOWINGLY EMPLOYING OR CONTINUING TO EMPLOY ANY PERSON WHO HAS BEEN CONVICTED OF A FELONY, WITHOUT WRITTEN APPROVAL OF SUCH EMPLOYMENT FROM THE SECRETARY OF THE TREASURY

A. A broker has 30 days to seek approval of the Secretary for such employment. If he seeks the approval within such time, no penalty will be assessed.

B. A $5,000 penalty for knowingly employing any convicted felon and failing to make application with the Secretary approving such employment within 30 days of the date of discovery of the felony conviction.

C. A $25,000 penalty for knowingly employing any convicted felon without seeking approval for employment.

D. A $30,000 penalty for knowingly employing any convicted felon and continuing to employ the same (or him/her) after approval has been denied (generally revocation or suspension of the license would be appropriate under this circumstance).

E. Example: If a broker unknowingly employs a convicted felon and 1 year after employment discovers the existence of such a conviction, the following actions would dictate imposition of a penalty:

1. If he seeks approval of the Secretary within 30 days after discovery of the existence of the conviction, no penalty will be assessed.

2. If he seeks approval at some time after 30 days from the date of discovery, a $5,000 penalty would lie.

3. If he does not seek approval until after Customs becomes aware of the violation, a $25,000 penalty would lie.

4. If he seeks approval, but is denied, and continues to employ the convicted felon, a $30,000 penalty would lie.

F. Customs discovery of a felony conviction. If Customs discovers the felony conviction and there is no indication that the employer is aware of same, Customs may inform the employer of such conviction. Discretion should be used in divulging this information.

G. Mitigation will only be permitted from the $5,000 penalty as follows:

1. If the application for approval is submitted within 60 days, but after 30 days, mitigate to $2,000.

2. If there is no application beyond the 60-day period, no mitigation shall be granted. Continued employment will result in further penalties as described above in sections E.3 and E.4.

VIII. SECTION 1641(d)(1)(F)—IN THE COURSE OF CUSTOMS BUSINESS, WITH INTENT TO DEFRAUD, KNOWINGLY DECEIVING, MISLEADING OR THREATENING ANY CLIENT OR PROSPECTIVE CLIENT

A. An unsubstantiated accusation by a client is inadequate basis to assess any penalty under this section of law.

B. A $30,000 penalty should be imposed for any violation of this section.

C. Mitigation—Inasmuch as evidence of intent must be shown before a penalty can be imposed, no mitigation should be permitted if a violation is found to lie. A petition for mitigation could be entertained only on the issue of whether such violation did, in fact, occur.

IX. SECTION 1641(b)(5)—THE FAILURE OF A CUSTOMS BROKER THAT IS LICENSED AS A CORPORATION, ASSOCIATION OR PARTNERSHIP TO HAVE, FOR ANY CONTINUOUS PERIOD OF 120 DAYS, AT LEAST ONE OFFICER OF THE CORPORATION OR ASSOCIATION OR ONE MEMBER OF THE PARTNERSHIP VALIDLY LICENSED

A. Important: Violation of this section results in the revocation of the broker's license by operation of law.

B. A $10,000 penalty may be imposed pursuant to section 1641(b)(6) because the revocation by operation of law results in the broker conducting Customs business without a license. No penalty liability would be incurred specifically under section 1641(b)(5).

C. Mitigation—Grant no mitigation from any penalty incurred by a broker for conducting Customs business without a license as a result of revocation of that license by operation of law.

X. SECTION 1641(c)(3)—FAILURE OF A CUSTOMS BROKER GRANTED A PERMIT TO CONDUCT BUSINESS IN A CERTAIN DISTRICT TO EMPLOY, FOR A CONTINUOUS PERIOD OF 180 DAYS, AT LEAST ONE INDIVIDUAL WHO IS LICENSED WITHIN THE DISTRICT OR REGION

A. Important: Violation of this section results in the revocation of a permit by operation of law.

B. Penalties may be imposed for violation of the provisions of 1641(d)(1)(C), violation of other laws enforced by Customs. Guidelines for imposition of penalties for conducting Customs business without a permit should be followed.

C. Mitigation—No mitigation should be permitted from any penalty imposed for failure to have a permit when the permit lapses by operation of law.

XI. SECTION 1641(b)(4)—FAILURE OF A LICENSED BROKER TO EXERCISE RESPONSIBLE SUPERVISION AND CONTROL OVER THE CUSTOMS BUSINESS THAT IT CONDUCTS

A. Standards of responsible supervision and control shall be issued by the Commissioner of Customs. Statutory authority to set such standards is provided by section 1641(f).

NOTE: All penalties assessed for violation of 1641(b)(4) shall also cite section 1641(d)(1)(C) as the statute violated in all notices issued to the alleged violator.

B. The following penalty amounts shall be assessed against brokers who fail to exercise responsible supervision and control over business conducted at district level.

1. A penalty of $1,000 against any broker who:

    a. Continuously makes the same errors on a particular type of entry;

b. Fails to properly instruct employees about Customs business, thereby resulting in the filing of incorrect entries or the mishandling of transactions relating to Customs business;

c. Knowingly allows his entry bond to be used to effect release of merchandise in districts where he does not have a license or permit (this is imposed in addition to any penalty for conducting Customs business without a license);

d. Fails to comply with regulations or procedures but does not commit violations that would warrant any higher penalty amount as described below.

2. A penalty of $5,000 against any broker who, when requested, is unable to produce documents relating to specific Customs business which are material to that business (e.g., if the business regards an entry he should have the invoice, packing list, etc.). This requirement excludes documents not required to be kept by a broker.

3. A penalty of $5,000 against any broker who is unable to satisfy the deciding Customs official that he has a working knowledge of any operation material to his ability to render valuable service to others in the conduct of Customs business.

Examples include:

a. A working knowledge of all automated systems in use in the district;

b. A knowledge of the cash flow procedures in each district of operation;

c. Retention of copies of all surety bonds in proper form and in sufficient dollar amount;

d. Knowledge of filing systems and document record storage in each district;

e. Continuous monitoring to ensure timely payment of all obligations including duties, taxes and refunds.

4. A penalty of $5,000 against any broker who fails to exercise responsible supervision and control over the Customs business that it conducts as defined in section XI.C. of this appendix.

5. A penalty of $10,000 against any broker who is found to have failed to maintain satisfactory accounting records or records of documents filed with Customs on any matter.

C. The following factors shall be indicative of a lack of supervision or lack of working knowledge of Customs procedures (the list is not conclusive):

1. A high rate of entry rejections when compared with other brokers in the permitted district.

2. A high rate of late filing liquidated damages cases when compared with other brokers in the permitted district.

3. In the case of entry summaries filed in the broker's name, a high number of missing document cases when compared with other brokers in the permitted district.

4. An inordinate number of entries for which free entry is claimed, but no documentation supporting such claim is submitted, resulting in liquidation of the entries as dutiable.

5. Inability to assist or failure to cooperate with an audit, including failure to provide all records and any other necessary information pertaining to a broker's Customs business to assist auditors.

6. Failure to settle (including petitioning) liquidated damages claims in a timely manner.

7. Evidence to indicate that timely duty refunds to clients are not made or accounted for and adequate records of same are not kept (usually will result in penalty assessed in accordance with section B.5. above).

8. Employing a licensed individual for a minimal number of days each 120- or 180-day period (See, sections 1641(b)(5) and 1641(c)(3) so as to avoid violation of the statute.

a. For purposes of imposition of penalties under this subsection, a minimal number of days shall be 10 working days for each 120-day period or 15 working days for each 180-day period.

b. It shall be presumed that temporary employment of such a licensed individual is undertaken solely to avoid revocation of a license or permit. Such minimal employment shall be prima facie evidence of lack of supervision.

D. Mitigation.

1. $1,000 penalties shall not be mitigated unless the broker can show that extraordinary mitigating factors are present.

2. $5,000 penalties for failure to produce documents may be mitigated to an amount between $2,000 and $3,500 if the documents are produced but not in a timely fashion. No mitigation shall be afforded if the documents are not produced, unless the broker can satisfactorily demonstrate that such failure to produce was caused by circumstances beyond the control of the broker or his client (e.g., a rupture of relations with the party responsible for generating the documents). Full mitigation shall be afforded in the case of destruction of records by events beyond a broker's control, such as theft, flood, fire or other acts of God.

3. $5,000 penalty for failure to have a working knowledge of any operation for which a broker is licensed to do business may be mitigated to a lesser amount upon a showing by the broker that steps have been taken to improve instruction and supervision of employees and an improvement in the knowledge of his operation occurs.

4. $5,000 penalty for failure to exercise responsible supervision and control may be mitigated to a lesser amount if the broker immediately corrects the problem which was the basis for the assessment and sufficiently monitors the situation to avoid recurrence.

5. $10,000 penalty for failure to maintain satisfactory accounting records will only be subject to mitigation in full if the broker can prove that satisfactory accounting records and documents records are being kept. Mitigation in a lesser degree may be afforded upon a showing by the broker that a bona fide attempt was made to establish a satisfactory accounting and/or recordkeeping system, or upgrade a deficient system, but such efforts proved unsuccessful or only partially effective.

6. Penalty equal to the value of monies not properly paid or accounted for.

a. If the broker shows that the monies were paid or accounted for and requisite notifications were made, albeit in an untimely fashion not to exceed 30 days after any due date, the penalty may be mitigated upon payment of 25 percent of the assessed amount, but no less than $250.

b. If the monies were paid and notifications made more than 30 days after any due date, the penalty may be mitigated upon payment of 50 percent of the assessed amount, but not less than $1,000.

c. If there is no proof of proper payment of duties, refunds, etc., no mitigation shall be granted.

XII. LIMITS OF PENALTY ASSESSMENTS

A. A broker shall be penalized a maximum of $30,000 for any violation or violations of the statute in any one penalty notice.

B. If a broker is penalized to the maximum the statute will allow and continues to commit the same violation or violations, revocation or suspension of his license would be the appropriate sanction. Barring such revocation or suspension action, he may again be penalized to the maximum the statute will allow.

C. From any one audit, the maximum aggregate penalty for all violations discovered is $30,000.

XIII. CONSOLIDATION OF CASES

Whenever multiple penalties arising from a particular fact situation or pattern are contemplated against brokers or individuals operating in different ports, the cases may be consolidated in one port. Approval for consolidation must be sought from the Brokers Compliance Branch, Office of Trade Compliance at Headquarters.

DRAWBACK PENALTIES - 19 U.S.C. 1593a
APPENDIX D TO PART 171, CUSTOMS REGULATIONS (T.D. 00-5)

Overview

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057). Title VI of that Act contained provisions pertaining to Customs Modernization and thus is commonly referred to as the Customs Modernization Act or "Mod Act." Paragraph (a) of section 622 of the Mod Act amended the Tariff Act of 1930, as amended, by adding section 593A, which prohibits the filing of false (fraudulent or negligent) drawback claims and prescribes the actions that Customs may take, including the assessment of monetary penalties, if such claims are filed. New section 593A was codified as section 1593a of Title 19 of the United States Code (19 U.S.C. 1593a, hereinafter "the statute").

As in the case of penalties under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), specific procedures and other requirements are set forth in the statute for prepenalty notices and penalty claims, the former not being required by the statute if the penalty is $1,000 or less, and provision is made for limited penalty assessment if there is a prior disclosure. The statute further provides for the applicability of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), which authorizes the administrative remission or mitigation of penalties. Written decisions, setting forth a final determination and findings of fact and conclusions of law upon which that determination was based, are also mandated by the statute.

The statute provides for the assessment of monetary penalties in amounts not to exceed a specific percentage of the actual or potential loss of revenue, with the applicable percentage depending on the level of culpability, whether there have been prior violations involving the same issue, and whether the violator is a participant in the Customs drawback compliance program. (The statute provides for the establishment of a drawback compliance program; regulatory provisions relating to the operation of that program were adopted as part of the amendments to the Customs Regulations regarding drawback published in the **Federal Register** as T.D. 98-16 on March 5, 1998, 63 FR 10970.) The statute also provides for the issuance of a notice of a violation (warning letter) in lieu of a monetary penalty in the case of a drawback compliance program participant who commits a first (that is, nonrepetitive) negligent violation.

Guidelines For The Imposition And Mitigation Of Penalties For Violations Of 19 U.S.C. 1593a

A monetary penalty incurred under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a; hereinafter referred to as section 593A), may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618; hereinafter referred to as section 618), if it is determined that there exist such

mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by Customs in arriving at a just and reasonable assessment and disposition of liabilities arising under section 593A within the stated limitations. It is intended that these guidelines will be applied by Customs officers in prepenalty proceedings, in determining the monetary penalty assessed in the penalty notice, and in arriving at a final penalty disposition. The assessed or mitigated penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1593a(i).

I. Violations Of Section 593a

A violation of section 593A occurs when a person, through fraud or negligence, seeks, induces, or affects, or attempts to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or any omission which is material, or aids or abets any other person in the foregoing violation. There is no violation if the falsity is due solely to clerical error or mistake of fact unless the error or mistake is part of a pattern of negligent conduct. Also, the mere unintentional repetition by an electronic system of an initial clerical error will not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the person's attention to the intentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 593A.

II. Degrees Of Culpability

A. Negligence. A violation is determined to be negligent if it results from an act or acts (of commission or omission) done with actual knowledge of, or wanton disregard for, the relevant facts and with indifference to, or disregard for, the offender's obligations under the statute or done through the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences from those facts, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

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

III. Assessment Of Penalties

A. Issuance of Prepenalty Notice. As provided in § 162.77a of the Customs Regulations (19 C.F.R. 162.77a), if Customs has reasonable cause to believe that a violation of section 593A has occurred and determines that further proceedings are warranted, a notice of intent to issue a claim for a monetary penalty will be issued to the person concerned. In issuing such prepenalty notice, the appropriate Customs field officer will make a tentative determination of the degree of culpability and the amount of the proposed claim. A prepenalty notice will not be issued if the claim does not exceed $1,000.

B. Issuance of Penalty Notice. After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (III)(A), the appropriate Customs field officer will determine whether any violation described in section (I) has occurred. If a notice was issued under paragraph (III)(A) and the appropriate Customs field officer determines that there was no violation, Customs will promptly issue a written statement of the determination to the person to whom the notice was sent. If the appropriate Customs field officer determines that there was a violation, Customs will issue a written penalty claim to the person concerned. The written penalty claim will specify all changes in the information provided in the prepenalty notice issued under paragraph (III)(A). The person to whom the penalty notice is issued will have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, Customs will provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

IV. Maximum Penalties

(1) Fraud. In the case of a fraudulent violation of section 593A, the monetary penalty will be in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) Negligence.

(a) In General. In the case of a negligent violation of section 593A, the monetary penalty will be in an amount not to exceed 20 percent of the actual or potential loss of revenue for the first violation.

(b) Repetitive Violations. For the first negligent violation that is repetitive (i.e., involves the same issue and the same violator), the penalty will be in an amount not to exceed 50 percent of the actual or potential loss of revenue. The penalty for a second and each subsequent repetitive

negligent violation will be in an amount not to exceed the actual or potential loss of revenue.

(3) Prior Disclosure

(a) In General. Subject to paragraph (D)(3)(b), if the person concerned discloses the circumstances of a violation of section 593A before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this Appendix will not exceed:

(i) In the case of fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) If the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under 26 U.S.C. 6621 on the amount of actual revenue of which the United States is or may be deprived during the period that begins on the date of overpayment of the claim and ends on the date on which the person concerned tenders the amount of the overpayment.

(b) Condition Affecting Penalty Limitations. The limitations in paragraph (D)(3)(a) on the amount of the monetary penalty to be assessed apply only if the person concerned tenders the amount of the overpayment made on the claim either at the time of the disclosure or within 30 days (or such longer period as Customs may provide) from the date of notice by Customs of its calculation of the amount of overpayment.

(c) Burden of Proof. The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(d) Commencement of Investigation. For purposes of this Appendix, a formal investigation of a violation is considered to be commenced with regard to the disclosing party, and with regard to the disclosed information, on the date recorded in writing by Customs as the date on which facts and circumstances were discovered which caused Customs to believe that a possibility of a violation of section 593A existed.

(e) Exclusivity. Penalty claims under section D will be the exclusive civil remedy for any drawback-related violation of section 593A.

V. Deprivation Of Lawful Revenue

Notwithstanding section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), if the United States has been deprived of lawful duties and taxes resulting from a violation of section 593A, Customs will require that such duties and taxes be restored whether or not a monetary penalty is assessed.

VI. Final Disposition Of Penalty Cases When The Drawback Claimant Is Not A Certified Participant In The Drawback Compliance Program

(1) In General. Customs will consider all information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed penalty. All factors considered should be stated in the decision.

(2) Penalty Disposition When There Has Been No Prior Disclosure.

(a) Nonrepetitive Negligent Violation. The final penalty disposition will be in an amount ranging from a minimum of 10 percent of the actual or potential loss of revenue to a maximum of 20 percent of the actual or potential loss of revenue.

(b) Repetitive Negligent Violation.

(i) First Repetitive Negligent Violation. The final penalty disposition will be in an amount ranging from a minimum of 25 percent of the actual or potential loss of revenue to a maximum of 50 percent of the actual or potential loss of revenue.

(ii) Second and Each Subsequent Repetitive Negligent Violation. The final penalty disposition will be in an amount ranging from a minimum of 50 percent of the actual or potential loss of revenue to a maximum of 100 percent of the actual or potential loss of revenue.

(c) Fraudulent Violation. The final penalty disposition will be in an amount ranging from a minimum of 1.5 times the actual or potential loss of revenue to a maximum of 3 times the actual or potential loss of revenue.

(3) Penalty Disposition When There Has Been a Prior Disclosure.

(a) Negligent Violation. The final penalty disposition will be in an amount equal to the interest determined in accordance with paragraph (D)(3)(a)(ii).

(b) Fraudulent Violation. The final penalty disposition will be in an amount equal to 100 percent of the actual or potential loss of revenue.

(4) Mitigating Factors. The following factors will be considered in mitigation of the proposed or assessed penalty claim or final penalty amount, provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) Contributory Customs Error. This factor includes misleading or erroneous advice given by a Customs official in writing to the alleged violator, but this factor may be applied in such a case only if it appears that the alleged violator reasonably relied upon the written information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If the Customs error contributed to the violation, but the alleged violator is also culpable, the Customs error is to be considered as a mitigating factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty is to be canceled.

(b) Cooperation with the Investigation. To obtain the benefits of this factor, the alleged violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. An example of the cooperation contemplated includes assisting Customs officers to an unusual degree in auditing the books and records of the alleged violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the alleged violator may not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508-1509.

(c) Immediate Remedial Action. This factor includes the payment of the actual loss of revenue prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of revenue attributable to the violation. In appropriate cases, where the alleged violator provides evidence that, immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of non-compliance.

(d) Prior Good Record. Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of filing drawback

claims without violation of section 593A, or any other statute prohibiting the making or filing of a false statement or document in connection with a drawback claim. This factor will not be considered in alleged fraudulent violations of section 593A.

(e) Inability to Pay the Customs Penalty. The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay). In addition, the alleged violator must present information reflecting ownership and related domestic and foreign parties and must provide information reflecting its current financial condition, including books and records of account, bank statements, other tax records (for example, sales tax returns) and a list of assets with current values; if the alleged violator is a closely held corporation, similar current financial information must be provided on the shareholders, wherever they are located.

(f) Customs Knowledge. This factor may be used in non-fraud cases if it is determined that Customs had actual knowledge of a violation and failed, without justification, to inform the violator so that it could have taken earlier remedial action. This factor is not applicable when a substantial delay in the investigation is attributable to the alleged violator.

(5) Aggravating Factors. Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the final administrative penalty. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be used to offset the presence of mitigating factors. The following factors will be considered "aggravating factors", provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) Obstructing an investigation or audit.
(b) Withholding evidence.
(c) Providing misleading information concerning the violation.
(d) Prior substantive violations of section 593A for which a final administrative finding of culpability has been made.
(e) Failure to comply with a Customs summons or lawful demand for records.

VII. Drawback Compliance Program Participants

(1) In General. Special alternative procedures and penalty assessment standards apply in the case of negligent violations of section 593A committed by persons who are certified as participants in the Customs drawback compliance program and who are generally in compliance with the procedures and requirements of that program. Provisions regarding the operation of the drawback compliance program are set forth in part 191 of the Customs Regulations (19 C.F.R. part 191).

(2) Alternatives to Penalties. When a participant described in paragraph (G)(1) commits a violation of section 593A, in the absence of fraud or repeated violations and in lieu of a monetary penalty, Customs will issue a written notice of the violation (warning letter).

(a) Contents of Notice. The notice will:

(i) State that the person has violated section 593A;

(ii) Explain the nature of the violation; and

(iii) Warn the person that future violations of section 593A may result in the imposition of monetary penalties and that repetitive violations may result in removal of certification under the drawback compliance program until the person takes corrective action that is satisfactory to Customs.

(b) Response to Notice. Within 30 days from the date of mailing of the written notice, the person must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation unless the person establishes to the satisfaction of Customs that no violation took place (See, § 162.73a(b)(2)(ii) of the Customs Regulations, 19 C.F.R. 162.73a(b)(2)(ii)). If the person fails to provide the required notification in a timely manner, any penalty assessed for a repetitive violation under paragraph (G)(3) will not be subject to mitigation under this Appendix.

(3) Repetitive Violations.

(a) In General. A person who has been issued a written notice under paragraph (G)(2) and who subsequently commits a negligent violation that is repetitive (i.e., involves the same issue), and any other person who is a participant described in paragraph (G)(1) and who commits a repetitive negligent violation, is subject to one of the following monetary penalties:

(i) An amount not to exceed 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive;

(ii) An amount not to exceed 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive ; and

(iii) An amount not to exceed 100 percent of the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(b) Repetitive Violations Outside 3-year Period. If a participant described in paragraph (G)(1) commits a negligent violation that is repetitive but that did not occur within 3 years of the violation of which it is repetitive, the new violation will be treated as a first violation for which a written notice will be issued in accordance with paragraph (G)(2), and each repetitive violation subsequent to that violation that occurs within any 3-year period described in paragraph (G)(3)(a) will result in the assessment of the applicable monetary penalty prescribed in that paragraph.

(4) Final Penalty Disposition When There Has Been No Prior Disclosure.

(a) In General. Customs will consider all information in the petition and all available evidence, taking into account any mitigating factors (See, paragraph (F)(4)), aggravating factors (See, paragraph (F)(5)), and extraordinary factors in determining the final assessed penalty. All factors considered should be stated in the decision.

(b) First Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2). The final penalty disposition will be in an amount ranging from a minimum of 10 percent of the loss of revenue to a maximum of 20 percent of the loss of revenue.

(c) Second Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3). The final penalty disposition will be in an amount ranging from a minimum of 25 percent of the loss of revenue to a maximum of 50 percent of the loss of revenue.

(d) Third and Each Subsequent Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3). The final penalty disposition will be in an amount ranging from a minimum of 50 percent of the loss of revenue to a maximum of 100 percent of the loss of revenue.

(e) Fraudulent Violations. The final penalty disposition will be determined in the same manner as in the case of fraudulent violations committed by persons who are not participants in the drawback compliance program (See, paragraph (F)(2)(c)).

(5) Final Penalty Disposition When There Has Been A Prior Disclosure. The final penalty disposition will be determined in the same manner as in the case of persons who are not participants in the drawback compliance program (See, paragraph (F)(3)).

VIII. Violations By Small Entities

In compliance with the mandate of the Small Business Regulatory Enforcement Fairness Act of 1996, under appropriate circumstances, the issuance of a penalty under section 593A may be waived for businesses qualifying as small business entities. Procedures that were established for small business entities regarding violations of 19 U.S.C. 1592 in Treasury Decision 97-48 published in the Federal Register (62 FR 30378) are also applicable for small entities regarding violations of section 593A.

RECORDKEEPING PENALTIES - 19 U.S.C. 1509 (T.D. 00-63)

Overview

On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (the "NAFTA Implementation Act"), Public Law 103-182, 107 Stat. 2057. Title VI thereof contained provisions pertaining to Customs modernization and thus is commonly referred to as the Customs Modernization Act or "Mod Act." Sections 6l4, 6l5 and 6l6 of the Mod Act amended sections 508, 509 and 510 of the Tariff Act of 1930, as amended (19 U.S.C. 1508, 1509, and 1510), which pertain to recordkeeping requirements applicable to importers and others. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509), sets forth procedures for the production of documents to Customs and Customs examination of those records. Section 509 also sets forth penalties for failure to provide records upon Customs demand.

The Mod Act amended various provisions of the Customs laws to grant Customs authority to no longer require the presentation of certain documentation or information at the time of entry. These amendments were intended to permit a reduction of the documentation and information required to be presented to Customs at the time of entry, thereby facilitating the entry process. However, in exchange for relieving importers of the obligation to present documents at the time of entry, and in order not to jeopardize the ability of Customs to obtain those records at a later date, section 614 of the Mod Act amended section 508 of the Tariff Act of 1930 to require that the documentation or information be maintained and section 615 of the Mod Act amended section 509 of the Tariff Act of 1930 to, among other things, provide for the imposition of substantial administrative penalties for a failure of a party required to keep records to comply, within a reasonable time, with a demand by Customs for production of such specific entry records.

Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by Title VI of the Mod Act, requires the production, upon demand by Customs, of records required by law or regulation for the entry of the merchandise. Section 509(e) of the Tariff Act of 1930 (19 U.S.C. 1509(e)), as amended by Public Law 103-182, requires the Customs Service to identify and publish a list of the records and entry information that are required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509 (a)(1)(A)). This list is commonly referred to as "the (a)(1)(A) list." The (a)(1)(A) list was published in the Customs Bulletin on January 3, 1996, as T.D. 96-1 and republished in the Federal Register on July 15, 1996, at 61 FR 36956. It is anticipated that the (a)(1)(A) list will change as entry requirements are revised.

On June 16, 1998 Customs published in the Federal Register (63 FR 32916) the final rule to implement the changes to the statutory recordkeeping provisions effected by the NAFTA Implementation Act. The final rule moved Customs requirements regarding recordkeeping from Part 162 to part 163 and amended the

requirements in accordance with the Mod Act. In addition, the final rule: (1) set forth, as an appendix to new Part 163, the previously published (a)(1)(A) list; and (2) included conforming amendments to various provisions within Parts 24, 111, and 143 of the Customs Regulations (19 C.F.R. Parts 24, 111, and 143).

The monetary penalties applicable for failure to produce entry records are set forth in section 163.6, Customs Regulations (19 C.F.R. 163.6). Pursuant to 19 U.S.C. 1509(g)(5) and section 163.6(b)(5), Customs Regulations (19 C.F.R. 163.6(b)(5)), these penalties may be remitted or mitigated pursuant to 19 U.S.C. 1618.

GUIDELINES FOR THE MITIGATION OF PENALTIES FOR 19 U.S.C. 1509

Pursuant to the Mod Act, a party who is subject to Customs recordkeeping requirements may be liable for penalties for failure to comply with a lawful demand for the production of an entry record unless the party meets certain criteria excusing the party from the penalty. In all cases, the amount of the penalty will depend upon whether the failure to produce the records is the result of willful conduct or negligence.

In addition to any penalty that may be imposed, if the requested records relate to the eligibility of merchandise for a special rate of duty, the entry covering the merchandise will be liquidated or reliquidated under the column 1 general rate of duty or at the column 2 rate of duty if deemed appropriate.

The assessment of a penalty for the failure to produce records for Customs inspection shall not limit or preclude the Customs Service from issuing, or seeking the enforcement of, a Customs summons.

Specific procedures for issuing PrePenalty Notices and penalty claims were not set forth in the statute. Customs will follow the procedures that have been set forth in section 592 (19 U.S.C. 1592) and which are contained in the Customs Regulations in 19 C.F.R. 162 and 19 C.F.R. 171.

The recordkeeping statute provides that any party who has been assessed administrative penalties pursuant to 19 U.S.C. 1509 will be able to petition for mitigation or remission of the penalties under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there exists such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of penalties arising under section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) and mitigation of those penalties. It is intended that these guidelines shall be applied by Customs officers in penalty (or prepenalty) proceedings and in determining the monetary penalty assessed in any penalty action pursuant to 19 U.S.C. 1509(g).

Except as provided in 19 U.S.C. 1509(g)(4), the assessment of recordkeeping penalties is not the exclusive remedy. The assessed penalty amount set forth in Customs administrative disposition which is determined in accordance with these guidelines does not in any way affect the authority of the U.S. District Court of the United States to impose monetary penalties as well as sanctions for the failure to produce records summoned by Customs.

I. Degrees Of Culpability

In general, a penalty may be imposed pursuant to 19 U.S.C. 1509(g) if a person fails to comply with a lawful demand for the production of an entry record contained in the (a)(1)(A) list and is not excused from a penalty pursuant to one of the exceptions set forth in 19 U.S.C. 1509(g)(3) and 19 C.F.R. 163.6(b)(3). There are two degrees of culpability for penalties under 19 U.S.C. 1509(g) which are defined as follows:

(A) Negligence: A violation under section 509 (19 U.S.C. 1509) is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute.

(B) Willful Conduct: A violation is determined to be willful under section 509 (19 U.S.C. 1509) if the failure to comply with a lawful demand for the production of an entry record was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by a preponderance of the evidence.

II. Procedure For Penalty Assessment

(A) Commencement of Penalty Actions - Penalties for the failure to comply with a lawful demand for the production of entry records may be assessed by the appropriate Customs field officer for any violation which occurs on or after July 15, 1996, the date of publication of the "(a)1)(A)" list in the Federal Register.

(B) Issuance of PrePenalty Notice and Penalty Notice - The specific procedures and requirements which have been set forth in the case of penalties and petitioning rights under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592) will be followed, to the extent practical, if Customs has reasonable cause to believe that a violation of 19 U.S.C. 1509 has occurred. (19 C.F.R. 162.77-79, 19 C.F.R. 171.11-33). Any penalty imposed under 19 U.S.C. 1509 may be remitted or mitigated under 19 U.S.C. 1618. Part 171, Customs Regulations (19 C.F.R. Part 171), sets forth the general procedures involved in filing a petition for remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs.

III. Administrative Penalty Disposition

(A) Mitigation Guidelines - A monetary penalty which is imposed for failure to produce (a)(1)(A) entry records for Customs examination within a reasonable time may be mitigated or remitted under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable disposition of penalties arising under 19 U.S.C. 1509.

It is intended that these guidelines shall be applied by Customs officers in arriving at the proper assessment of monetary penalties. In any case, in determining the administrative penalty disposition under 19 U.S.C. 1509, the appropriate Customs field officer shall consider the entire case record, taking into account the presence of any mitigating or aggravating factors. In addition, in deciding whether or not to issue a penalty, the deciding officer may take into account the age and nature of the documents, the overall number of documents requested versus the number of documents produced, and the overall recordkeeping performance of the person. All such factors should be set forth in the written administrative penalty decision.

In addition to administrative penalties, the Mod Act recognizes the authority of courts to impose monetary penalties pursuant to 19 U.S.C. 1510(a) for the failure to produce records summoned by Customs pursuant to 19 U.S.C. 1509. Moreover, it should be understood that these guidelines do not limit or preclude the Customs Service from issuing, or seeking the enforcement of a customs summons.

Liabilities incurred under section 509 (19 U.S.C. 1509), shall be mitigated or remitted in accordance with the following guidelines:

(B) Dispositions:

(1) Non-Participants in Recordkeeping Compliance Program

(a) Definition - Non-participants in the Recordkeeping Compliance Program are all persons required to maintain records and who have not been certified by Customs to participate in a Recordkeeping Compliance Program.

(b) In cases where a non-participant in the Recordkeeping Compliance Program fails to comply with the demand for the production of records required to be maintained under 19 U.S.C.

1509(a)(1)(A), Customs may mitigate the penalty amount as set forth below.

(i) Negligent Violations- Penalty dispositions for a negligent violation made by a non-participant in the Recordkeeping Compliance Program shall be calculated as follows:

(A) If the violation is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed an amount ranging from a minimum of $5,000 to a maximum of $10,000 or an amount ranging from a minimum of 20 percent of the appraised value of the merchandise to a maximum of 40 percent of the appraised value of the merchandise, whichever amount is less.

(ii) Willful Violations - Penalty dispositions for a willful violation made by a non-participant in the Recordkeeping Compliance program shall be calculated as follows:

(A) If the violation results from the willful failure to maintain, store or retrieve records, the penalty for each release will be an amount ranging from a minimum of $50,000 to a maximum of $100,000 or an amount ranging from a minimum of 45 percent of the appraised value of the merchandise to a maximum of 75 percent of the appraised value of the merchandise, whichever amount is less.

(iii) Example - A party files an Entry Summary which contains two different line items. The first line item represents an entry of widgets and the second line item represents an entry of bolts showing appraised values of $1,000 and $2,500, respectively. Customs makes a written demand pursuant to 19 C.F.R. 162.6(a) for the production of the invoice applicable to each line item listed on the Entry Summary. If the party fails to produce the invoice for the widgets within the specified time period, then Customs may assess a penalty under 19 C.F.R. 162.6(b). If the party's failure to produce the invoice is the result of negligence, in accordance with the mitigation guidelines for negligent violations, the amount of the penalty would range from a minimum of $200 to a maximum of $400, which represents a

range of a minimum of 20 percent and a maximum of 40 percent of the appraised value ($1,000) of the widgets.

(c) Remission of Claim - If the Customs field officer believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, the Customs field officer should first seek approval from the Chief, Penalties Branch, Customs Service Headquarters.

(2) Participants in the Recordkeeping Compliance Program

(a) Description of program - The Customs Recordkeeping Compliance Program is a voluntary Customs program under which certified recordkeepers may be eligible for alternatives to penalties that might be assessed under 19 C.F.R. 163.6 for failure to produce a demanded entry record. A participant in the Recordkeeping Compliance Program may be entitled to alternatives to any recordkeeping penalty that may be assessed should the party be unable to produce a requested record. See, 19 C.F.R. 163.12 and 19 U.S.C. 1509(g). In general, special alternative procedures apply in the case of negligent violations of 19 U.S.C. 1509 committed by persons who are participants in the Recordkeeping Compliance Program and who are generally in compliance with the procedures and requirements of that program. If a certified participant in the Recordkeeping Compliance Program does not produce a demanded entry record for a specific release or provide the information contained in the demanded entry record by acceptable alternate means, Customs shall, in lieu of a monetary penalty issue a written notice of violation to the person, provided that the certified participant is generally in compliance with the procedures and requirements of the program, and provided that the violation was not a willful violation or a repetitive negligent violation. However, even where a certified recordkeeper is eligible for an alternative to a penalty, participation in the Recordkeeping Compliance Program has no limiting effect on the authority of Customs to use a summons, court order or other legal process to compel the production of records by the certified recordkeeper.

(b) Certification Requirements for Participants in the Recordkeeping Compliance Program - Certified Recordkeepers are those persons required to maintain records according to 19 U.S.C. 1508(a) and supporting regulations, and who have recordkeeping systems certified by Customs under a Recordkeeping Compliance Program. A recordkeeper may be certified as a participant in the Recordkeeping Compliance Program after meeting the general

recordkeeping requirements established under 19 C.F.R. 163.12(b)(3) and 19 U.S.C. 1509(f).

(c) Procedures for Participants in Recordkeeping Compliance Program

(i) First-time negligent violations made by participants in the Recordkeeping Compliance Program (19 U.S.C. 1509(g) and 19 C.F.R. 163.12(d)). Written Notice of Violation - When a participant in the Recordkeeping Compliance Program does not produce a demanded entry record for a specific release or provide the information contained in the demanded entry record by acceptable alternative means, in the absence of willfulness or a repetitive negligent violation, and provided that the participant is generally in compliance with the procedures and requirements of the program, Customs shall issue a written notice (warning letter) of violation to the person in lieu of a monetary penalty. A repetitive negligent violation involves any failure to comply with a lawful demand for the production of an entry record contained in the (a)(1)(A) list which occurs within three years from the date of the violation of which it is repetitive.

(ii) The contents of the notice of violation issued to a participant in the Recordkeeping Compliance Program for failure to produce a demanded entry record or information contained therein are contained in 19 U.S.C. 1509(g)(7)(B) and 19 C.F.R. 163.12(d)(2). Within a reasonable time after receiving written notice of a recordkeeping violation, the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation. (19 C.F.R. 163.12(d)(3)).

(iii) Repetitive negligent or willful violations by participants in the Recordkeeping Compliance Program - When a participant in the Recordkeeping Compliance Program commits a repetitive negligent violation or a willful violation, the issuance of monetary penalties is appropriate as well as the removal under the program until corrective action, satisfactory to the Customs Service, is taken. In cases where a participant in the Recordkeeping Compliance Program commits a repetitive negligent violation or a willful failure to comply with a lawful demand for the production of entry records, the penalty assessment guidelines for negligent violations or willful violations that apply to non-

participants in the Recordkeeping Compliance Program as stated above, shall be utilized.

(iv) Example - A participant in the Recordkeeping Compliance Program files an Entry Summary on January 1, 1999 for one entry of telephones. By letter dated February 1, 1999, Customs makes a written demand pursuant to 19 C.F.R. 162.6(a) for the production of the invoice covering the telephones listed on the Entry Summary. If the participant fails to produce the invoice for the subject merchandise within the specified time period as the result of negligence, Customs will issue a written notice of violation to the participant. On April 1, 1999, Customs makes a written demand pursuant to 19 C.F.R. 162.6(a) for the production of a GSP Declaration from the same participant in connection with an entry of televisions. If the participant fails to produce the GSP Declaration for the entry of televisions within the specified time period, then, in the absence of fraud, the participant's failure to produce the GSP Declaration will be considered a repetitive negligent violation. Accordingly, Customs may assess a penalty for the second violation using the penalty guidelines for negligent violations applicable to non-participants in the Recordkeeping Compliance Program.

IV. Mitigating Factors

The following factors shall be considered in mitigation of the proposed or assessed penalty claim or final penalty amount for both participants and non-participants in the Recordkeeping Compliance Program, provided that the case record sufficiently establishes their existence. The following list is not all-inclusive.

1) Communications are impaired because of a language barrier or because of the mental condition or a physical ailment of the violator;

2) Violator cooperates with Customs officers - To obtain the benefits of this factor, the violator must exhibit extraordinary cooperation beyond that expected from a person under investigation for a Customs violation;

3) Immediate remedial action - This factor includes the production of and presentation of the entry records and information requested prior to the issuance of a Penalty Notice. In appropriate cases, where the violator provides evidence that immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action

may be considered as a mitigating factor. Customs encourages immediate remedial action to help prevent future incidents of non-compliance;

4) Prior good record - Prior good record is a factor only if the violator is able to demonstrate a consistent pattern of importations without violation of 19 U.S.C. 1509, or any other statute prohibiting false or fraudulent importation practices. This factor will not be considered if the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded record(s) or information, pursuant to 19 U.S.C. 1509;

5) Inability to pay the Customs penalty - The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years, and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay);

6) Contributory Customs Error - This factor includes misleading or erroneous advice given by a Customs official in writing to the violator only if it appears that the violator reasonably relied upon the information and the violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty claim is to be canceled. If the Customs error contributed to the violation, but the violator is also culpable, the Customs error is to be considered as a mitigating factor;

7) The person required to maintain and produce records is inexperienced in the customs transactions to which the records relate;

8) Violator substantially complies with the demand for the production of records in comparison to the total number of importations for which records are requested.

V. Aggravating Factors

Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the final administrative penalty decision. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violation, but may be utilized to offset the presence of mitigating factors. The following factors shall be considered “aggravating factors,” provided that the case

record sufficiently establishes their existence. The following list is not all-inclusive.

1) The person required to maintain and produce records is experienced in the customs transactions to which the records relate;

2) The records are concealed, destroyed or withheld to evade U.S. law;

3) The importer or other party exhibits behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted destruction of records;

4) The importer or other party has a prior recordkeeping violation for which a final administrative finding of culpability has been made;

5) The importer or other party has provided misleading information concerning the violation;

6) The importer or other party has obstructed an investigation or audit;

7) The importer or other party has demonstrated evidence of a motive to evade the production of entry records or information requested by Customs.

VESSEL REPAIR PENALTIES (19 U.S.C. 1466)

I. In General

It is a violation of the vessel repair statute if the owner or master of a vessel subject to vessel repair entry requirements willfully or knowingly neglects or fails to report, make entry and pay duties as required; makes any false statements regarding purchases or repairs without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by Customs, is subject to seizure and forfeiture and recoverable from the owner.

II. Statutory/Regulatory Requirements

A. The following items, if provided in a foreign country to a vessel documented under the laws of the U.S. for foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades, (an including vessels documented under U.S. law with a fishery endorsement or undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the U.S.) must be declared and entered and duties paid thereon at the port of first arrival in the U.S.

1. Expenses of any repairs (including labor)

2. Cost of repair parts or materials

3. Equipment (including boats) purchased for vessel

B. In the case of any U.S. vessel that continuously remain outside the U.S. two years or longer, duties shall apply only with respect to:

1. Fish nets and netting

2. Other equipment and parts thereof, repair parts and materials purchased, or repairs made, during the first six months of their absence.

NOTE: even though some costs may not be dutiable because of the six-month rule, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

3. Any vessel designed or used primarily for transporting passengers

or merchandise which depart the U.S. for the sole purpose of obtaining equipment, parts, materials or repairs remain fully liable for duty regardless of the duration of their absence from the U.S.

C. Liability for declaration, entry and payment of duties accrues at the time of first arrival in the U.S. In lieu of payment of duty at the time of entry, a bond may be provided to secure payment of duty.

III. Elements of Violation/Determination of Liability

A. Culpable parties

1. Owner of vessel, or

2. Master of vessel

B. Culpable party must:

1. Willfully or knowingly neglect or fail to:

   a. Report (declare)
   b. Make entry
   c. Pay duties

2. Make any false statement without reasonable cause to believe the truth of such statement, or

3. Aid in or procure the making of any false statement as to a material matter without reasonable cause to believe the truth of such statement.

C. Amount of liability

1. Monetary amount of **up to** the value of the vessel involved, or

2. Seizure and forfeiture of the vessel (**NOTE**: Seizure shall never occur without the approval of the Director, International Trade Compliance Division, ORR)

D. Failure to declare, file a vessel repair entry or pay duty in a timely manner constitute a violation of the statute.

E. Inasmuch as willful neglect is the basis for a violation, intent or fraud need not be proven in order for a violation to be found. Simple negligence will be sufficient to sustain a violation.

IV. Penalty Assessment Procedures

A. Evidence describing a violation may be given by any Customs officer discovering such a violation (which may include the boarding inspector, carrier control, entry control or vessel liquidation unit) to FP&F having jurisdiction in the port where the vessel first arrived.

B. A prepenalty notice will be issued by FP&F.

C. The FP&F Officer will determine whether a violation has occurred, but will not make any decision regarding submission of evidence of cost of repairs, casualty or similar matters or grant extensions of time to submit documents for purposes of liquidation of the entry.

D. The prepenalty notice will contain the following:

1. Description of the circumstances of the alleged violation.

2. Recitation of the statutes and regulations violated.

3. Disclosure of all material facts which establish the alleged violation.

4. A statement of the estimated loss of duties and the amount of the proposed penalty.

5. An indication that the alleged violator has reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued (See, 19 C.F.R. 162.76(b)).

E. All prepenalty notices shall be issued for an amount equal to four (4) times the loss of revenue or the value of the vessel, whichever is lower, except in the instance where the violation is for the late filing of the entry or documents only. In the latter instance, the prepenalty notice shall be issued for an amount equal to two (2) times the loss of revenue.

F. After considering representations made by concerned parties concerning the propriety of issuance of the penalty, the FP&F Officer shall determine if a violation occurred.

1. If no violation occurred, the alleged violator shall be notified in writing of such decision and the claim shall be cancelled.

2. If a violation is found to have occurred, the written claim for penalty shall be issued.

G. The international carrier's bond (See, 19 C.F.R. 113.64) guarantees the

payment of any vessel repair duties and penalties. Accordingly, a copy of any penalty notice should be provided to surety (See, 19 C.F.R. 172.1).

H. For petition review procedures, see Section 3.4.2 of the Seized Asset Management and Enforcement Procedures Handbook.

V. Mitigation Guidelines

A. If the violation is for late filing of the entry or any documents relating to such, the following guidelines should be followed:

1. First offense, negligence found, but no fraudulent intent – mitigate to 5 percent of the loss of revenue or $500, whichever is greater.

2. Subsequent offenses, negligence found, but no fraudulent intent – mitigate to 10 percent of the loss of revenue or $1,000, whichever is greater.

3. If gross negligence found, use guideline for subsequent offense.

4. Deliberate violation – no relief.

B. All other violations.

1. First offense, negligence found – mitigate to 10 percent of the loss of revenue or $5,000, whichever is greater.

2. Gross negligence found – mitigate to 50 percent of the loss of revenue or $25,000, whichever is greater.

3. Deliberate violation – grant no relief.

4. Subsequent violations shall be mitigated at the next higher culpability level than that found. For example, a subsequent violation occurs and negligence is found. Mitigation should be granted using the gross negligence guidelines.

5. Refusal to cooperate with Customs may justify a finding of gross negligence.

C. All mitigation is conditioned upon deposit of any loss of revenue.

VESSELS AND OTHER CONVEYANCES IN FOREIGN AND DOMESTIC TRADE; CARGO DELIVERY; MANIFESTING

VESSELS AND OTHER CONVEYANCES IN FOREIGN AND DOMESTIC TRADE; CARGO DELIVERY; MANIFESTING

The Customs Service is responsible for administering and enforcing the Customs and navigation laws, including those relating to the entry and reporting of arrival of vessels, vehicles and aircraft and those relating to the manifesting, lading, and unlading of passengers, merchandise, or baggage, and the unlawful importation of any articles. Laws restricting the use of foreign-flag or foreign-built vessels in the coastwise trade or other activities within the waters of the United States are also enforced.

SPECIAL NOTE: THE PROVISIONS OF THIS CHAPTER APPLY ONLY TO THOSE SITUATIONS WHICH DO NOT INVOLVE NARCOTICS OR CONTROLLED SUBSTANCES. FAILURE TO MANIFEST CONTROLLED SUBSTANCES OR THOSE PENALTIES ASSESSED UNDER THE ZERO TOLERANCE PROGRAM ARE COVERED IN OTHER CHAPTERS OF THIS VOLUME.

ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT

I. Arrival Reporting Requirements

Under the provisions of 19 U.S.C. 1433, the following requirements apply to the arrival of the listed conveyances:

A. Vessels. Immediately upon arrival at any port or place in the United States, the following vessels must report arrival immediately at the nearest Customs facility or such other place as the Secretary of the Treasury may prescribe in regulations:

1. Any vessel arriving from a foreign port or place.

2. Any foreign-flag vessel arriving from a domestic port.

3. Any vessel carrying bonded merchandise or foreign merchandise for which entry has not been made.

B. Vehicles

1. Vehicles must only cross at designated border crossing points.

2. The operator of the vehicle must immediately report arrival and present the vehicle and all persons and merchandise for inspection.

C. Aircraft. Aircraft must comply with such advance notification, arrival, reporting and landing requirements as prescribed by Part 122, Customs Regulations.

D. Additional requirements

1. The Master of a vessel, person in charge of a vehicle or pilot of an aircraft shall present all documents, papers, or manifests as may be prescribed by 19 C.F.R. Part 4 (relating to vessels), Part 122 (relating to aircraft), or Part 123 (relating to vehicles).

2. Departure from the place of arrival or discharge of passengers or merchandise may only occur in accordance with Regulations.

E. Boarding of vessels

1. Per 19 C.F.R. 4.1(b) only a pilot of a navigation vessel (e.g., a tugboat), an officer of a U.S. government agency or a vessel agent dealing with vessel entry formalities may board an arriving vessel without the authorization of the port director.

2. Per 19 C.F.R. 4.1(d), the pilot of a tugboat or other vessel shall bring such vessel alongside an incoming vessel and put on board any person thereof except as authorized by law or regulation.

3. Per 19 C.F.R. 4.1(c), no person may leave an arriving vessel, other than for the purpose of reporting arrival, with or without the consent of the master, without the permission of the port director or Customs officer in taking charge of the vessel.

F. Aircraft commander responsibility

If an aircraft lands in the United States and Customs officers have not arrived, the aircraft commander shall hold the aircraft and any merchandise or baggage on the aircraft for inspection. Passengers and crewmembers shall be kept in a separate place until Customs officers authorize their departure. See, 19 C.F.R. 122.36.

II. Making Entry

A. Vessels

1. All vessels are required to report arrival as noted in Part I; all are required to make entry except the following (See, 19 U.S.C. 1441):

a. Vessels of war and public vessels employed for the conveyance of letters dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade,
b. Passenger vessels making three trips or more a week between a U.S. port and a foreign port (including ferryboats),
c. Licensed yachts (including foreign-flag yachts with cruising licenses) or undocumented U.S. pleasure vessels not engaged in trade nor in any way violating the Customs laws and not having visited any hovering vessel and vessels carrying passengers on excursion from the U.S. V.I. to British V.I. and returning,
d. Vessels arriving in distress or for taking on bunker oil or sea stores and departing within 24 hours of arrival without taking on board any passengers or other merchandise, and
e. Tugs enrolled and licensed to engage in foreign and coastwise trade when towing vessels which are required by law to enter and clear.

2. U.S. Vessels (19 U.S.C. 1434, 19 C.F.R. 4.3, 19 C.F.R. 4.9). The master of an American vessel arriving in the U.S. from a foreign port or place or arriving from another U.S port with unentered foreign merchandise or in-bond merchandise must, within 48 hours of the arrival of the vessel in a Customs district, make formal entry of the vessel at the Customhouse.

3. Foreign Vessels (19 U.S.C. 1434, 19 C.F.R. 4.9). The master of any foreign vessel must also make entry at the Customhouse within 48 hours of arrival in the Customs district. See, 19 C.F.R. 4.9(c) for requirements regarding delivery of foreign vessel documents.

B. Vehicles

The person in charge of a vehicle carrying merchandise shall present the inward manifest at the time of report of arrival of the vehicle (19 C.F.R. 123.5). When baggage arrives in the actual possession of a traveler, his declaration shall be in lieu of presentation of a manifest (19 C.F.R. 123.3).

C. Aircraft

1. All aircraft are required to make entry except;

a. Public aircraft (i.e., aircraft owned by or under the control and management of the U.S. government or one of its agencies), and

b. Private aircraft (i.e., any flight which is arriving from foreign engaged in a personal or business flight which is not carrying cargo or passengers for commercial purposes).

2. Air cargo manifests shall be presented. In some instances a general declaration may be presented in lieu of an air cargo manifest. See, 19 C.F.R. 122.43.

3. Per 19 C.F.R. 122.42, the aircraft commander shall present all required forms to Customs at once after arrival. Per 19 C.F.R. 122.27(c) he shall present pilot certificate, medical certificate and aircraft registration certificate if requested.

III. Seizures/Penalties

For failure to report arrival, presentation of any false paper or document, violation of any regulation regarding the entry and arrival of conveyances, the discharge of passengers or merchandise, or departure from the place of arrival without customs authorization, the following sanctions, pursuant to the provisions of title 19, United States Code, section 1436, are available:

A. A civil penalty in the amount of $5,000 for a first offense or $10,000 for a subsequent offense assessable **only** against:

1. The master of a vessel,

2. The person in charge of a vehicle, or

3. The pilot of an aircraft.

B. A civil penalty equal to the value of any merchandise (except sea stores or their equivalent) in or aboard an unreported conveyance may also be assessed against the master, person in charge, or pilot. This penalty is in addition to the $5,000 or $10,000 statutory penalty.

C. Seizure of the conveyance.

D. Seizure of the merchandise in or aboard the conveyance.

NOTE: Seizure of merchandise should only occur under limited circumstances. See, Section V of this Chapter for clarification.

IV. Penalty Assessment

A. If the identity of the master of a vessel, person in charge of a vehicle, or pilot of an aircraft can be ascertained, assessment of the $5,000 or $10,000 penalty against that party is appropriate.

B. An additional penalty equal to the value of the merchandise on board may be assessed against the master, pilot, or person in charge only if arrival of the conveyance is not reported or the conveyance is not properly entered and aggravating factors are present. Examples of aggravating factors are:

1. Documentary or other evidence that establishes violator's intent.

2. Informant provides information which tends to establish master, pilot or person in charge's intent to violate the statute.

3. Unmanifested or unreported articles concealed to evade U.S. law rather than for safekeeping.

4. Behavior such as extreme lack of cooperation, verbal or physical abuse, attempted escape, or other behavior which tends to demonstrate a lack of respect for law.

5. Experience in importing. For purposes of these guidelines, an experience in importing is established by showing that an individual, through prior arrivals into the United States or other commercial experience, should have known of conveyance entry and documentation presentation procedures.

6. A failure to report arrival could result in the possible importation of prohibited or restricted merchandise.

C. The penalty described in paragraph B. shall be assessed in an amount equal to the domestic, rather than transaction, value of the merchandise.

D. These penalties are assessable only against the master, person in charge or pilot. They may not be assessed against passengers in an unreported conveyance, importers of merchandise, consignees of merchandise, brokers or freight forwarders.

1. This penalty cannot be assessed against a passenger on any conveyance that does not report arrival. For example, when a vehicle which enters without inspection (EWI) contains a driver and a passenger, the penalty for failure to report arrival is assessed against the operator of the vehicle. The passenger in the vehicle is not liable for this penalty.

2. If the violator is a conveyance operator who is an employee of a corporate entity (e.g., airline, steamship company, trucking company), the penalty notice may be issued against the conveyance operator in care of the corporate entity and mailed to the employing entity. If a petition is filed by the airline, steamship company, trucking company, etc., on behalf of the employee, as a matter of policy the petition should be considered and mitigation afforded based on the case record.

3. If the employing company pays the penalty on behalf of the employee conveyance operator, the payment should be accepted and the case processed per standard operating procedures.

E. Multiple violations on the same arrival, or on a continuous voyage.

1. If a first-time violator fails to report arrival, he necessarily does not present a manifest as required by regulation. While these acts constitute two violations of the statute, separate penalties of $5,000 should not be assessed for each violation. As a matter of policy, a single $5,000 penalty for the failure to report arrival incident is sufficient sanction.

2. As a general rule, a violator who fails to report arrival at numerous ports on a continuous sea voyage or fails to report at more than one airport on the same contemporaneous journey, should be considered as a first-time violator at each port if no element of intent exists for the violation. Intent will be presumed if Customs has advised the violator of the reporting requirements after discovery of the violation at any of the ports where arrival was not reported and violations continue. Barring a finding of intent, each violation should be considered a first violation and the ports where each violation occurred may assess a separate $5,000 penalty. No port should issue a $10,000 penalty as a subsequent violation.

3. As a general rule, a penalty for departure from the place of arrival without authorization should not be assessed against a violator who fails to report arrival entirely. In order for this penalty to lie, the violator must have first reported to a Customs officer and then departed without authorization.

F. Presentation or display of a false or altered user fee decal shall be considered to be presentation of a false document for purposes of 1436 penalty assessment. A penalty shall be assessed in the amount of $5,000 against the operator of the vehicle for a first offense. A $10,000 penalty should be assessed for a second or subsequent offense.

G. Penalties Against Aircraft Pilots

1. Under the provisions of 19 C.F.R. 122.166, civil penalties against a pilot of an aircraft shall be assessed as provided by 19 U.S.C. 1436 with respect to the following actions:

   a. Advance notification of arrival
   b. Report of arrival
   c. Landing of aircraft
   d. Presentation of documentation
   e. Departure from the port, place or airport of arrival without authorization
   f. Discharge of passengers or merchandise (to include baggage) without authorization.

2. If an aircraft pilot violates any of the regulations promulgated in Part 122 that deal with something other than those actions listed in a. through f. above, a penalty of $5,000 should be assessed under the provisions of 19 U.S.C. 1644a. The penalty notice, in addition to section 1644a, should also reference the specific regulation violated and provide a detailed description of the violation.

3. All second or subsequent penalties issued for violation of section 1644a shall also be issued for $5,000.

4. Consistent with the policy articulated in paragraph IV.E.1., above, if an aircraft pilot commits multiple offenses on one arrival (i.e., fails to give advance notification of arrival and fails to report arrival) he shall incur one penalty for that arrival.

H. Presentation of false documents, manifests, etc.

1. If there is a manifest discrepancy that is not attributable to a deliberate smuggling attempt, penalties should be assessed pursuant to 19 U.S.C. 1584 for failure to manifest.
2. Manifest discrepancies for which a penalty generally should not be assessed under section 1436 are as follows:

   a. The manifest does not contain shipper or consignee names
   b. The manifest has an inadequate description of the cargo or has incorrect values, either of which could be attributable to paperwork error or mistake.
   c. There is a shortage or overage that can be attributable to paperwork errors or mistakes in tabulation of the amount of

cargo on the conveyance by parties other than the operator of the conveyance.

3. Manifest penalties under 1436 are appropriate for the presentation of any false manifest information or data.

   NOTE: Manifest presentation and discrepancy violations should be processed under the provisions of this section entitled MANIFEST OR CARGO DELIVERY VIOLATIONS.

4. If there is a substantial material falsity between the amount of merchandise manifested and invoiced and the amount of merchandise actually discovered on the conveyance, then seizure of the merchandise may be appropriate. See, Section VI., below.

5. **NOTE**: The provisions of 19 C.F.R. 123.5 require a manifest listing baggage and other merchandise, certified by the person in charge, to be presented to the Customs officer at the time the report of arrival is made. If the operator of commercial vehicle arrives without a completed manifest, he will be required to complete a manifest and present it to the appropriate Customs officer. He may be the subject of a penalty under **19 U.S.C. 1584** at the discretion of the local port director.

V. Recreational Vessel Reporting

1. Port Directors in ports which have numerous pleasure vessels that frequently touch foreign or traverse in foreign waters and return to U.S. waters shall have enforcement discretion in the assessment of penalties for failure to report arrival.

2. In lieu of penalty action, port directors may, at their discretion, issue warning letters to first-time violators who are masters of pleasure vessels that fail to report arrival.

VI. Seizures

A. Unless there is a compelling reason to do so, a conveyance involved in a violation of 19 U.S.C. 1436 shall not be seized for a first violation.

B. Notwithstanding subparagraph A., above, seizure of a conveyance is always appropriate if:

   1. The failure to report is part of a deliberate smuggling attempt,

2. The violation occurs in association with other unlawful activity (not necessarily limited to smuggling).

3. There is a lack of information necessary to assess a penalty. E.g., if a vehicle runs a port and the identity of the person in charge of the vehicle at the time of the violation cannot be ascertained, later seizure of the vehicle would be appropriate.

4. Seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an entry without inspection occurs and the operator of the vehicle is a foreign national and the likelihood of collection of a monetary penalty is remote). The conveyance also may be held under the provisions of 19 U.S.C. 1594 in order to secure payment of the penalty.

C. Statutory limitations regarding the seizure of common carriers, as provided for in 19 U.S.C. 1594, are applicable. When a violation of section 1436 is the only violation present, a common carrier will not be seized unless the violation is intentional in nature.

D. As a general rule, merchandise which is owned by someone other than the master of a vessel, operator of a vehicle or pilot of an aircraft should not be seized unless there is evidence of other unlawful activity or there is evidence to indicate that the owner of the property, or the agent of the owner, is responsible for the violation for which seizure could be effected (See, paragraph E. below).

E. **NOTE**: In land border situations, if a significant manifest discrepancy exists, and it is determined that the operator of the vehicle did not know of the discrepancy and it appears that the false documents were prepared by the owner of the property or his broker, freight forwarder or other agent, seizure of the merchandise is appropriate. If the significant discrepancy is attributable to the negligence of the operator of a commercial vehicle, seizure would not be appropriate. A monetary penalty against the operator of the vehicle is the appropriate sanction.

VII. Mitigation/Remission Guidelines

The following guidelines should be used for violations of section 1436 that do not involve controlled substances.

A. Penalties - $5,000 first offense for failure to report arrival.

1. If the violation involves a recreational vessel master who fails to report arrival, mitigate to an amount not less than $100 nor more

than $500, depending upon the presence of aggravating circumstances (See, IV.B. above).

2. If the violation involves the operator of a non-commercial conveyance who fails to report arrival after entry into the United States at an unmanned port of entry or airport, mitigate to an amount not less than $100 nor more than $500, depending on the presence of aggravating circumstances (See, IV.B. above).

3. If the violation involves a situation involving failure to report arrival that is not described in subparagraphs 1., and 2., above, mitigate to an amount between $500 and $2,500 depending on the presence of aggravating factors (See, IV.B. above).

4. If the violator can show that the failure to report arrival occurred because of a medical emergency, inclement weather or arrival of a conveyance in distress, the district director may remit the penalty without payment.

5. If multiple violations occurred on the same arrival, but only one penalty was issued (See, paragraphs IV.E.1. and IV.G.4. above), mitigation to an amount in the higher range of the guidelines is permitted.

B. Penalties - $5,000 first offense for presentation of false document or manifest, failure to have manifest, failure to deliver manifest to Customs, or departure from place of arrival without Customs authorization; mitigate to an amount not less than $500 nor more than $2,500 depending on the presence of aggravating circumstances (See, IV.B. above).

NOTE: Relief may be denied if any document pertaining to the registry of the vessel, vehicle or aircraft is counterfeit or otherwise forged or altered.

C. Penalties - $10,000 subsequent offense for failure to report arrival, mitigate to an amount not less than $1,000, nor more than $5,000 depending on the presence of aggravating factors. If the payment of a mitigated amount has no deterrent effect on a chronic violator, relief may be denied and the full penalty amount collected.

D. Penalties - $10,000 subsequent offense for presentation of a false document or manifest, failure to have a manifest, or departure from the place of arrival without Customs authorization; mitigate to an amount not less than $1,000 nor more than $5,000 depending upon the presence of aggravating circumstances (See, IV.B. above).

E. Penalties equal to the value of the merchandise aboard a conveyance which was not properly reported or entered, mitigate to an amount equal to between 5 and 20 percent of the penalty depending on the presence of aggravating factors. If an intentional smuggling attempt on an unreported conveyance can be proven, then mitigation to an amount higher than 20 percent or even denial of relief from the penalty may be appropriate.

F. Penalties assessed for violation of the provisions of 19 U.S.C. 1644a and Part 122 of the Customs Regulations, mitigate the penalties in accordance with guidelines provided in subparagraph B. above.

G. Seizure of Conveyances

1. If the seizure results because the conveyance is used in association with other unlawful activity or is used as part of a deliberate smuggling attempt, grant no relief unless the claimant can show that he was neither privy to nor had reason to believe the illegal activity would occur.

2. If the seizure results to secure payment of a penalty assessed for violation of section 1436, remit the forfeiture following the guidelines for mitigation of $5,000 or $10,000 penalties based on the number of violations attributable to the person in charge of the conveyance.

3. If the seizure results because assessment of a penalty could not be made because the identity of the master, person in charge or pilot was not known, remit the forfeiture following the guidelines for mitigation of $5,000 or $10,000 penalties based on the number of violations attributable to the conveyance.

4. If seizure occurs in addition to a monetary penalty, remit the forfeiture of the conveyance upon payment of an amount equal to the mitigation afforded with regard to the monetary penalty. This amount cannot exceed the domestic value of the conveyance.

H. Seizure of merchandise

1. If the seizure results because the merchandise is being deliberately smuggled, grant no relief.

2. If the seizure results because of a significant manifest discrepancy and there is a calculable loss of revenue because of the discrepancy, remit the forfeiture upon payment of an amount equal to no less than two times and no more than six times the loss of revenue depending on the presence of aggravating circumstances

(See, IV.B. above). If the merchandise would be absolutely or conditionally free of duty, remit the forfeiture upon payment of an amount between one and ten percent of the domestic value depending on the presence of aggravating circumstances.

I. Every remission shall be conditioned upon payment of the costs of seizure and storage (if any) and execution of an agreement to hold Customs harmless from any other possible claimants to the seized property who may come forward and make claims against that property.

PASSENGER/CREWMEMBER VIOLATIONS

I. Specific Violations

A. An individual boards an arriving vessel before Customs grants authorization.

1. No person except a pilot in connection with the navigation of the vessel or an officer of Customs, Coast Guard, APHIS or an agent of the vessel exclusively for purposes relating to Customs formalities, shall go on board any vessel arriving from outside the Customs territory without the permission of Customs. (See, 19 C.F.R. 4.1(c)(1))

2. Penalty of $5,000 against the master for violation of 19 U.S.C. 1436 and 19 C.F.R. 4.1(c)(1).

B. An individual departs an arriving conveyance before Customs authorization.

1. Vessels

a. No person may leave an arriving vessel except for the purpose of reporting arrival without the permission of the Customs officer in charge.

b. Penalty of $5,000 against the master for violation of 19 U.S.C. 1436 and 19 C.F.R. 4.1(c)(2).

2. Aircraft

a. The commander of an aircraft is responsible for keeping arriving passengers and crewmembers in a separate place until Customs authorizes their departure.

b. Penalty of $5,000 against the aircraft commander for violation of 19 U.S.C. 1436 and 19 C.F.R. 122.36.

C. A carrier unlades passengers without Customs permission.

1. Vessels or vehicles

Penalty of $1,000 for the first passenger unladen and $500 for every subsequent passenger unladen without a permit to be assessed against the master of the vessel or any person involved in the unlading. 19 U.S.C. 1454.

2. Aircraft

Penalty of $5,000 against the aircraft pilot for violation of 19 U.S.C. 1436, 19 C.F.R. 122.166, and 19 C.F.R. 122.38.

D. A passenger or crewmember individual leaves a reported conveyance without Customs authorization.

For a first violation, penalty of $5,000 against the individual for violation of 19 U.S.C. 1459. For a second or subsequent violation, a penalty of $10,000.

E. A passenger or crewmember arriving on a reported conveyance fails to report immediately to the designated Customs facility.

For a first violation, penalty of $5,000 against the individual for violation of 19 U.S.C. 1459. For a second or subsequent violation, a penalty of $10,000.

F. A passenger or crewmember arriving on a reported conveyance departs the designated Customs facility without authorization.

For a first violation, penalty of $5,000 against the individual for violation of 19 U.S.C. 1459. For a second or subsequent violation, a penalty of $10,000.

G. An individual arriving on an unreported conveyance fails to report his or her arrival to a Customs officer.

For a first violation, penalty of $5,000 against the individual for violation of 19 U.S.C. 1459. For a second or subsequent violation, a penalty of $10,000.

H. A crewmember attempts to land articles and does so in a manner so as to avoid inspection.

Seizure of the merchandise plus a personal penalty against the crewmember equal to the value of the merchandise landed in a manner so as to avoid inspection pursuant to 19 U.S.C. 1453 and 19 C.F.R. 148.67(a).

I. A crewmember fails to declare all merchandise, which he has landed and upon which duties are owed.

Seizure of the merchandise plus a personal penalty against the crewmember equal to the value of the merchandise not declared (to be treated as merchandise unladen without a permit) pursuant to 19 U.S.C. 1453 and 19 C.F.R. 148.67(b).

J. A crewmember files a declaration but omits certain articles from that declaration.

Treat as a regular 19 U.S.C. 1497 failure to declare case. See, 19 C.F.R. 148.67(c).

II. Mitigation Guidelines

A. For all violations of 19 U.S.C. 1436 or 19 U.S.C. 1459 described in I. above, mitigate in accordance with guidelines provided in **ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT**, Section VI., above, for departure from the place of arrival without Customs authorization.

B. For all violations of 19 U.S.C. 1453 or 19 U.S.C. 1497 described in I. above, mitigate in accordance with guidelines for 19 U.S.C. 1497 violations.

C. For all violations of 19 U.S.C. 1454 described above, mitigate in accordance with guidelines for 19 U.S.C. 1454 penalties provided in **IV. OTHER VESSEL PENALTIES** below.

MANIFEST AND CARGO DELIVERY VIOLATIONS

I. Presentation of Manifests

The following list of violations covers the most frequently referenced discrepancies or irregularities involving the presentation of manifests.

A. Carrier does not have manifest in its possession, the master of a vessel or person in charge of a vehicle does not produce the manifest to an officer demanding the same or the carrier does not produce it upon demand by post-audit team:

1. Penalty action against master of vessel or person in charge of rail or truck carrier; assess a penalty of $1,000 for violation of 19 U.S.C. 1584.

2. Penalty action against pilot of air carrier; assess a penalty of $5,000 for violation of 19 U.S.C. 1433, 19 U.S.C. 1436, 19 C.F.R. 122.48 and 19 C.F.R. 122.166.

3. **NOTE**: The provisions of 19 C.F.R. 123.5 require a manifest listing baggage and other merchandise, certified by the person in charge, to be presented to the Customs officer at the time the report of arrival is made. If the operator of commercial vehicle arrives without a completed manifest, he will be required to complete a manifest and present it to the appropriate Customs officer. He may be the subject of a penalty under 19 U.S.C. 1584 at the discretion of the local port director.

4. Mitigation to $500 may be afforded from any penalty assessed under 1584 against the master of vessel or operator of vehicle or under 1436 against the pilot of an aircraft. No relief will be afforded to a repeat violator of this section who incurs a penalty under 1584 for failing to present a manifest upon the demand of a Customs officer. Notwithstanding any mitigation provisions under 19 U.S.C. 1436 guidelines, as a general rule mitigation to $1,000 will be afforded to any pilot of an aircraft who is a repeat violator.

B. Carrier does not deliver manifest to Customs immediately upon arrival:

1. Penalty action against master of vessel; assess a penalty of $5,000 for violation of 19 U.S.C. 1433.

2. Penalty action against operator of rail or truck carrier or aircraft pilot; assess a penalty of $5,000 for violation of 19 U.S.C. 1433, 19

U.S.C. 1436, and 19 C.F.R. 123.5 (if truck) or 19 C.F.R. 123.6 (if rail carrier) or 19 C.F.R. 122.42(c) (aircraft).

3. Notwithstanding any mitigation provisions under 19 U.S.C. 1436 guidelines, mitigation may be afforded to an amount not less than $250 nor more than $1,000. Mitigation of penalties assessed against rail and truck carrier operators and pilots of aircraft should be consistent with that afforded to masters of vessels who have similar records of prior violations.

4. In the case of aircraft pilots, if a pilot incurs numerous penalties for this violation, or exhibits a continuing course of conduct in failing to deliver the manifest to Customs upon arrival, and the assessment of the $5,000 penalty for violation of 19 U.S.C. 1436 has no deterrent effect, an additional penalty may be assessed for violation of 19 U.S.C. 1644a, 19 C.F.R. 122.48, 19 C.F.R. 122.42(c) and 19 C.F.R. 122.161. That penalty shall be mitigated in accordance with guidelines in effect for mitigation of penalties incurred for violation of 19 U.S.C. 1436.

II. Inaccuracies or Discrepancies in Manifests

The following violations involve manifests that inadequately describe merchandise, include merchandise that is not found (shortage) or fail to manifest merchandise entirely (overage).

A. Manifest does not contain list all inward cargo as required by 19 C.F.R. 4.7a(c). The manifest should contain sufficient detail as required by the CF-1302 Cargo Declaration. The manifest description should include the number and kind of packages and description of the goods. Those carriers that accept unit-loaded cargo may use the provisions of 19 C.F.R. 4.7a and indicate Shipper's Load and Count (SLAC) next to the quantity on the manifest. When discrepancies are discovered for SLAC quantities, the carrier should be warned and permitted to rectify this with the shipper.

1. When these sorts of discrepancies are originally discovered, the carrier should be informed of the problem and counseled as to the correct manner of description of the merchandise contained on the manifest.

2. If carriers continue to make errors or inadequately describe merchandise on the manifest after instruction from Customs, a penalty should be issued for violation of 19 U.S.C. 1584 in the amount of the domestic value of the cargo not adequately described. Said penalty cannot exceed $10,000. A prepenalty

notice must be issued if the penalty is to be issued for more than $1,000. See, 19 C.F.R. 162.76.

3. The penalty may be assessed against any party that is directly or indirectly responsible for the inadequate merchandise description. The penalty is the same for air, sea, or land carriers.

4. For these violations, the penalties may be mitigated to the domestic value of the merchandise inadequately described or $500, whichever is less. If the violator is responsible for numerous description inadequacies and the mitigation afforded has had no deterrent effect, the penalties may be mitigated upon payment of amounts in excess of $500. In no case can mitigation be in an amount that exceeds the assessed penalty.

B. Manifest does not contain shipper/consignee names, or identifies the shippers as "various."

1. When these sorts of omissions or insufficiencies are originally discovered, the carrier should be informed of the problem and counseled as to the appropriate designation of shippers or consignee names that should appear on the manifest.

2. If parties responsible for preparing manifests continue to omit names of shippers or consignees or continue to identify them as "various," on the manifest after instruction from Customs, a penalty should be issued for violation of 19 U.S.C. 1584 in the amount of the domestic value of the cargo which is not ascribed to a named shipper or consignee. Said penalty cannot exceed $10,000. A prepenalty notice must be issued if the penalty is to be issued for more than $1,000. See,19 C.F.R. 162.76.

3. The penalty may be assessed against any party that is directly or indirectly responsible for the omission. The penalty is the same for air, sea or land carriers.

4. For these violations, the penalties may be mitigated to the domestic value of the merchandise inadequately described or $500, whichever is less. If the violator is responsible for numerous and continuous omissions and the mitigation afforded has had no deterrent effect, the penalties may be mitigated to amounts in excess of $500. In no case can mitigation be in an amount that exceeds the assessed penalty.

C. Manifest quantity is greater than entered or discovered quantity, i.e., manifested but not found (shortage).

1. If Customs receives or there is filed an adequate manifest discrepancy report (MDR) within the time period provided for by regulation (60 days for vessels per 19 C.F.R. 4.12, 30 days for aircraft per 19 C.F.R. 122.49(a)(2), and 60 days for vehicle carrier per 19 C.F.R. 123.9(b)), or if during an audit the manifest records indicate that adequate MDR's are present, then no penalty action is warranted.

2. Manifest discrepancy reports (MDR's) may be filed by any party discovering a discrepancy, including but not limited to the importing carrier, a subsequent in-bond carrier, a cartman or lighterman, or an importer. Manifest discrepancy reporting procedures are chronicled in Customs Directive 3240-067A.

3. The party last receipting for the full amount of merchandise listed on the manifest, in-bond document or transfer document is responsible for reporting discrepancies.

4. If a clear and concise statement as to the reason for the discrepancy is not provided (such statement supported by proof in the form of bills of lading, signed affidavits, exporter's and shipper's messages and telexes or any other documents that would substantiate the discrepancy) in the discrepancy report, Customs must find that the shortage occurred.

5. A penalty of $1,000 shall be assessed under 19 U.S.C. 1584 against any party directly or indirectly responsible for the failure to explain the discrepancy.

6. Mitigation may be afforded to an amount equal to no less than $200 for violations of this type. If violations continue and mitigation has no deterrent effect on a violator, the district director, in his discretion, may deny relief from this penalty.

D. Manifest quantity is less than entered or discovered quantity (overage).

1. If Customs receives or there is filed an adequate manifest discrepancy report within the time period provided for by regulation (60 days for vessels per 19 C.F.R. 4.12, 30 days for aircraft per 19 C.F.R. 122.49(a)(2), and 60 days for vehicle carrier per 19 C.F.R. 123.9(b)), or if during an audit the manifest records indicate that adequate MDR's are present, then no penalty action is warranted.

2. Carrier is responsible for the merchandise until it has been placed in G.O. warehouse, exported, entered or receipted for by another party (container freight station, in-bond carrier, etc.).

3. The party last receipting for the full amount of merchandise listed on the manifest, in-bond document or transfer document is responsible for reporting discrepancies.

4. If the manifest discrepancy report is not adequate a penalty should be issued under 19 U.S.C. 1584 equal to the domestic value of the merchandise or $10,000 whichever is smaller. The penalty may be assessed against any party directly or indirectly responsible for the manifest discrepancy.

5. Any 1584 penalty for over $1,000 requires issuance of a prepenalty notice. See, 19 C.F.R. 162.76.

6. If the overage has been released without Customs authorization, a penalty in the amount of the domestic value of the merchandise may be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of the provisions of 19 U.S.C. 1448 for removal of merchandise from the place of unlading without Customs authorization against any party responsible for the unauthorized release.

7. Mitigation of any 1584 penalty assessed for an overage should be afforded to an amount between 10 and 50 percent of the assessed amount, but no less than $200. If a violator is a chronic one and the above mitigation does not have a deterrent effect, mitigation to an amount in excess of 50 percent is permitted.

8. Mitigation of section 1595a(b) penalties for violation of section 1448, follow mitigation guidelines found in section III.B. below.

E. Failure to file manifest discrepancy reports

1. Vessel - No specific penalty for this failure, assess 19 U.S.C. 1584 penalty for overage or shortage resulting from the failure to report the discrepancy.

2. Air – while a $5,000 can be assessed against the pilot for 19 U.S.C. 1644a and 19 C.F.R. 122.49, as a matter of policy only the 1584 penalty for overage or shortage resulting from the failure to report the discrepancy (as in the vessel environment).

3. Land carrier - No specific penalty for this failure, assess 19 U.S.C. 1584 penalty for discrepancy as above.

5. Failure to file a manifest discrepancy report shall be considered to be an aggravating factor when mitigating any 1584 penalty that results against a land carrier for a shortage or overage.

6. Mitigation from penalties arising under 19 U.S.C. 1584 against a party for failing to file a manifest discrepancy report shall be under guidelines stated in sections C. and D. above.

F. Carrier does not maintain adequate records at the time of audit review.

1. If no manifest exists for a particular conveyance arrival, penalties should be issued and mitigated in accordance with subparagraph I. A. above.

2. If manifest discrepancy reports are not maintained, penalties should be issued and mitigated in accordance with subparagraph E. above.

3. A separate violation will be established for each conveyance arrival for which a manifest or a manifest discrepancy report is not maintained.

4. Recordkeeping penalties pursuant to 19 U.S.C. 1509 may be pursued.

G. Unmanifested merchandise when container is delivered with seals intact, but upon examination, either an overage or shortage is discovered.

1. When a container is sealed prior to being received by the carrier, the carrier or any party who is responsible for the accuracy of the manifest remains legally responsible for inaccuracies in the manifest. However, if Customs receives or there is filed an adequate manifest discrepancy report within the time period provided for by regulation (60 days for vessels per 19 C.F.R. 4.12, 30 days for aircraft per 19 C.F.R. 122.49(a)(2), and 60 days for vehicle carrier per 19 C.F.R. 123.9(b)), or if during an audit manifest records indicate that a discrepancy was annotated, then no penalty action is warranted.

2. If the violator can show that it had no knowledge of the violation, and the evidence indicates that neither tampering with the seals nor carrier records has occurred, the penalty may be remitted in full.

3. If the carrier is responsible for placing seals on the containers, full mitigation will not be afforded and the guidelines noted above for shortages and overages should be followed.

H. Seizure of merchandise

1. Under the provisions of 19 U.S.C. 1584, failure to manifest merchandise belonging or consigned to the master or any crew of a vessel or to the owner or person in charge of a vehicle or to the pilot or crew of an aircraft. Only the unmanifested merchandise is subject to seizure and forfeiture. The conveyance carrying the unmanifested merchandise is not subject to seizure and forfeiture under 1584.

2. Remission of forfeitures incurred under section 1584 should be consistent with penalty mitigation guidelines articulated in section VI.H., ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT, above.

III. Delivery of Cargo Without Customs Authorization (19 U.S.C. 1595a(b) for Violation of 19 U.S.C. 1448 and/or 19 U.S.C. 1499)

A. Penalty Assessment. Penalties for removal of merchandise from the place of unlading without authorization will be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of the provisions of 19 U.S.C. 1448 or penalties for delivery of merchandise without Customs examination will be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1499.

1. These penalties may be assessed against any party who is deemed to be responsible for the unauthorized removal or delivery (e.g., non-vehicle operating common carrier [NVOCC], container freight station, independent trucker, anyone who removes merchandise without Customs authorization.

2. Penalties are assessed in an amount equal to the domestic value of the merchandise removed or delivered without authorization.

3. Penalties of these types assessed against holders of international carrier bonds are secured by the terms and conditions of the bond up to the limit of the bond. Penalties may be collected in full from the violator. Collection from a surety is limited to the amount of the bond.

4. Double penalties should not be assessed, *i.e.*, while the same misdelivery may be without Customs authorization and may involve

avoidance of examination, only one assessment equal to the value of the merchandise should be made. If multiple assessments from the same transaction occur, mitigation should reflect the policy that only a single penalty should have been assessed.

B. Penalty Mitigation (See, T.D. 99-29)

1. If the violator can show that the violation occurred solely as a result of Customs error, the penalty should be cancelled.

2. If the violator can show that the merchandise was never received or landed, the penalty should be mitigated without payment.

3. If the merchandise which was removed without authorization or delivered without examination could have been the subject of an informal entry, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the violator comes forward and discloses the violation to Customs, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus $50.

5. If the merchandise which was removed without authorization was not designated for Customs examination and the violator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon or that the merchandise was exported, the penalty may be mitigated upon payment of an amount between $250 and $2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was removed without authorization was not designated for Customs examination and the violator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon or that the merchandise was exported, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $300 and $2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise which was removed without authorization or delivered without examination was designated for Customs examination and the violator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon or that the merchandise was exported, the penalty may be mitigated upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case shall the mitigated amount be lower than any costs chargeable to the importer which are incident to such examination. Conversely, the mitigated amount can never exceed the value of the shipment.

8. If the merchandise which was removed without authorization or delivered without examination was designated for Customs examination and the violator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon or that the merchandise was exported, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case shall the mitigated amount be lower than any costs chargeable to the importer which are incident to such Customs examination. Conversely, the mitigated amount can never exceed the value of the shipment.

9. If the violator has a history of removal of merchandise from the place of unlading without Customs authorization or delivery without Customs examination or particularly aggravating circumstances exist with regard to a violation, the Fines, Penalties and Forfeitures Officer may mitigate the penalty upon payment of a higher amount than that authorized by these guidelines; however, the advice of HQ, ORR, Penalties Branch will be sought to determine appropriate mitigation.

10. Theft of merchandise from Customs custody. Merchandise which is stolen from the carrier prior to having been released by Customs shall be treated as having been delivered without Customs authorization. The carrier will be liable for penalties and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1448 or 1499 may also be assessed against the individuals who steal the merchandise from Customs custody. In those instances, no mitigation will be afforded to the person or persons primarily responsible for the illegal act. Aiders and abettors may receive mitigation to 25-50 percent of the penalty, depending upon the degree of complicity.

C. Mitigating and Aggravating Factors.

1. Mitigating Factors

a. Violator inexperienced in the handling of cargo.
b. Violator has a general good performance and low error rate in the handling of cargo.
c. Violator demonstrates remedial action has been taken to prevent future violations.

2. Aggravating Factors

a. Violator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
b. Violator has a rising error rate, which is indicative of deteriorating performance in the handling of cargo.

D. Restricted or Prohibited Merchandise. If Customs has reason to believe that the merchandise which was removed from the place of unlading without authorization or which was delivered without examination may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in mitigation at the high end of the mitigation range.

E. If an importer indicates he hasn't received all cargo, this penalty can be generated against carrier. Filing of MDR, police report of theft or other explanation of discrepancy after a short delivery will not eliminate any penalty assessment. Such action taken after discovery of the shortage will be considered in mitigation.

IV. Other Vessel Penalties

A. Penalties Against Carrier for Failure to Notify Customs of Presence of Unentered Merchandise (G.O. Notification Penalties)

1. Obligation to notify Customs

Any merchandise or baggage regularly landed but not covered by a permit for its release will be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the master, pilot, operator or owner of the conveyance or the agent thereof must notify Customs of any such merchandise or baggage for which entry has not been made. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system.

2. Penalty assessment

   Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the master, pilot, operator or owner of the conveyance or the agent thereof for violation of the provisions of title 19, United States Code, section 1448 (19 U.S.C. 1448). If the value of the merchandise on the bill is less than $1,000, the penalty will be equal to the value of such merchandise.

3. Mitigation

   a. If notification of the presence of unentered merchandise is provided outside the time period allowed by law or regulation, the penalty may be mitigated to an amount between 10 and 50 percent of the assessment, but not less than $100, depending on the presence of aggravating or mitigating circumstances.
   b. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

4. For claims for liquidated damages arising against the arriving carrier for failure to notify the bonded warehouse of the presence of unentered merchandise, against the in-bond carrier or receiver of the merchandise under a Customs-authorized permit-to-transfer to notify Customs and the bonded warehouse of the presence of unentered merchandise and against the bonded warehouse for failure to collect merchandise for which it had received notification, see sections XII, XIV, and XV of the Liquidated Damages Chapter of this Handbook.

B. Unlading or lading merchandise from a vessel or vehicle without a permit (19 U.S.C. 1453).

1. This violation generally involves failure to obtain a CF-3171 to unlade merchandise, commencement of unlading prior to Customs officer's supervision of unlading, or unlading merchandise which has not been properly manifested.

2. This violation may also involve diversion of merchandise if merchandise is manifested for delivery at Port B, but is offloaded at Port A before conveyance arrival at Port B (vessels only) or overcarriage of merchandise if merchandise is manifested for delivery at Port A, but is overcarried to Port B and unladen there. If this

diversion of cargo occurs for reasons other than those expressed in 19 C.F.R. 4.33 and the manifest is not amended to reflect the diversion/overcarriage of cargo, a penalty under the provisions of 19 U.S.C. 1453 may be assessed. If this violation is discovered only because the carrier informs Customs of the offloading, then the above-noted penalties may be waived at the discretion of the port director.

3. Penalty may be assessed against the master of vessel, person in charge of vehicle and all parties responsible for the violation.

4. Penalty amount - domestic value of merchandise unladen or laden without a permit.

5. Statute also permits seizure of merchandise and vessel. Do not seize without Headquarters, ORR, Penalties Branch, approval.

6. Mitigation to $500-$5,000 is appropriate. If penalty is for less than $500 grant no relief.

7. If the $500 to $5,000 mitigation does not have a deterrent effect, mitigation to an amount exceeding $5,000 may be appropriate.

8. For aircraft, penalty of $5,000 shall be assessed against pilot (if a first violation) for violation of 19 U.S.C. 1433, 19 C.F.R. 122.38 and 19 C.F.R. 122.166. Penalty is $10,000 for subsequent violations. Notwithstanding any other 1436 mitigation guidelines, mitigate consistent with 5. and 6. above.

C. Unlading passengers without a permit (19 U.S.C. 1454).

1. Penalty may be assessed against master of vessel, person in charge of vehicle and every other person who knowingly is concerned or who aids in the violation.

2. Penalty amount - $1,000 for the first passenger unladen and $500 per each subsequent passenger unladen without a permit.

3. Applies to the unlading of passengers – not crew members.

4. Mitigation to $100-$250 per passenger depending on the presence of aggravating factors. See, IV.B. in ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT.

5. If a party continues to violate the statute and the $100-$250 mitigation does not have a deterrent effect, grant no relief.

6. Penalty of $5,000 against aircraft pilot for permitting passengers to depart without Customs permission under 19 U.S.C. 1644a and 19 C.F.R. 122.36. Penalty is $5,000 per incident and not $5,000 per passenger. Mitigate consistent with paragraph 3. above based on number of passengers permitted to depart.

D. Failure of a vessel or vehicle which, at any authorized place, fails to come to a stop when signaled to do so by a Customs officer displaying proper insignia 19 U.S.C. 1581(d).

1. Penalty is to be assessed against the master, owner, operator or person in charge of the conveyance.

2. Penalty is in the amount of not more than $5,000 nor less than $1,000.

3. As a general rule, no mitigation should be granted. If the violator can show that there was a true misunderstanding and that no loss of revenue was incurred due to the failure to come to a stop, then extraordinary mitigation may be afforded to an amount to be determined by the FP&F Officer.

E. Obstruction of boarding officer (19 U.S.C. 1455). See, also 46 U.S.C. App. 324 relating to obstruction of boarding officer checking licensing or registry. Same penalty assessment and mitigation.

1. Assess penalty against any officer, owner, agent of the owner, or member of the crew of such vessel who obstructs or hinders the customs officer in the performance of his duty.

2. Penalty amount - $500.

3. As a general rule, no relief.

F. Presentation by a master of a vessel of forged, altered or false document to an examining officer who has boarded the vessel in accordance with the authority granted by 19 U.S.C. 1581(a) to examine a manifest or other documents and 19 U.S.C. 1581(b) to pursue and arrest any person engaged in the breach of the navigation laws. This is a violation of 19 U.S.C. 1581(c).

1. Penalty may only be assessed against a master of a vessel.

2. The master must have knowledge that the document was forged, altered or false.

3. Penalty amount is between $500 and $5,000.

4. No mitigation should be granted.

5. This penalty should not be assessed against a master who presents a manifest with a discrepancy as to merchandise amounts or descriptions which are more properly penalized under 19 U.S.C. 1584.

G. Unlawful unlading or transshipment (19 U.S.C. 1586)

1. Penalty against master of vessel for unlading merchandise after arrival in Customs waters but before arrival at place for discharge and before receiving permit to unlade - twice the value of the merchandise unladen but not less than $10,000. Vessel and cargo are subject to seizure and forfeiture. 19 U.S.C. 1586(a).

2. Penalty against master of vessel for transshipment of merchandise from a vessel located at a point adjacent to the Customs waters to a vessel which may introduce such merchandise into the U.S. in violation of law - twice the value of the merchandise transshipped but not less than $10,000. Vessel and cargo are subject to seizure and forfeiture. 19 U.S.C. 1586(b).

3. Penalty against master of vessel for transshipment of merchandise from a vessel located at a point adjacent to the Customs waters to a U.S. vessel twice the value of the merchandise transshipped but not less than $10,000. Vessel and cargo are subject to seizure and forfeiture. 19 U.S.C. 1586(c).

4. Penalty against master of vessel that receives illegally transshipped merchandise or any other person who aids or assists in such transshipment - twice the value of the merchandise transshipped but not less than $10,000. Vessel and cargo are subject to seizure. 19 U.S.C. 1586(d).

5. Above penalties are not incurred if transshipment results because of accident or stress of weather. 19 U.S.C. 1586(f).

6. As a general rule, no mitigation from penalties or forfeitures shall occur for these violations.

7. For violations involving the transfer of merchandise between an aircraft and a vessel, see the provisions of 19 U.S.C. 1590.

H. Failure to comply with direction of boarding officer (19 U.S.C. 1587).

1. Penalty amount - not more than $5,000 nor less than $500. Seizure and forfeiture of vessel and cargo may also be incurred for this violation.

2. As a general rule, no mitigation from this penalty or forfeiture.

V. Departure of Vessels; Transportation in Coastwise Trade

Failure to comply with clearance procedures upon departure to a foreign port or place (19 U.S.C. 1436)

1. All vessels bound for a foreign port or place are required to clear except (See, 19 C.F.R. 4.60):

   a. Any documented vessel with a pleasure license endorsement or an undocumented American pleasure vessel,
   b. A documented vessel with a Great Lakes license that will touch foreign only to take on bunker fuel,
   c. Vessels exempted from entry by 19 U.S.C. 1441,

2. Documents required for clearance are provided for by 19 C.F.R. 4.63 including CF-1302A, Cargo Declaration Outward with Commercial Forms.

3. Violations:

   a. Departure without obtaining clearance from Customs.
   b. Delivery of false outward manifest, data or information (which would include “rollovers”, i.e., merchandise manifested for an outbound conveyance, but actually placed on a second outbound conveyance).
   c. Prior to departure, failing to present SED for validation when merchandise covered by the SED is licensable by the Department of State or the Department of Commerce.
   d. Failing to file outward manifest.

4. Penalty amounts - $5,000 for first violation, $10,000 for any subsequent violation, assessable for violation of 19 U.S.C. 1436 against the master of the vessel, pilot of the aircraft or operator of the vehicle, consistent with the rules set forth in Section IV., **ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT**, above.

5. Mitigation shall be consistent with mitigation guidelines in Section VI.B., **ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT**, above.

6. The 19 U.S.C. 1436 penalty will generally not be assessed for late filing of a complete outward manifest or late filing of Shipper's Export Declarations (SEDs).

7. Both a 19 U.S.C. 1436 and claims for liquidated damages for late filing of SEDs (15 C.F.R. 30.24) and/or late filing of the complete outward manifest (19 C.F.R. 113.64(c)) can arise from the same conveyance departure.

8. Slot Charters (vessels)

   a. Slot charter operators cannot incur penalties under 1436. Those penalties must be assessed against the master of the vessel.

   b. There is nothing in the regulations which bars the holder of a slot charter from obligating his bond in lieu of that submitted by the arriving or departing carrier or agent of that carrier for any liquidated damages that may arise due to the holder of the slot charter's failure to comply with outbound document submission requirements. However, 1436 penalties must be assessed against the master of the vessel.

A. Failure to have permit to proceed or failure to have a certified copy of manifest (19 U.S.C. 1436).

   1. Penalty amount - $5,000 for first violation; $10,000 for each subsequent violation assessed against the master of the vessel.

   2. Mitigation shall be consistent with mitigation guidelines in Section VI.B., **ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT**, above.

B. Use of nonqualified vessel to tow any other vessel other than a vessel in distress (46 U.S.C. App. 316(a))

   1. Penalty of between $250 and $1,000 to be recovered from owner or master plus $50 per ton on the measurement of the towed vessel. Penalty should be based on gross tonnage rather than net tonnage.

   2. Mitigate to between 25 and 50 percent of claim for first violation, no relief for subsequent violations.

C. Offering vessels for sale when the vessels have entered under a cruising license (19 U.S.C. 1595a(a), 19 C.F.R. 4.94, Chapter 89, Additional U.S. Note 1, Harmonized Tariff Schedules of the United States (HTSUS)).

1. Vessels which enter the United States under a cruising license may not be offered for sale. See, 19 C.F.R. 4.94.

2. Offer for sale of such a vessel renders it subject to seizure and forfeiture under the provisions of 19 U.S.C. 1595a(a) for violation of 46 U.S.C. App. 104 and 19 C.F.R. 4.94.

3. Remit the forfeiture upon payment of an amount between 2 and 6 times the loss of revenue. If the vessel would have been absolutely free of duty upon entry, e.g., as American Goods Returned, remit the forfeiture upon payment of one-half percent of the value or $100 whichever is higher.

D. Coastwise Transportation of Merchandise and Passengers in Non-coastwise Qualified Vessels (46 U.S.C. App. 883 for merchandise and 46 U.S.C. App. 289 for passengers)

1) Provisions of these statutes prohibit the carriage of merchandise and passengers, respectively, between coastwise points in the United States by a non-coastwise qualified (e.g. foreign-flag) vessel. These statutes are enacted specifically to preserve for U.S. vessels the transportation of goods and people within points encompassed by U.S. territorial waters. They are strictly applied by Customs, as intended by Congress.

2) Statutory citations - 46 U.S.C. App. 883 (merchandise); 46 U.S.C. App. 289 (passengers); The foregoing laws are part of, and known loosely as, the "Jones Act." Regulations: 19 C.F.R. 4.80 (general); 19 C.F.R. 4.80b, 171.11(c) (merchandise); 19 C.F.R. 4.80a (passengers)

a) Merchandise violations – Penalty Assessment

The penalty (see below) may be assessed against any person transporting the merchandise, or causing it to be transported. This includes the importer, consignee, master of the vessel, vessel agent, or owner of the vessel. Typically, the assessment is made against the vessel agent or owner (if the owner is located in the U.S.).

Merchandise violation – Example

A vessel that is not coastwise qualified loads merchandise at Norfolk, Virginia, and unloads it at Savannah, Georgia. If the transportation does not fall into an exception, discussed below, or one of the 13 provisos to section 883, it would be a violation of the coastwise law.

b) Merchandise violations – Seizure.

Although the statute provides for seizure of the merchandise transported illegally, the approval of the Headquarters Penalties Branch must be obtained before seizure.

c) Merchandise violations – Penalty Amounts.

The statute also provides for a penalty *up to* the domestic value of the merchandise (or the actual cost of the transportation, whichever is greater).

Note: No penalty should be assessed in an amount higher than $100,000, regardless of the value of the merchandise in violation or cost of transportation, if the violation arose from an emergency to the vessel that required, for reasons of safety or other humanitarian cause, that coastwise transportation occur. An example would be a violation directly caused by a hurricane or other force of nature. In case of a violation caused by such an emergency, the penalty must be assessed, and mitigation left to the discretion of the Fines, Penalties and Forfeitures Officer. There is no limit on the amount of penalty to be assessed when the violation occurred due to commercial expediency.

d) Merchandise violations – Mitigation.

a. The Fines, Penalties & Forfeitures Officer may remit in full if the petition for relief establishes that the violation occurred as a direct result of the arrival of the transporting vessel in distress (*See,* 19 C.F.R. 171.11(c)).

b. If the vessel is not in distress, but the coastwise movement occurred due to some other humanitarian concern, e.g. disembarkation of a crew member because of a life threatening injury or illness, that somehow involved the unlading of domestic cargo, then the penalty would be assessed, but mitigated in full.

c. However, if neither of the foregoing situations--distress or humanitarian reason--are present, then the violation will be

considered to have been committed for commercial expediency (even where no monetary gain is realized by the violator). In that case, the assessed penalty will be mitigated to an amount equal to between 10 and 50 percent of that assessed.

d. **NOTE**: The unavailability of a coastwise-qualified vessel is NOT a mitigating factor in a case where commercial expediency has been found. Mitigation normally will be accomplished at the 10 percent level for a first violation that is not aggravated. Examples of aggravating factors would be a second or subsequent violation, or a violation that was deliberate, in that Customs obtains evidence or information that the violation was premeditated, or that the violation occurred *after* the violator was informed by Customs that the anticipated transportation would constitute a violation of section 883.

e. However, in either situation, a non-aggravated first violation or an aggravated violation, Customs reserves the ability in a given case to recover a liability in an amount that would offset any economic gain that inured to the violator as a result of the violation, even if that amount would exceed the mitigated penalty that would otherwise have been taken. For example, if the normal mitigated penalty amount were 10 percent of the domestic value of the cargo illegally transported, or $15,000, but the vessel avoided costs of $30,000 by committing the violation as a commercial expedient, then Customs could take a mitigated penalty of $30,000, rather than $15,000.

e) Passenger Violations – Penalty Assessment.

The penalty for a violation will be assessed against the master of the vessel.

1. Passenger Violations – Penalty Example

A non-coastwise qualified vessel embarks passengers at New York, New York, transports them to Miami, Florida, and allows them to disembark there, either temporarily, or to terminate the voyage. That transportation would violate section 289.

2. Passenger Violations – Penalty Amount.

The law prescribes the amount of the penalty to be assessed: $200 per passenger transported and landed. **NOTE**: The term

"passenger" is defined in 19 C.F.R. 4.50(b) as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business." So, it does not include crewmembers.

3. Passenger Violations – Mitigation.

   a. 46 U.S.C. App, 320 provides for the mitigation by Customs of a penalty assessed under section 289, when the offense was not "willfully committed." Thus, if the violation was deliberate or intentional, then no mitigation of the $200 per passenger statutory liability should be granted.
   b. Violations that occur because of commercial expediency will be considered to be deliberate. Violations that may occur due to a force of nature, the vessel being in distress, or by reason of safety or humanitarian concern, will be assessed at the statutory amount, but then mitigated in full by the Fines, Penalties and Forfeitures Officer or Headquarters Penalties Branch.

A first violation that is not intentional normally may be mitigated to $100 per passenger. No mitigation will be granted in second or subsequent violations.

VI. International Carrier Bond

A. Bond Conditions; Guarantee of Payment of Penalties

Under the terms of the International Carrier Bond, if any vessel, vehicle or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft incurs a penalty, duty, tax or other charge provided by law or regulation the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs (19 C.F.R. 113.64(a)). This is the **only** bond that guarantees the payment of penalties.

B. If a carrier or employee of a carrier (i.e., an aircraft pilot, truck driver or vessel master) incurs a monetary penalty and the carrier, as bond principal, either does not petition or does not comply with a mitigation decision, a demand on surety for the penalty amount should be made. The surety will then have the same petitioning rights as the principal. The bond amount provides the maximum of the surety's liability. The full penalty amount (even if it exceeds the bond) may still be sought from the principal. See, 19 C.F.R. Part 172 for administrative procedures.

C. Unlike liquidated damages claims, monetary penalties may be assessed in amounts that exceed the bond.

LIQUIDATED DAMAGES

I. In General

A. Claims for liquidated damages are contractual in nature arising from breaches of the terms of bonds.

B. By statute, the Secretary of the Treasury authorizes Customs officers to require bonds to ensure protection of the revenue or assure compliance with any provision of law that Customs may be authorized to enforce. See, 19 U.S.C. 1623(a).

C. 19 U.S.C. 1623 is an enabling statute. It is incorrect to cite section 1623 on the CF-5955A as the statute violated.

D. Parties to bond contract:

1. Principal – party who takes out bond as required by regulation (e.g., importer of record, bonded warehouse proprietor, bonded carrier, container freight station, centralized examination station, gauger, foreign trade zone operator, etc.)

2. Surety - underwriter of debt (corporate or individual surety)

3. Beneficiary (Customs)

E. Cancellation authority - Under the provisions of 19 U.S.C. 1623, the Secretary of Treasury may cancel (i.e., mitigate) claims for liquidated damages upon terms and conditions he deems appropriate. Authority to cancel all liquidated damages claims has been delegated to Customs.

F. Coverage

1. Single entry – covers a single entry of merchandise or a single arrival of a conveyance.

2. Continuous (term) – covers all transactions occurring during a set term (usually one year). Continuous bonds are automatically renewed on their anniversary date.

G. Customs Bond Conditions – see 19 C.F.R. Part 113, Subpart G

1. Basic importation and entry bond – see 19 C.F.R. 113.62

2. Basic custodial bond – see 19 C.F.R. 113.63

3. International carrier bond – see 19 C.F.R. 113.64

4. Repayment of erroneous drawback payments – see 19 C.F.R. 113.65

5. Control of containers and instruments of international traffic – see 19 C.F.R. 113.66

6. Commercial gauger and commercial laboratories – see 19 C.F.R. 113.67

7. Wool and fur products labeling acts and fiber products identification act – see 19 C.F.R. 113.68

8. Production of bills of lading – see 19 C.F.R. 113.69

9. Bond to indemnify U.S. for detention of copyrighted material – see 19 C.F.R. 113.70

10. Bond condition to observe neutrality – see 19 C.F.R. 113.71

11. Bond condition to pay court costs (claim and cost bond) – see 19 C.F.R. 113.72

12. Foreign trade zone operator bond – 19 C.F.R. 113.73

H. Termination of bonds – See, 19 C.F.R. 113.27

1. Termination by principal. A request by a principal to terminate a bond shall be made in writing to the port director and shall take effect on the date requested if the date is at least 10 business days after the date of receipt of the request. Otherwise the termination shall be effective on the close of business 10 business days after the request is received at the port.

2. Termination by surety. A surety may, with or without the consent of the bond principal, terminate a Customs bond on which it is obligated. The surety shall provide reasonable written notice of termination to the port director and the principal and shall be sent to both Customs and the principal by certified mail, with a return receipt requested. Thirty (30) days shall constitute reasonable notice unless the surety can show to the satisfaction of the port director that a lesser time is reasonable under the facts and circumstances.

3. Customs does not terminate bonds. The port director can require additional bonding from a principal and surety if he believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper the enforcement of Customs laws or regulations. See, 19 C.F.R. 113.13.

4. Termination of a bond does not extinguish any obligations under the bond that were undertaken while the bond was in force. Also, termination does not serve to cancel any claim for liquidated damages that has been assessed against a bond.

II. Statute of Limitations for Bond Violations-See, 28 U.S.C. 2415

A. The statute of limitations for the vast majority of liquidated damages cases is six years from the date the right of action accrues, i.e., the date of breach of the bond condition.

B. In some limited instances, the statute of limitations will run one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law (if that one year period expires beyond six years from the date of the breach of the bond condition).

C. Statute does not run:

1. if the violator (principal on the bond) is outside of the United States

2. if the violator is exempt from the legal process (e.g., insane)

3. if facts material to the right of action-are not known by the Customs so that the claim can not be issued

III. FP&F Officer's Mitigation Authority

A. All cases involving claims of $200,000 or less (with certain exceptions). See, 19 C.F.R. 172.11(a) and T.D. 00-58.

B. Exceptions; No dollar limit to the district director's cancellation authority in the following cases:

1. Late or non-filing of entry summary cases

2. Late or non-filing of reconciliation entry cases

C. If it is definitely determined that the act or omission forming the basis for the claim for liquidated damages did not occur, the claim may be canceled by the FP&F Officer without regard to assessed amount. See, 19 C.F.R. 172.11(b).

D. No action will be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to 19 C.F.R. 113.38(c)(3). See, 19 C.F.R. 172.13(b).

E. No action will be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice. See, 19 C.F.R. 172.13(a).

IV. Assessment of Claims

A. Maximum assessments - Claims for liquidated damages cannot be assessed against either the principal or the surety for an amount in excess of that for which the bond is written. See, Bill Curphy Company v. Elliott, 207 F.2d 103.

B. Minimum assessments - No claim should be assessed for less than $100, except where the law or regulation expressly provides that a lesser amount may be taken, e.g., a claim for late filing of SED or export documents necessary to complete outward manifest that is one day late. Assessment of $50 is mandated by regulation and is appropriate in that instance. Also, carnet violations may be issued for less than the minimum.

C. Assessing against correct bond.

1. The bond in effect at the time a transaction is commenced is responsible for obligations that arise and payment of any liquidated damages because breaches of those obligations. That bond will remain liable for breaches of any obligations that vest while the bond is in force. For example, the international carrier bond presented for the arrival and clearance of a conveyance will cover all obligations governing the reporting of arrival (including manifesting of cargo, unlading of merchandise, etc.) and clearance of that conveyance. If a violation is discovered in a subsequent audit, the bond presented for that arrival will be charged even if another bond has been obtained by the carrier in the interim.

2. Superseding Bonds - The importer of record on a CF-3461 who uses his bond to effect release of goods is responsible for the payment of estimated duties. A superseding bond filed in the name of another party (usually the actual owner or consignee) at the time of filing the entry summary will shift liability for any subsequent obligations (e.g., increased duties, redelivery notices issued after presentation of the superseding bond) but will not make the party named in the superseding bond liable for previously vested obligations such as payment of estimated duties.

D. Assessment amounts – Unless another amount is authorized by law or regulation, liquidated damages are generally assessed in an amount equal

to the entered value of the merchandise which is the subject of the bond breach or three times the entered value of that merchandise if the merchandise is restricted, prohibited or alcoholic beverages.

V. Offers in Compromise

A. FP&F Officers have been delegated the authority to accept offers in compromise in liquidated damages cases consistent with their authority to mitigate claims, i.e., when the amount assessed (not the amount offered) is $200,000 or less (or in any late or non-filing of an entry summary or late or non-filing of a reconciliation entry case).

B. Any decision by the FP&F Officer to accept an offer submitted with regard to a claim for liquidated damages must be approved by the Assistant Chief Counsel, Account Services Division, Indianapolis.

VI. Petitions for Relief

Petitions for relief from liquidated damages claims shall be considered timely if they are filed within 60 days of the date of issuance of the CF-5955A. See, 19 C.F.R. 172.3(b). Extensions may be granted by the FP&F Officer when the circumstances so warrant.

A. Pursuant to 19 C.F.R. 172.1(a), sureties are notified at the same time as principals of liability for liquidated damages. The concurrent notice shall be construed as a courtesy copy for sureties.

B. If the principal does not respond to the initial notice in 60 days, a demand on the surety is issued as soon thereafter as possible. The surety will then have 60 days to petition from the date of the demand. See, 19 C.F.R. 172.4.

C. Supplemental petitions must be filed within 60 days of the decision on the original petition for relief or within 60 days following an administrative or judicial decision with respect to issues serving as the basis for the claim for liquidated damages (whichever is later) unless another time to file such a supplemental petition is prescribed in the original decision. See, 19 C.F.R. 172.41.

D. Carnet Cases. The petitioning process for carnet cases differs from all other cases. See, Section III B., below, for information.

VII. Protests

Claims for liquidated damages are not protestable by the bond principal. See, United States v. Toshoku America, Inc., 879 F.2d 815 (Fed. Cir. 1989). If a

principal does file a protest, the FP&F Officer may either return the protest and inform the principal that protests may not be filed, or treat the protest as a petition for relief. A surety may protest a claim for liquidated damages.

If a protest is filed against a Customs action that forms the basis for the claim for liquidated damages (the most common example being the filing of a protest against a notice of redelivery), the claim for liquidated damages may be assessed, but any action on the claim should be held in abeyance pending the resolution of the protest (including any applications for further review).

VIII. Providing Copies of Bonds and Entries

A. Customs is not required to attach a copy of the bond to its demand for payment when Customs supplies sufficient information for the surety to locate the bond and ascertain its liability for payment. See, Peerless Insurance v. United States, 703 F. Supp. 104 (1988).

B. A formal demand containing the name and address of delinquent debtor, the bill number, billing date, port name, document date, entry number, the amount due and the importer number was found to be a sufficient demand. See, Peerless v. United States, supra.

IX. Defenses

The surety stands in the shoes of the principal and may raise any defense or issue that the principal could raise. The surety will receive the same mitigation that would have been due the principal.

X. Effect Of Liquidation

Liquidation of an entry does not affect the issuance or mitigation of claim for liquidated damages if the violation occurred while entry bond was still in effect.

Exception: If a Notice of Redelivery (CF-4647) is issued after liquidation has become final, a claim for liquidated damages for failure to redeliver cannot be assessed. See, 19 C.F.R. 141.113(g).

XI. Bankruptcy of Principal

Bankruptcy of a principal does not affect the liability of the surety. Any claims for liquidated damages should be pursued against the surety.

GUIDELINES FOR CANCELLATION OF LIQUIDATED DAMAGES CLAIMS
Ref: T.D. 94-38, T.D. 98-53, T.D. 99-29, T.D. 01-41 AND T.D. 02-20

I. Guidelines for Cancellation of Claims for Liquidated Damages for Failure to File Entry Summaries Timely (19 C.F.R. 142.15 and 113.62(b)), Failure to Pay Estimated Duties Timely (19 C.F.R. 113.62(a)(1)(i) and 113.62(l)(4)), and Failure to Remit Passenger Processing Fees Timely (19 C.F.R. 113.64(a)) (T.D. 94-38)

A. Failure to file entry summaries timely.

Claims for liquidated damages for failure to file entry summaries timely shall be issued and mitigated as follows:

1. Notification of liquidated damages incurred; modified CF-5955A**.** Notices of liquidated damages incurred shall be issued on a modified CF-5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

   a. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

   b. Option 2. Petition for relief. Pursuant to the provisions of 19 C.F.R. 172.2 and 172.4, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The FP&F Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the FP&F Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. Calculation of mitigated amount; entry summary filed late. The amounts to be set forth under Option 1 on the CF 5955A shall be calculated as follows:

a. Dutiable entry summary filed late. The bond principal or surety shall be charged an administrative fee of $100 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary.

b. Duty-free entry filed late. The bond principal or surety shall be charged an administrative fee of $100 plus interest on any withheld fees and taxes calculated at the rate of 0.1 percent (.001) per calendar day that the entry summary was late.

c. Dutiable entry rejected and re-filed late with no withheld duty, fees and taxes. The bond principal or surety shall be charged $100.

d. Dutiable entry filed timely but rejected, re-filed late with additional duties, fees and taxes owed. The bond principal or surety shall be charged an administrative fee of $100 plus interest calculated on withheld duties, fees and taxes only, calculated at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late.

3. Entry summary not filed.

a. If at the time the demand for liquidated damages is issued the entry summary has not been filed, a claim for liquidated damages for non-filing of the entry summary shall be issued. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must file the entry summary and pay estimated duties, fees and taxes or the surety must deposit estimated duties, fees and taxes.

b. Once the estimated duties, fees and taxes have been paid, a notice of claim for liquidated damages shall be issued for late filing of the entry summary, replacing the earlier notice of claim for non-filing of the entry summary. The late filing claim issued as a result of a non-filing situation shall be canceled in accordance with the following guidelines once the estimated duties, fees and taxes have been deposited.

i. The bond principal shall be charged an administrative fee of $200 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the entry summary was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the duty amount shall be rounded down to the next dollar.

ii. When the surety deposits estimated duties, fees and taxes, the surety shall be charged an administrative fee of $200 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of the estimated duties, fees and taxes.

c. If no response from the principal is received within 60 days from the date of issuance of the non-filing claim, a claim for liquidated damages for the non-filing shall be issued to both the principal and surety, but no Option 1 mitigation shall be offered.

4. Late filing of statement summaries.

a. If a Customs broker files an entry statement including multiple entry summaries for processing in an untimely manner, the FP&F Officer may, in his or her discretion, cancel all claims for liquidated damages arising because of the late filing in accordance with the following standard:

The broker shall be charged, as an Option 1 amount, an administrative fee of $500 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary. A broker who is responsible for late submission of a statement summary shall be afforded this mitigation with regard to any first violation. This mitigation may be afforded with regard to a subsequent violation, based upon the discretion of the district director.

b. Petition for relief.

i. If the broker files a petition for relief which demonstrates that the violation did not occur or occurred as a result of Customs error, all claims arising from the late filing should be canceled without payment.

ii. If the broker files a petition for relief which fails to demonstrate that the violation did not occur or occurred as a result of Customs error, the claim shall be canceled upon payment of $700 plus interest on any withheld fees and taxes calculated at the rate of 0.1 percent (.001) per calendar day that the entry statement was late.

c. Failure to pay Option 1 amount or petition for relief.

If a broker fails to pay the Option 1 amount or fails to petition for relief, Customs shall issue appropriate claims for liquidated damages against all bond principals and sureties and the mitigation guidelines enumerated in paragraph B. above shall be followed. In no case shall the $500 plus interest Option 1 amount afforded to brokers in these cases be afforded to principals or sureties.

5. Suspension of immediate release privileges. If an importer fails to meet his obligations with regard to claims for liquidated damages for late filing of entry summaries, the FP&F Officer is always empowered to recommend to the port director suspension of immediate release privileges of the importer. Alternatively, the FP&F Officer may choose to assess liquidated damages but not offer an Option 1 alternative.

B. Late or non-payment of estimated duties.

Claims for liquidated damages for late or non-payment of estimated duties shall be issued in an amount equal to double the late-paid estimated duties, fees, taxes and charges or $1,000 (whichever is greater) and mitigated as follows:

1. Notification of liquidated damages incurred; estimated duties not paid. If at the time the demand for liquidated damages is issued the estimated duties, fees and taxes have not been paid, the claim shall be issued on a CF-5955A citing 19 C.F.R. 113.62(a)(1)(i) and 19 C.F.R. 113.62(l)(4) as the bond conditions violated. No

mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must pay estimated duties, fees and taxes or the surety must deposit estimated duties, fees and taxes.

2. Notification of liquidated damages incurred; estimated duties paid late; modified CF 5955A. If at the time of issuance of the demand for liquidated damages, estimated duties, fees and taxes have been paid, the Notices of Claim for Liquidated Damages incurred shall be issued on a modified CF-5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

   a. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

   b. Option 2. Petition for relief. Pursuant to the provisions of 19 C.F.R. 172.2 and 172.4, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The FP&F Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs or financial institution error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs or financial institution error, the FP&F Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

3. Calculation of Option 1 amounts.

   a. If estimated duties, taxes and charges are paid untimely, but payment is made before Customs is required to issue a Notice of Claim as described in Subparagraph B(1) above, the bond principal or surety shall be charged an administrative fee of $100 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation

guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary.

b. If estimated duties, taxes, fees and charges are paid untimely by the bond principal after Customs has issued a claim for liquidated damages for non-payment of estimated duties in accordance with Subparagraph B(1) above, the bond principal shall be charged an administrative fee of $200 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the payment was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the duty amount shall be rounded down to the next dollar.

c. When the surety deposits estimated duties, fees and taxes, in response to a demand made in accordance with Subparagraph B(1) above, the surety shall be charged an administrative fee of $200 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of the estimated duties, fees and taxes.

C. Failure to remit collected passenger processing fees.

Claims for liquidated damages for untimely payment to Customs of collected passenger processing fees shall be issued in an amount equal to two times the passenger processing fees which have been collected but not timely paid to Customs and mitigated as follows:

1. Notification of liquidated damages incurred; passenger processing fees not remitted. If at the time the demand for liquidated damages is issued the collected fees have not been remitted to Customs, the claim shall be issued on a CF-5955A citing 19 C.F.R. 113.64(a) and 19 C.F.R. 24.22(g) as the bond condition and regulations violated. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must remit the collected fees or the surety must deposit an amount equal to those unremitted fees.

2. Notification of liquidated damages incurred; passenger processing fees paid late; modified CF 5955A. If at the time of issuance of the demand for liquidated damages, the collected fees have been remitted, the Notices of Claim for Liquidated Damages incurred shall be issued on a modified CF-5955A. The modified form shall

specify two options from which the petitioner may choose to resolve the demand.

a. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. Option 2. Petition for relief. Pursuant to the provisions of 19 C.F.R. 172.2 and 172.4, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The FP&F Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the FP&F Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

3. Calculation of Option 1 amounts.

a. If the collected passenger processing fees are remitted untimely, but are remitted so that Customs is not required to issue a Notice of Claim as described in Subparagraph C(1) above, the bond principal or surety shall be charged an administrative fee of $200 plus interest on the unremitted fees at the rate of 0.1 percent (.001) per calendar day that the fees were late. The interest amount shall be rounded up to the next dollar.

b. If the collected but unremitted fees are remitted untimely by the bond principal after Customs has issued a claim for liquidated damages for failure to remit those fees in accordance with Subparagraph C(1) above, the bond principal shall be charged an administrative fee of $1,000 plus interest on the unremitted fee at the rate of 0.1 percent (.001) per calendar day that the payment was late. The interest amount shall be rounded up to the next dollar.

c. When the surety deposits an amount equal to the collected but unremitted fees, in response to a demand made in

accordance with Subparagraph C(1) above, the surety shall be charged an administrative fee of $1,000 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of an amount equal to the collected but unremitted fees.

D. Referral of petitions to Headquarters.

The FP&F Officer may always refer a petition for relief to Customs Headquarters, Penalties Branch, for advice or guidance. This referral is at the discretion of the FP&F Officer and shall not be allowed to a petitioner as a matter of right.

II. Guidelines for Cancellation of Claims for Liquidated Damages for Violation of Temporary Importation Bonds (19 C.F.R. 10.39) (T.D. 94-38)

A. Claims are assessed for two times the duties plus merchandise processing fees or 110 percent of the duties plus merchandise processing fees.

NOTE: Do not include harbor maintenance fees in this calculation, as they are paid on TIB entries) unless such different amount has been authorized in accordance with the provisions of 19 C.F.R. 10.31(f).

B. Cancel the claim without payment if the breach was for the benefit of the United States.

C. Cancel the claim upon payment of an amount equal to the merchandise processing fee that would have been due on the merchandise had an entry for consumption been filed (but not less than $100) if:

1. The breach was due wholly to circumstances beyond the importer's control and which could not have been reasonably anticipated i.e. destruction by accidental fire, documented theft

2. Merchandise which was the subject of the entry would have been entitled to free entry as domestic products exported and returned or under any other duty-free provision.

D. If the merchandise was exported or destroyed timely but Customs was not notified in a timely manner so as to cancel the bond, cancel the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the claim (depending on aggravating or mitigating factors present), but not less than $100.

E. If the merchandise was exported or destroyed but outside the bond period, cancel the claim for liquidated damages upon payment of an amount between 5 and 10 percent of the claim (depending on aggravating or mitigating factors present), but not less than $200.

1. Examples of aggravating factors:

   a. Importer is uncooperative, e.g., fails to provide information to Customs.
   b. A large number of violations of this type by the importer in relation to the total number of transactions engaged in.
   c. Importer's willful disregard of or carelessness toward responsibilities under applicable statutes, regulations or bond.

2. Examples of mitigating factors:

   a. Importer cooperates with Customs personnel in resolution of the case.
   b. Importer takes immediate remedial action.
   c. Lack of experience in importing.
   d. A small number of violations of this type in relation to the number of transactions engaged in.

F. If Customs designates a TIB entry for examination upon exportation or for supervision of destruction and the importer fails to obtain export examination or supervision of destruction, cancel the claim upon payment of an amount between 10 and 25 percent of the claim, but not less than $300, depending on the presence of aggravating or mitigating factors.

G. If the merchandise is sold domestically, the following guidelines should be followed

1. Grant relief equal to one times the duty on merchandise which is sold but later exported within the bond period.

2. Grant relief to one and one-half times the duty on merchandise, which is sold but later exported outside the bond period.

3. If merchandise is sold but later exported outside the bond period, grant no relief if the bond amount represents 110 percent of the duties on the merchandise.

H. Grant no relief from the claim for liquidated damages in the following cases:

1. When the merchandise has entered into the commerce of the United States. If a petitioner claims the merchandise has been exported or destroyed, but does not present satisfactory proof of such exportation or destruction, the merchandise shall be presumed to have entered the commerce for purposes of these guidelines.

2. When the importer requests that a TIB entry be amended to a consumption entry after the merchandise has been released from Customs custody.

3. When TIB merchandise is sold, but not exported.

III. Guidelines for Cancellation of Claims Involving Carnets (T.D. 02-20)

A. Assessment of claims

1. Articles entered under an ATA or TECRO/AIT carnet must be re-exported or destroyed prior to the expiration of the carnet period.

2. Failure to re-export or destroy those articles in the time period prescribed will result in the assessment of liquidated damages in an amount equal to 110 percent of the duties due on said articles.

3. The term “duties” shall not include Merchandise Processing Fees or Harbor Maintenance Fees for carnet claim assessment purposes.

4. All claims are assessed against the guaranteeing association, the United States Council for International Business (USCIB).

5. No claim may be established more than one year after the expiration of the period for which the carnet was valid.

B. Petitions for relief

1. Petitions for relief must be filed within 6 months of the date of the claim.

2. The petition must provide proof of re-exportation or destruction of the articles.

3. If no petition is submitted in the 6-month period, the USCIB must provide full payment of the claim.

4. Such payment must be made within 30 days from the end of the 6-month period.

5. The USCIB will then have 90 days from the date of payment to submit adequate proof of re-exportation or destruction in order to receive a refund.

C. Proof of re-exportation or destruction; regularization fees.

1. The ATA Convention allows Customs officials to charge a regularization fee for assisting the foreign issuing association in avoiding the liquidated damages. The regularization fee is a service fee and is not liquidated damages. Regularization fees shall be charged as described herein.

2. If the petitioner provides a re-exportation counterfoil, unconditionally discharged by Customs, then the claim will be closed without payment. If payment of liquidated damages has been made, then a full refund shall be afforded. The term "unconditionally discharged" means that no remarks were noted by a Customs officer in the appropriate sections of the counterfoil.

3. If the petition provides an appropriate importation carnet voucher, signed by a foreign Customs officer, the claim will then be regularized upon payment of $50.

4. If the petitioner provides any other acceptable proof of re-exportation or destruction, then the claim will be regularized upon payment of $100.

5. Small dollar value carnets. If the assessed amount for breach of a carnet is $100 or less (including carnets for zero duties), the claim still must be assessed. It is possible, based upon the type of proof of re-exportation or destruction provided, that payment of a regularization fee in excess of the assessed liquidated damages amount, could occur. Unlike other liquidated damages claims, the amount of the bond does not limit liability for payment of the regularization fee, which is a fee for service. (See, section F. below)

D. Partial re-exportation or destruction.

1. In any situation where partial re-exportation or destruction occurs, if that re-exportation or destruction occurs within the carnet period and proof of re-exportation or destruction other than an unconditional discharge by a Customs officer is provided, Customs will collect a regularization fee with regard to that portion of

merchandise for which adequate proof of re-exportation or destruction is provided.

2. If the partial re-exportation or destruction occurs beyond the carnet period, mitigation may be afforded (see Section E. below).

3. Full liquidated damages will be charged on that portion of the merchandise for which neither proof of re-exportation or destruction is provided. As such, partial liquidated damages and a regularization fee could be collected in closure of the same carnet.

4. If a re-exportation counterfoil showing an unconditional discharge as to part of a shipment of merchandise is provided timely, no collection will be made as to that merchandise.

E. Late Re-Exportation.

1. If merchandise is re-exported (or destroyed) after the one-year period and a re-exportation counterfoil indicating unconditional discharge by a Customs officer is provided timely, the claim shall be cancelled without payment.

2. If merchandise is re-exported (or destroyed) 180 days or more after the expiration of the carnet period and a re-exportation counterfoil indicating an unconditional discharge by a Customs officer is not provided, no relief from the claim shall be afforded.

3. If merchandise is re-exported (or destroyed) more than 90 days but less than 180 days after the expiration of the carnet period and adequate proof of re-exportation or destruction other than a re-exportation counterfoil with an unconditional discharge by a Customs officer is provided, the claim for liquidated damages may be cancelled upon payment of 50 percent of the liquidated damages assessed amount but not less than $100.

4. If merchandise is re-exported (or destroyed) 90 days or less after the expiration of the carnet period and adequate proof of re-exportation or destruction other than an exportation counterfoil with an unconditional discharge by a Customs officer is provided, the claim for liquidated damages may be cancelled upon payment of 25 percent of the claim but not less than $50.

F. Late Re-Exportation of Duty-free and Zero Duty Merchandise.

1. If merchandise is duty-free or has a zero duty rate, claims for liquidated damages should still be assessed.

2. Claims for duty-free and zero duty Carnets will be processed in accordance with these guidelines.

G. Issuance of claims.

1. If a claim is received by the USCIB after the one-year period has expired, the claim will not be pursued.

2. Claims issued by Customs more than 30 days prior to the end of the one-year period will be presumed to be timely.

3. Claims should be issued by Customs as promptly as possible after discovery.

IV. Guidelines for Cancellation of Claims Involving Failure to Redeliver Merchandise into Customs Custody or Failure to Comply With a Notice of Refusal of Admission Issued by Another Government Agency (19 C.F.R. 141.113, 113.62(d) or 113.62(e)) (T.D. 94-38)

A. Statutes and regulations enforced on behalf of the Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC).

1. The provisions of 21 C.F.R. 1.97 (FDA Regulations) and 16 C.F.R. 1500.271 (CPSC Regulations) require that the port director of Customs and the district director of the other agency be in agreement as to the amount to be accepted in cancellation of the claim for liquidated damages. All petitions for relief received in FDA and CPSC cases must be referred to those agencies for recommendation. By regulation Customs must follow the recommendation of FDA or CPSC.

2. EXCEPTION: When the sole requirement which has been imposed by FDA on refused merchandise is exportation or destruction under Customs supervision, apply guidelines to be used in the case of other Customs statutes or regulations in Subparagraph K below.

3. If any merchandise which is requested for examination by the other agency is available for examination at the place designated by such other agency but is not examined for any reason, Customs will not issue liquidated damages with regard to such merchandise or will cancel any claim related to such merchandise without payment.

4. If there is a compelling reason to depart from the recommendation of the other agency, state such reason in a referral memorandum and forward the case record to Customs Headquarters, Office of Regulations and Rulings, Penalties Branch.

B. Statutes and regulations enforced on behalf of other agencies (not FDA or CPSC).

1. Any petition received should be forwarded to the other agency for recommendation. As a rule, the recommendation of the other agency as to appropriate mitigation will be followed.

2. Customs is not required by regulation to follow the recommendation of agencies other than FDA and CPSC. If the FP&F Officer finds the recommendation of the other agency to be arbitrary and capricious, he may modify the recommendation to be consistent with Customs guidelines.

C. Country of origin marking cases - merchandise marked with the country of origin after liquidation of the entry and outside the 30-day marking period.

1. If the merchandise is marked outside the 30-day marking period <u>and</u> after liquidation of the entry, the entry should be reliquidated if liquidation has not become final, and marking duties should be assessed and collected.

2. If marking duties have been assessed and collected, cancel the claim upon payment of one percent of the value of the merchandise, but not less than $100 for a first-time violation. Cancel upon payment of between one and five percent but not less than $250 for a subsequent violation.

3. Grant no relief in any case until marking duties are assessed and collected; however, if liquidation is final and marking duties cannot be assessed, cancel upon payment of an amount equal to 11 percent of the value of the merchandise but not less than $100 for a first violation and between 11 and 15 percent but not less than $250 for a subsequent violation.

D. Country of origin marking cases - merchandise marked outside the 30-day period, but before liquidation.

1. If the merchandise is properly marked with the country of origin outside the 30-day period but before liquidation of the entry, liquidated damages are appropriate, but marking duties are <u>not</u> due.

2. For a first time violation, if the merchandise has been marked under Customs supervision outside the 30-day period, cancel the claim upon payment of an amount equal to one percent of the value of the merchandise, but not less than $100.

3. For subsequent violations, cancel upon payment of an amount between one and five percent of the value of the merchandise but not less than $250 depending upon the number of violations and the presence of aggravating and mitigating factors.

E. Marking cases - merchandise not marked with the country of origin.

1. Relief from liquidated damages incurred is contingent upon deposit of marking duties. See, 19 C.F.R. 134.54(c).

2. For a first-time violation, where marking duties have been assessed and collected, cancel the claim upon payment of an amount between 10 and 25 percent of the value depending on the presence of aggravating or mitigating factors.

3. If it is a subsequent violation and marking duties have been assessed and collected, cancel the claim upon payment of an amount between 25 and 50 percent of the value of the merchandise.

4. If marking duties have been assessed but not collected, grant no relief. If liquidation of the entry has become final, thereby barring the assessment of marking duties, cancel as follows:

   a. If it is a first-time violation, cancel the claim for liquidated damages upon payment of an amount between 20 and 35 percent of the value.
   b. If it is a second or subsequent violation, cancel the claim for liquidated damages upon payment of an amount between 35 and 60 percent of the value.

5. Examples of aggravating factors:

   a. Offender is uncooperative, e.g., fails to provide information to Customs when requested.
   b. A large number of violations of this type by the offender in relation to the total number of transactions engaged in.
   c. Offender's experience in importing.
   d. Offender's willful disregard or carelessness toward responsibilities under the applicable statutes or regulations.

6. Examples of mitigating factors:

   a. Contributory Customs error, e.g., offender demonstrates that he acted in accordance with instructions given by Customs personnel.
   b. Offender cooperates with Customs personnel in resolution of the case.
   c. Offender takes immediate remedial action.
   d. Offender's lack of importing experience.
   e. A small number of violations of this type by the offender in relation to the number of transactions engaged in.

F. False designation of origin cases.

1. When merchandise is marked with a false designation of origin, and a claim for liquidated damages for failure to redeliver that merchandise results and the offender can demonstrate that the merchandise was marked with the correct country of origin outside the redelivery period designated in the notice of redelivery, the claim should be canceled upon payment of an amount equal to one percent of the value of the merchandise, but not less than $100 for a first violation. For subsequent violations of this type, the claim should be canceled upon payment of an amount equal to one to five percent of the value of the merchandise, but not less than $250.

2. When merchandise is marked with a false designation of origin and the merchandise is not properly marked with the true country of origin and a first violation is involved, the claim should be canceled upon payment of an amount between 25 and 50 percent of the value of the merchandise.

3. For a subsequent violation where the merchandise is not properly marked with the true country of origin, the claim should be canceled upon payment of an amount equal to no less than 50 percent of the value of the merchandise.

G. Quota/visa violative merchandise.

1. If the importer fails to redelivery visa-violative merchandise, but subsequent to the assessment of the claim produces a valid visa or visa waiver, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than $100, depending on the presence of aggravating or mitigating factors.

2. If no visa is ever produced, and it is a first-time violation, cancel the claim upon payment of an amount between 20 and 30 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. If no visa is ever produced, and it is a subsequent violation, cancel the claim upon payment of no less than 40 percent of the value of the merchandise.

4. If the importer fails to redeliver quota merchandise, and it is a first-time violation, cancel the claim upon payment of an amount between 25 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating circumstances.

5. For subsequent quota redelivery violations, cancel the claim upon payment of no less than 50 percent of the value of the merchandise.

6. For merchandise that is not redelivered which is subject to both quota and visa restrictions, follow guidelines for cancellation of claims relating to quota-violative merchandise.

H. Copyright-violative merchandise.

1. If the importer fails to redeliver copyright-violative merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise from the copyright holder, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than $100.

2. If no authorization is received from the copyright holder, cancel a first-time violation upon payment of an amount between 20 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. For subsequent violations where no authorization of the copyright holder is received, cancel the claim upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In order to receive any relief, extraordinary mitigating factors must be shown.

I. Trademark-violative merchandise.

1. If the importer fails to redeliver trademark-violative merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise from the trademark holder, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than $100.

2. If no authorization is received from the trademark holder, cancel a first-time violation upon payment of an amount between 20 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. For subsequent violations where no authorization of the trademark holder is received, cancel the claim upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In order to receive any relief, extraordinary mitigating factors must be shown.

4. As a general rule, if the merchandise is counterfeit, no relief shall be granted. If the merchandise is genuine, that fact shall be considered as a mitigating factor in accordance with the above guidelines.

J. Failure to provide a sample.

1. If the importer fails to provide a sample within the time period prescribed on the request for a sample, but then does provide the sample subsequent to the issuance of liquidated damages and can prove to the satisfaction of the import specialist that the sample is, in fact, from the shipment in question and the merchandise is not violative of any provision of law regarding its admissibility, the claim for liquidated damages may be canceled upon payment of an amount between one and five percent of the value of the merchandise in the shipment, but not less than $100.

2. If the importer fails to provide a sample, cancel the claim consistent with guidelines for the violation which the sample was being examined. For example, if a sample is sought to determine whether merchandise is copyright-violative, and the importer fails to provide a sample, cancel the claim consistent with guidelines for failure to redeliver copyright-violative merchandise where no retroactive license is given.

K. Other Customs-enforced statutes and regulations.

1. If the merchandise is not redelivered for any reason not enumerated above or is redelivered outside the time period

prescribed for redelivery in the notice of redelivery, the claim may be canceled upon payment of between 1 and 10 percent of the value of the merchandise depending upon the presence of aggravating or mitigating factors.

2. For subsequent violations, cancel the claim upon payment of an amount between 10 and 50 percent of the value of the merchandise, depending upon the presence of aggravating or mitigating factors.

3. If the issue is Customs supervision of exportation or destruction of merchandise which is the subject of a notice of refusal of admission issued by FDA or CPSC, and such exportation or destruction occurs, but not under supervision, cancel the claim in accordance with guidelines enumerated in subparagraphs K.1. or K.2. directly above.

4. If exportation or destruction (when ordered) never occurs, grant no relief.

5. Claims for liquidated damages arising for failure to comply with special marking for watch and clock movements, cases and dials as required by Chapter 91, Additional U.S. Note 4, United States Tariff Schedule (19 U.S.C. 1202) shall be canceled in accordance with the guidelines promulgated subparagraphs K(1) or K(2) directly above.

V. Guidelines for Cancellation of Claims Arising From Failure to Provide Missing Documents (19 C.F.R. 113.42) (T.D. 94-38)

A. Except when another period is fixed by law or regulation, any document for the production of which a bond is given shall be delivered within 120 days from the date of notice from Customs requesting such document or any extension of time that may be granted under 19 C.F.R. 113.43.

B. Issuance of modified CF-5955A. A modified CF5955A similar to that issued in cases involving late filing of entry summaries shall be issued in missing document cases.

1. <u>Option 1.</u>

a. Petitioner may pay a specified sum within 60 days and the case will be closed.
b. Such payment shall act as a waiver of his right to file a petition.

2. Option 2.

   a. Normal petitioning procedures are in effect.
   b. Mitigation shall not be permitted to an amount less than $100 greater than that afforded under Option 1 unless extraordinary mitigating factors can be shown.
   c. Petitions shall be limited to the following issues:
      i. Circumstances causing the delay in filing of the document.
      ii. Extent of the lateness.
      iii. Past record of the importer.
      iv. Lack of intent to file documents untimely.

C. Missing documents not provided. When a claim for liquidated damages is issued and the missing documents have not been provided (as opposed to being provided untimely), a modified CF-5955A should not be issued.

D. Calculation of mitigated amount.

1. Document other than invoice filed late - cancel upon payment of $100.

2. Invoice filed late:

   a. No resulting duty advance - cancel upon payment of $100.
   b. Resulting duty advance - cancel upon payment of $100 plus 0.1 percent of amount of duty advance for each calendar day late.

3. Document not filed:

   a. If absence of document will not affect duty due, cancel upon payment of $200.

   b. If absence of document impedes Customs ability to appraise merchandise, cancel upon payment of $200 plus further duties determined by Customs to be owing after a reasonable appraisal of merchandise is made.

4. Document upon which a claim of conditionally free or reduced duty entry is based:

   a. Filed late - Cancel upon payment of $100 plus 0.1 percent per calendar day late of duty that would have been due had the entry been liquidated as fully dutiable. This mitigation is

not affected by the fact that the late-filed documents substantiated the conditionally free or reduced duty claim.

b. Non-filing.
   i. For the first violation cancel upon payment of $200 plus liquidation of the entry as fully dutiable.
   ii. For second or subsequent violation, cancel upon payment of $400 plus liquidation of the entry as fully dutiable.

E. Continuous course of conduct.

1. By an importer. If there is a continuing course of conduct by an importer where conditionally free entry is claimed, but documents supporting such claim are regularly missing from the entry and are not provided, the presumption after the fourth violation shall be one of bad faith in the filing of the entry as conditionally free. No relief from the claim should be afforded.

2. By a customs broker. If the violator is a Customs broker, a civil monetary penalty for violation of the provisions of title 19, United States Code, section 1641, may be appropriate.

F. Second or subsequent offenses.

Except as noted in subparagraph E above, second or subsequent offenses will not be considered in cancellation of claims other than as relating to importers' past record in consideration of petitions for relief.

VI. Guidelines for Cancellation of Claims Arising From Failure to Timely File Shipper's Export Declarations (15 C.F.R. 30.24) and Other Export Documents (19 C.F.R. 113.64(c)) (T.D. 94-38)

A. Notification of liquidated damages; modified CF-5955A. Notices of liquidated damages incurred may be issued on a modified CF-5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

1. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

2. Option 2. Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The FP&F Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the FP&F Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount; however, in no case can the amount afforded in mitigation exceed the amount of the original claim.

B. Assessment amounts.

1. $50 per day for each of first three days late.

2. $100 per day for each day late beyond three.

3. Maximum assessment is $1,000.

C. Mitigation guidelines.

1. For each offense, the claim for liquidated damages may be canceled upon payment of an amount between 25 and 50 percent of the claim, but not less than $100.

2. **NOTE**: All claims assessed for $50 or $100 (1 or 2 days late) will receive no mitigation.

3. If a carrier has a poor record of compliance with shipper's export declaration filing requirements as compared to other carriers in a port, and mitigation in accordance with subparagraph (B)(1) above has had no deterrent effect, relief from the claim for liquidated damages may be denied.

D. Slot Charters.

There is nothing in the regulations which bars the holder of a slot charter from obligating his bond in lieu of that submitted by the arriving or departing carrier or agent of that carrier for any liquidated damages that may arise due to his (the holder of the slot charter's) malfeasance.

E. These guidelines should also be used for claims for liquidated damages arising from violation of the provisions of 19 C.F.R. 113.64(c) for late filing of export documents (e.g., bills of lading) in order to complete the outward manifest.

VII. Guidelines for Cancellation of Claims for Shortage, Irregular Delivery, Non-Delivery or Delivery Directly to the Consignee of In-bond Merchandise (19 C.F.R. 18.8) (T.D. 99-29)

A. Assessment.

All claims for liquidated damages assessed for breach of the provisions of 19 C.F.R. 18.8 for shortage, irregular delivery, non-delivery or delivery directly to the consignee of in-bond merchandise will be assessed for the value of the merchandise or three times the value of the merchandise if the merchandise is restricted or is alcoholic beverages.

B. Documents filed late or merchandise delivered late.

1. Modified CF 5955A. Notices of liquidated damages incurred for this violation may be issued on a modified CF-5955A. If a modified form is issued, it shall specify two options from which the petitioner may choose to resolve the demand.

   a. Option 1. The bond principal or surety may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, the principal or surety waives the right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

   b. Option 2. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The Fines, Penalties and Forfeitures Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the Fines, Penalties and Forfeitures Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. If merchandise is delivered untimely to the port of destination or exportation (not within 15 days if transported by air, 30 days if transported by vehicle, or 60 days if transported by vessel) but is otherwise intact, the Fines, Penalties and Forfeitures Officer may

cancel the claim upon payment of an amount between $100 or $500, depending on the presence of aggravating or mitigating factors.

3. If merchandise is delivered timely but the documentation is not filed with Customs within 2 days of arrival in the port of delivery, the Fines, Penalties and Forfeitures Officer may cancel the claim upon payment of an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the bonded carrier consistently fails to deliver paperwork timely and Customs business is impeded by these repeated failures, the Fines, Penalties and Forfeitures Officer may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.

C. Failure to deliver, shortage or delivery directly to the consignee.

1. If the in-bond carrier can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the in-bond carrier can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not delivered, delivered short or delivered directly to the consignee could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the in-bond carrier comes forward and discloses the violation to Customs, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus $50.

5. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was not designated for Customs examination and the in-bond carrier can show that the merchandise

was entered and duties, fees, taxes and charges paid thereon (in the case of an IT) or that the merchandise was exported (in the case of an IE or T&E), the claim for liquidated damages may be canceled upon payment of an amount between $250 and $2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was not designated for Customs examination and the in-bond carrier cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon (in the case of an IT), or that the merchandise was exported (in the case of an IE or T&E), the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $300 and $2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was designated for Customs examination and the in-bond carrier can show that the merchandise was entered and duties, fees, taxes and charges paid thereon (in the case of an IT), or that the merchandise was exported (in the case of an IE or T&E), the claim for liquidated damages may be canceled upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

8. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was designated for Customs examination and the in-bond carrier cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon (in the case of an IT), or that the merchandise was exported (in the case of an IE or T&E), the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can

never exceed the value of the claim for liquidated damages.

9. If the in-bond carrier has a history of not delivering, delivering short or delivering directly to the consignee, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of HQ, ORR, Penalties Branch shall be sought to determine appropriate mitigation.

10. Theft of in-bond merchandise. In-bond merchandise which is stolen from the carrier prior to having been delivered to Customs at the port of destination or exportation shall be treated as having been not been delivered. The carrier will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1448 or 1499 may also be assessed against the individuals who steal the merchandise from the bonded carrier. Theft of merchandise in those instances will be mitigated in accordance with guidelines articulated in Section III.B.10. of the Guidelines for Delivery of Cargo Without Customs Authorization in the Vessel Section of this Handbook.

D. Mitigating and Aggravating Factors.

1. Mitigating Factors

a. Carrier inexperienced in the handling of in-bond cargo.
b. Carrier has a general good performance and low error rate in the handling of in-bond cargo.
c. Carrier demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. Carrier refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
b. Carrier has a rising error rate, which is indicative of deteriorating performance in the delivery of in-bond cargo.

E. Restricted or Prohibited Merchandise.

If Customs has reason to believe that the merchandise which was not delivered, delivered short or delivered directly to the consignee may have been restricted or prohibited from entry, that will be considered an

extraordinary aggravating factor and will result in mitigation at the high end of the mitigation range.

VIII. Guidelines for Cancellation of Claims Arising From Violation of Warehouse Proprietor's Bond (19 C.F.R. PART 19, 19 C.F.R. 113.63) (T.D. 94-38)

The following guidelines apply to violations involving bonded warehouse proprietors and duty-free store operators.

A. Defaults Involving Merchandise. Defaults involving merchandise include violations involving merchandise which:

1. Cannot be located or accounted for in a bonded warehouse.

2. Has been removed from a bonded warehouse without a Customs permit.

3. Has been deposited, manipulated, manufactured, or destroyed in a bonded warehouse:

   a. Without proper Customs permit;
   b. Not in accordance with the description of the activity in the permit; or
   c. In the case of Class 6 warehouses, not manufactured in accordance with the formula specified in section 19.13(e) of the Customs Regulations (19 C.F.R. 19.13(e)).

B. Defaults Not Involving Merchandise. Defaults not involving merchandise include those instances of failure, other than those involving merchandise, to comply with Customs laws and regulations. The same act shall not be regarded as both a default involving merchandise and a default not involving merchandise.

C. Defaults Involving Merchandise; Petitions. Petitions received in cases arising from defaults involving merchandise should be processed in accordance with the following.

1. If the breach resulted from clerical error or mistake (a non-negligent inadvertent error), the claim should be canceled without payment.

2. If the breach resulted from negligence but no threat to the revenue occurred (e.g., the merchandise was not manipulated in accordance with the permit to manipulate) the claim should be canceled upon payment of an amount between one and 15 percent of the value of the merchandise involved in the breach, but not less

than $100 nor more than $10,000. If the merchandise involved in the breach is restricted merchandise, that shall be considered an aggravating factor which shall result in mitigation on the higher end of the range.

3. If the breach resulted from negligence and a potential loss of revenue resulted (e.g., merchandise cannot be located in the warehouse, merchandise is removed from the warehouse without a permit), the claim shall be canceled upon payment of an amount between one and three times the loss of revenue (loss of revenue to include duties, fees and taxes), but not less than $100. If the merchandise involved in the breach is restricted merchandise, the claim shall be canceled upon payment of an amount between three and five times the loss revenue but in no case less than 10 percent of the value of such merchandise.

4. If the breach is intentional (e.g., the warehouse proprietor conspires to remove merchandise from the warehouse without proper entry), there will be no relief granted from liquidated damages.

5. Aggravating factors.

   a. Principal's failure or refusal to cooperate with Customs.
   b. Large number of violations compared to number of transactions handled.
   c. Experience of principal.
   d. Principal's carelessness or willful disregard toward its responsibilities.

6. Mitigating factors.

   a. Contributory error by Customs.
   b. Small number of violations compared to number of transactions handled.
   c. Remedial action taken by principal.
   d. Cooperation with Customs.
   e. Lack of experience of principal.
   f. Merchandise which cannot be located or released without permit is returned to Customs custody.

D. Defaults Not Involving Merchandise; Modified CF 5955A. Defaults not involving merchandise shall be processed in accordance with the following guidelines.

1. Modified CF 5955A. Notices of liquidated damages incurred may be issued on a modified CF-5955A. The modified form shall

specify two options from which the petitioner may choose to resolve the demand.

a. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. Option 2. Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The FP&F Officer shall grant full relief when the petitioner demonstrates that the violation did not occur. If the petitioner fails to demonstrate that the violation did not occur, the FP&F Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. Maximum Assessments. In cases involving violations which do not involve merchandise which are assessed at $1,000 for each business day that the violation continues, a maximum of $10,000 shall be assessed for any one such continuing violation unless the district director can articulate a legitimate enforcement purpose for exceeding said limit. These claims shall be canceled in conformance with the terms of these guidelines.

3. Clerical Error. If the breach resulted from clerical error, the claim may be canceled without payment.

4. Negligence. If the breach resulted from negligence, the claim may be canceled upon payment of an amount between $100 and $250 per default actually assessed, depending on the presence of aggravating or mitigating factors. For example, if a document is filed 100 days late, Customs, by policy, will generally limit the assessment to $10,000. Mitigation will be based on the $10,000 actual assessment and not relate to the $100,000 potential assessment.

5. Intentional violation. If the breach was intentional, no relief shall be granted.

IX. Guidelines for Cancellation of Claims Arising From Violation of Airport Security Regulations (19 C.F.R. 122.181 ET.SEQ.) (T.D. 94-38)

A. Assessment of claims for liquidated damages; Modified CF 5955A. Notices of liquidated damages incurred may be issued on a modified CF-5955A if the violation is of a type that warrants mitigation. The modified form shall specify two options from which the petitioner may choose to resolve the demand. The modified form should not be offered in any situation where the district director anticipates that substantial factual or legal issues may be raised.

1. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

2. Option 2. Petition for relief. Pursuant to the provisions of 19 C.F.R. 172.2 and 172.4, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The FP&F Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the FP&F Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

B. Mitigation Guidelines.

1. Failure to conduct a background investigation or failure to retain background investigation records:

   a. No mitigation unless extraordinary mitigating circumstances exist.
   b. An example of an extraordinary mitigating circumstance would be destruction of records by accidental fire or act of God.

2. Unauthorized entry in secured area, failure to openly display or possess identification card, strip or seal or failure to surrender identification upon demand by an authorized Customs officer, cancel the claim upon payment of an amount between $250 and $500.

3. Failure to return, failure to report loss or theft of identification card, strip or seal or failure to notify port director that employee no longer requires access to a secured area:

   a. First violation - cancel upon payment of $500.
   b. Second or subsequent violation - grant no relief.

4. Presentation of an identification card, strip or seal by a person other than to whom it was issued:

   a. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor used the card, strip or seal in an improper manner and it had given warnings about such conduct to all its employees, agents or contractors.
   b. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in (B)(4)(a) above, cancel the claim upon payment of $200.
   c. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

5. Refusal of an employee, agent or contractor to obey any proper order of a Customs officer or any Customs order, rule or regulation.

   a. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor had acted contrary to proper order, rule or regulation and it had given warnings about such conduct to all its employees, agents and contractors.
   b. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in subparagraph (B)(5)(a) above, cancel upon payment of between $200 and $500.
   c. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

X. Guidelines for Cancellation of Claims Arising From the Failure to Hold Merchandise at the Place of Examination (19 C.F.R. 113.62(f)) (T.D. 99-29)

A. Assessment.

The importer of record (including a Customs broker when acting as importer of record) may seek and obtain permission from Customs to have merchandise examined at a place other than at a wharf or other place in the charge of a Customs officer. The importer obligates the provisions of its basic importation bond guaranteeing to deliver the merchandise to the place of examination and hold it there until examination occurs. If merchandise which is to be held at the place of examination or delivered to the place of examination as obligated by the importer of record under the terms and conditions of the basic importation bond is not so held or delivered, a claim for liquidated damages arises for violation of the provisions of 19 C.F.R. 113.62(f) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of claims arising for failure to hold merchandise at or deliver merchandise to the place of examination pursuant to the provisions of the Basic Importation Bond.

1. If the importer of record can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the importer of record can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not held at or delivered to the place of examination could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. By its very nature, merchandise not held at or delivered to the place of examination is considered to be designated for Customs examination. If the importer of record can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

5. If the merchandise was not held at or delivered to the place of examination and the importer of record cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

6. If the importer of record has a history of not holding merchandise at or not delivering merchandise to the place of examination, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of HQ, ORR, Penalties Branch will be sought to determine appropriate mitigation.

7. Theft of merchandise from the place of examination or while being delivered to the place of examination. Merchandise which is stolen from the custody of the importer of record at or on its way to the place of examination will be treated as having been removed without authorization. The importer of record will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1448 or 1499 may also be assessed against the individuals who steal the merchandise from the importer of record. Theft of merchandise in those instances will be mitigated in accordance with guidelines articulated in Section III.B.10., of the Guidelines for Delivery of Cargo Without Customs Authorization in the Vessel section of this Handbook.

C. Mitigating and Aggravating Factors.

1. Mitigating Factors
   a. The importer of record is inexperienced in the handling of cargo.
   b. The importer of record has a general good performance and a low error rate in the delivery and safekeeping of cargo.
   c. The importer of record demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors
   a. The importer of record refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
   b. The importer of record has a rising error rate which is indicative of deteriorating performance in the delivery and safekeeping of cargo.

D. Restricted or Prohibited Merchandise.

If Customs has reason to believe that the merchandise which was not held at the place of examination or was not delivered to the place of examination may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in mitigation at the high end of the mitigation range.

E. Failure to Keep Customs Seal or Cording Intact.

The importer of record also agrees to keep any Customs seals or cording intact until the merchandise is examined. For a violation which involves the failure to keep any Customs seal or cording intact until the merchandise is examined, the claim will be canceled upon payment of an amount between $100 and $500 if there is no evidence to indicate the merchandise in the sealed or corded shipment was tampered with. If there is evidence of tampering, the claim will be canceled upon payment of an amount equal to the value of any missing merchandise.

XI. Guidelines for Cancellation of Claims Arising From the Failure of a Centralized Examination Station (CES) Operator to Deliver Merchandise to or Retain Merchandise at the CES (19 C.F.R. 151.15, 19 C.F.R. 113.63) (T.D. 99-29)

A. Assessment.

Merchandise not delivered to or retained at a Centralized Examination Station (CES) by the CES operator shall be the subject of a claim for liquidated damages for violation of the provisions of 19 C.F.R. 151.15(b)(3) and 19 C.F.R. 113.63(b)(2) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of claims arising for failure to deliver merchandise to the CES or removal or delivery of merchandise from the CES without authorization.

1. If the CES operator can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the CES operator can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not delivered to the CES or removed or delivered from the CES without authorization could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the CES operator comes forward and discloses the violation to Customs, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus $50.

5. By its very nature, merchandise not delivered to a CES or removed or delivered from a CES without authorization is designated for Customs examination. If the CES operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

6. If the merchandise was not delivered to a CES or was removed or delivered from a CES without authorization, and the CES operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination.

Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

7. If the CES operator has a history of receipting for merchandise which has not been delivered to the CES or allowing merchandise to be removed or delivered from the CES without authorization, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of HQ, ORR, Penalties Branch shall be sought to determine appropriate mitigation.

8. Theft of bonded merchandise. Merchandise which is stolen from the CES shall be treated as having been removed without authorization. The CES operator will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1448 or 1499 may also be assessed against the individuals who steal the merchandise from a CES. Theft of merchandise in those instances will be mitigated in accordance with guidelines articulated in Section III.B.10., of the Guidelines for Delivery of Cargo Without Customs Authorization in the Vessel section of this Handbook.

C. Mitigating and Aggravating Factors.

1. Mitigating Factors

a. CES operator inexperienced in the handling of cargo.
b. CES operator has a general good performance and low error rate in the handling of cargo.
c. CES operator demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. CES operator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. CES operator has a rising error rate which is indicative of deteriorating performance in the handling and safekeeping of cargo.

D. Restricted or Prohibited Merchandise.

If Customs has reason to believe that the merchandise which was not delivered to a CES or was removed from the CES without authorization may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in mitigation at the high end of the mitigation range.

E. Failure to maintain records as required by regulation.

1. If a CES operator fails to maintain records as required by Customs, claims for liquidated damages not involving merchandise for violation of 19 C.F.R. 113.63(a)(3) and 19 C.F.R. 118.4 shall result.

2. If the breach resulted from clerical error, the claim may be canceled without payment.

3. If the breach resulted from negligence, the claim may be canceled upon payment of an amount between $100 and $250 per default, depending on the presence of aggravating or mitigating factors.

4. If the breach was intentional, no relief shall be granted.

XII. Guidelines for Cancellation of Claims Arising from the Removal of Merchandise Without Authorization From a Container Freight Station (CFS) (19 C.F.R. 19.40 ET.SEQ.) (19 C.F.R. 113.63(b)) (T.D. 99-29)

A. Assessment.

Merchandise not retained at a Container Freight Station (CFS) by the CFS operator shall be the subject of a claim for liquidated damages for violation of the provisions of 19 C.F.R. 113.63(b)(2) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of claims arising for removal or delivery of merchandise from the CFS without authorization.

1. If the CFS operator can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the CFS operator can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was removed or delivered from the CFS without authorization could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the CFS operator comes forward and discloses the violation to Customs, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus $50.

5. If the merchandise which was removed or delivered from the CFS without authorization was not designated for Customs examination and the CFS operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $250 and $2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was removed or delivered from the CFS without authorization was not designated for Customs examination and the CFS operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $300 and $2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise removed or delivered from a CFS without authorization was designated for Customs examination and the CFS operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

8. If the merchandise which was removed or delivered from a CFS without authorization and was designated for Customs examination

and the CFS operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

9. If the CFS operator has a history of receipting for merchandise which has been removed or delivered from the CFS without authorization or allowing merchandise to be removed from the CFS without authorization, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of HQ, ORR, Penalties Branch shall be sought to determine appropriate mitigation.

10. Theft of merchandise from the CFS. Merchandise which is stolen from the CFS shall be treated as having been removed without authorization. The CFS operator will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1448 or 1499 may also be assessed against the individuals who steal the merchandise from a CFS. Theft of merchandise in those instances will be mitigated in accordance with guidelines articulated in Section III.B.10. of the Guidelines for Delivery of Cargo Without Customs Authorization in the Vessel section of this Handbook.

C. Mitigating and Aggravating Factors.

1. Mitigating Factors

a. CFS operator inexperienced in the handling of cargo.
b. CFS operator has a general good performance and a low error rate in the handling of cargo.
c. CFS operator demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. CFS operator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
b. CFS operator has a rising error rate which is indicative of deteriorating performance in the handling and safekeeping of cargo.

D. Restricted or Prohibited Merchandise.

If Customs has reason to believe that the merchandise which was removed from the CFS without authorization may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in mitigation at the high end of the mitigation range.

XIII. Claims for Liquidated Damages Assessed Against a Bonded Party for Failure to Notify Customs of the Presence of Unentered Merchandise (T.D. 99-29)

A. Assessment.

Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party must notify Customs of any such merchandise or baggage for which entry has not been made. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages equal to $1,000 per bill of lading for which notification is not given for violation of the provisions of 19 C.F.R. 113.63(c)(4) and: 19 C.F.R. 4.37(b), if original arrival is by vessel; 19 C.F.R. 122.50(b), if original arrival is by air; or 19 C.F.R. 123.10(b), if original arrival is by land carrier.

B. Mitigation.

1. If notification of the presence of unentered merchandise is provided outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

XIV. Claims for Liquidated Damages Incurred by the Carrier or Other Party for Failure to Notify the Bonded Warehouse of the Presence of Unentered Merchandise (T.D. 99-29)

A. Assessment.

In addition to the notification to Customs, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) must provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system and must be provided within the 20-calendar day period. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading for which notification is not given. Liability of the arriving carrier would be under the provisions of 19 C.F.R. 113.64(b) and: 19 C.F.R. 4.37(c) if the original arrival was by vessel; 19 C.F.R. 122.50(c) if the original arrival was by air; or 19 C.F.R. 123.10(c) if the original arrival was by land carrier. Liability of the party to whom custody has been transferred by a Customs-authorized permit to transfer or in-bond entry would be under the provisions of 19 C.F.R. 113.63(b), 19 C.F.R. 113.63(c) and: 19 C.F.R. 4.37(c) if the original arrival was by vessel; 19 C.F.R. 122.50(c) if the original arrival was by air; or 19 C.F.R. 123.10(c) if the original arrival was by land carrier.

B. Mitigation.

1. If notification of the presence of unentered merchandise is provided to the bonded warehouse outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

XV. Claims for Liquidated Damages Against a Bonded Warehouse for Failure to Collect Unentered Merchandise For Which Notification Has Been Received (T.D. 99-29)

A. Assessment.

If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages of $1,000 per bill of lading remaining uncollected. Liability would be under 19 C.F.R. 113.63(a)(1) and: 19 C.F.R. 4.37(d) if the original arrival was by vessel; 19 C.F.R. 122.50(d) if the original arrival was by air; or 19 C.F.R. 123.10(d) if the original arrival was by land carrier.

B. Mitigation.

1. If the bonded warehouse operator takes possession of unentered merchandise outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If the bonded warehouse operator never takes possession of merchandise for which he has received appropriate notification, no mitigation will be afforded.

XVI. Guidelines for Cancellation of Claims Arising From Violation of Foreign Trade Zone Regulations (19 C.F.R. Part 146, 19 C.F.R. 113.73) (T.D. 01-41)

A. Defaults Involving Merchandise. Defaults involving merchandise include those violations relating to merchandise which:

1. Cannot be located or accounted for in the activated area of a foreign trade zone;

2. Has been removed from the activated area of the zone without a proper Customs permit; or

3. Has been admitted, manipulated, manufactured, exhibited, or destroyed in the activated area of a zone:

   a. Without proper Customs permit; or
   b. Not in accordance with the description of the activity in the Customs permit.

B. Defaults Not Involving Merchandise. Default not involving merchandise means any instance of failure, other than one involving merchandise or late payment of the annual fee, to comply with the laws or regulations governing foreign trade zones. A default involving one zone lot or unique identifier may not be combined with a default under another lot or unique identifier.

C. Defaults Involving Merchandise; Petitions. Claims arising from defaults involving merchandise should be processed in accordance with the following:

1. If the breach resulted from clerical error or mistake (a non-negligent inadvertent error), the claim should be canceled without payment.

2. If the breach resulted from negligence but no threat to the revenue occurred (e.g., the merchandise was not manipulated in accordance with the permit to manipulate) the claim should be canceled upon payment of an amount between one and 15 percent of the value of the merchandise involved in the breach, but not less than $100 nor more than $10,000. If the merchandise involved in the breach is restricted merchandise, that shall be considered an aggravating factor which shall result in mitigation on the higher end of the range. If the merchandise involved in the breach is domestic status merchandise, that shall be considered a mitigating factor which shall result in mitigation on the lower end of the range.

3. If the breach resulted from negligence and a potential loss of revenue resulted (e.g., merchandise cannot be located in the zone, merchandise is removed from the zone without a permit), the claim shall be canceled upon payment of an amount between one and three times the loss of revenue (loss of revenue to include duties, fees and taxes). If the merchandise involved in the breach is restricted merchandise, the claim shall be canceled upon payment of an amount between three and five times the loss revenue but in no case less than 10 percent of the value of such merchandise.

4. If the breach is intentional (e.g., the foreign trade zone operator conspires to remove merchandise from the warehouse zone

without proper entry being made), there will be no relief granted from liquidated damages.

5. Aggravating factors.

   a. Principal's failure or refusal to cooperate with Customs.
   b. Large number of violations compared to number of transactions handled.
   c. Experience of principal.
   d. Principal's carelessness or willful disregard toward its responsibilities.

6. Mitigating factors.

   a. Contributory error by Customs.
   b. Small number of violations compared to number of transactions handled.
   c. Remedial action taken by principal.
   d. Cooperation with Customs.
   e. Lack of experience of principal.
   f. Merchandise which cannot be located or which has been removed without permit is returned to Customs custody.
   g. The merchandise involved in the breach is domestic status merchandise.

7. If the violator comes forward and informs Customs of a violation, prior to Customs discovery of the violation, the claim for liquidated damages may be cancelled, at the discretion of the appropriate Customs officer, upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus $50.

8. If the violator comes forward and informs Customs of a violation, prior to Customs discovery of the violation, and the violation involves restricted merchandise, then the claim for liquidated damages may be cancelled, at the discretion of the appropriate Customs officer, upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus 5 percent of the value of the merchandise, but not less than $500. The kind and character of the restriction will be considered before relief under this provision is allowed.

D. Defaults Not Involving Merchandise; Modified CF 5955A. Defaults not involving merchandise shall be processed in accordance with the following guidelines.

1. Modified CF 5955A. Notices of liquidated damages incurred may be issued on a modified CF-5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

   a. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

   b. Option 2. Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The FP&F Officer shall grant full relief when the petitioner demonstrates that the violation did not occur. If the petitioner fails to demonstrate that the violation did not occur, the FP&F Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. Maximum Assessments. In cases involving violations which do not involve merchandise which are assessed at $1,000 for each business day that the violation continues, a maximum of $10,000 shall be assessed for any one such continuing violation unless the FP&F Officer can articulate a legitimate enforcement purpose for exceeding said limit. These claims shall be canceled in conformance with the terms of these guidelines.

3. Clerical Error. If the breach resulted from clerical error, the claim may be canceled without payment.

4. Negligence. If the breach resulted from negligence, the claim may be canceled upon payment of an amount between $100 and $250 per default actually assessed, depending on the presence of aggravating or mitigating factors. For example, if a document is filed 100 days late, Customs, by policy, will generally limit the assessment to $10,000. Mitigation will be based on the $10,000 actual assessment and not relate to the $100,000 potential assessment.

5. Intentional Breach. If the breach was intentional, no relief shall be granted.

6. Violator disclosing violation before Customs discovery. If the violator comes forward and discloses the violation to Customs prior to Customs discovery of the violation, whether or not the violation is a continuing one, the claim for liquidated damages may be cancelled, at the discretion of the appropriate Customs officer, upon payment of the amount of $50.

E. Cancellation of claims for late payment of the annual fee.

1. If the late payment resulted from clerical error or mistake, the claim may be canceled upon payment of the amount due but not paid.

2. If the late payment resulted from negligence, cancel upon payment of the amount due but not paid plus the following percent of that amount for each day payment is in arrears:

a. First seven calendar days - not less than one-third of one percent nor more than three-fourths of one percent per day.
b. Second seven calendar days - not less than one and one-third percent nor more than one and three-fourths percent per day.
c. After the fourteenth calendar day - not less than two and one-third nor more than two and three-fourths percent per day.

3. If the late payment was intentional, no relief shall be granted.

XVII. Guidelines for Cancellation of Claims for Late Filing or Failure to File Softwood Lumber Information (19 C.F.R. 12.140, 19 C.F.R. 113.62(k), 19 C.F.R. 113.62(l)(5)) (T.D. 98-53)

A. The provisions of 19 C.F.R. 12.140 set forth special entry requirements for softwood lumber. The importer of record is obligated to obtain and provide to Customs information regarding the issuance of a Canadian export permit. The export permit information must be provided to Customs within 20 working days of release of the merchandise.

B. Late presentation of export permit information. Claims for liquidated damages for late presentation of export permit information shall be processed in accordance with the following guidelines.

1. Modified CF-5955A. Notices of liquidated damages incurred may be issued on a modified CF-5955A. The modified form shall specify

two options from which the petitioner may choose to resolve the demand.

a. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition.

b. Option 2. Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The Fines, Penalties, and Forfeitures Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or occurred solely as a result of Customs error, the Fines, Penalties, and Forfeitures Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. Cancellation of claims for late presentation of export permit information. Liquidated damages incurred for late presentation of the necessary information may be canceled upon payment of an amount between 25 and 50 percent of the claim but not less than $500 and not more than $3,000. Such amount may be afforded as an Option 1 amount. Mitigation shall be based upon the experience of the importer and the number of violations incurred compared with the number of importations made. No relief shall be granted from any claim issued for $500 or less.

C. Failure to present export permit information. If the importer fails to present the appropriate export permit information, no relief from the claim for liquidated damages will be granted unless the importer can show that the information was not required or that the violation occurred solely as a result of Customs error. Upon presentation of proof which satisfies the Fines, Penalties, and Forfeitures Officer that the information was not required or that the violation occurred solely as a result of Customs error the claim shall be canceled without payment.

XVIII. Guidelines for Cancellation of Claims for Failure to File Reconciliations Timely (REF: 64 FR 73121, dated December 29, 1999; 66 FR 14619, dated March 13, 2001)

The filing of NAFTA Reconciliations is now optional. Accordingly, the liquidated damages provisions in this section apply only to value, classification, and 9802 Reconciliations. They do not apply to NAFTA Reconciliations.

A. Requirements

As described above and in the Federal Register notice of February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation within the allotted time, covering the flagged issue(s) on that entry summary. This notice removes the obligation to reconcile NAFTA eligibility for entry summaries flagged for that issue. Each entry summary flagged for value, classification, and/or 9802 issues must be covered by a Reconciliation filed prior to the due date, 15 months from the earliest entry summary date of the underlying entry summaries. Up to 9,999 underlying entry summaries may be covered by a single Reconciliation. If any one of the underlying entry summaries' due dates has passed prior to Reconciliation filing, the entire Reconciliation is considered late. However, the importer and filer have discretion to determine which and how many entry summaries are grouped on a Reconciliation, regardless of the flagging method and timing involved in the original flagging of those entry summaries.

B. Liquidated Damages for Non-Filed and Late-Filed Reconciliations

The obligation to file Reconciliations created by the flagging of entry summaries carries liquidated damages implications for failure to do so timely. Each flagged entry summary remains an independent entity until reconciled. Customs has no way of knowing which entry summaries will be covered by a single Reconciliation until one is actually filed. Once the Reconciliation has been filed, the universe of entry summaries covered by it is established. Moreover, the Reconciliation is an entry in its own right and has the same legal status as other Customs entries. For these reasons, late-filing and non-filing of Reconciliations will be dealt with using different mechanisms.

C. Liquidated Damages Mechanisms

1. “No File” Liquidated Damages

Periodically, Customs will perform research to identify flagged entries that were not reconciled timely (within 15 months of their date). In cases where flagged entry summaries are found to have not been covered by a Reconciliation, Customs will issue a single ``No File'' liquidated damages claim against the importer of record for all unreconciled flagged entries past their due dates for the calendar month. Subsequent filing of Reconciliations to cover entries on this monthly consolidated liquidated damages report will result in mitigation of the initial liquidated damages claim.

2. “Late File” Liquidated Damages

In cases where flagged entry summaries are found to have been covered by a Reconciliation that was filed late, Customs will issue a single ``Late File" liquidated damages claim against the Reconciliation entry itself (as opposed to a claim against the importer that covers the calendar month, as in the case of ``No File" liquidated damages claims). This mechanism applies also to reconciliations, filed timely or not, where payment of additional monies (duties, taxes, fees, and interest) due is made late or not at all.

3. Where Liquidated Damages Claims Are Processed

Each importer participating in the ACS Reconciliation Prototype is assigned to a particular reconciliation processing port. Liquidated damages claims involving Reconciliation will always be processed by the Reconciliation processing port. This is true regardless of the port(s) where the underlying entry summaries were filed.

D. Summary of Liquidated Damages Claims

There are five different types of liquidated damages violations under the ACS Reconciliation Prototype. The descriptions, assessed liquidated damages amounts, and ``option 1" amounts are shown below. ``Option 1" refers to the option where importers may agree to pay a reduced amount, but waive rights to mitigate the claim below that amount. The term ``money" in this listing refers to the additional duties, taxes, fees, and interest due upon Reconciliation.

1. Reconciliation No File

Description: Entry summaries flagged but no Reconciliation filed. Customs will issue a single consolidated liquidated damages claim for all entries fitting this description for a given importer, per month, per surety.

a. Assessed Liquidated Damages Amount: Total entered value of the underlying entry(ies).

b. Option 1 Amount: The filing of the Reconciliation entry (or entries) covering the flagged entry summaries listed on the consolidated liquidated damages claim (CF 5955A), with all applicable duties, taxes, fees, and interest owed, will be treated as a petition for relief. Payment of the Option 1 amount will be authorized only upon the proper filing of this Reconciliation, with duties, taxes, fees, and interest. For a consolidated monthly liquidated damages claim covering five or more flagged entry summaries, the Option 1 amount is $500. For consolidated monthly claims involving four or fewer flagged entry summaries, the Option 1 amount is $100 per entry.

2. Reconciliation Money No File

Description: Reconciliation filed timely but without payment of additional duties, taxes, fees, and interest due.

a. Assessed Liquidated Damages Amount: $1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.

b. Option 1 Amount**:** Payment of the Option 1 amount will be authorized only after all duties, taxes, fees, and interest due are paid. For claims involving five or more flagged entry summaries, the amount is $500. For claims involving four or fewer flagged entry summaries, the amount is $100 per entry.

3. Reconciliation Late File

a. Description: Reconciliation filed and paid after the 15-month deadline.

b. Assessed Amount: $1,000 or double the duties, taxes, fees, and interest, if applicable, due on the Reconciliation, whichever is greater.

c. Option 1 Amount: For claims involving five or more flagged entry summaries, the amount is $500. For claims involving four or fewer flagged entry summaries, the amount is $100 per entry.

4. Reconciliation Money Late File

a. Description: Reconciliation filed timely but payment of additional duties, taxes, fees, and interest due submitted late.

b. Assessed Amount: $1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.

c. Option 1 Amount: For claims involving five or more flagged entry summaries, the amount is $500. For claims involving four or fewer flagged entry summaries, the amount is $100 per entry.

5. Reconciliation Late File with Money No File

a. Description: Reconciliation filed late, without payment of duties, taxes, fees, and interest due.

b. Assessed Amount: $1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.

c. Option 1 Amount: Payment of Option 1 amount will be authorized only after duties, taxes, fees, and interest due are paid. For claims involving five or more flagged entry summaries, the amount is $500. For claims involving four or fewer flagged entry summaries, the amount is $100 per entry.

E. Surety Issues

The liquidated damages claims that result from failure to file Reconciliations or filing them untimely may be for substantial amounts. Failure to resolve these claims could saturate the importer's continuous bond. Thus, in certain circumstances, importers may be required to submit single entry bonds for further entry summaries or make live entry with payment to secure release of merchandise.

XIX. Guidelines for Cancellation of Claims for Failure to Redeliver Export Merchandise (19 C.F.R. 113.64(f)(1) and (f)(2)) (T.D. 02-20)

A. Assessment

Claims for failure to redeliver merchandise exported in violation of the export laws result in the assessment of liquidated damages equal to 3 times the value of that merchandise.

B. Mitigation

1. There will be no mitigation of the claim for liquidated damages in the event that a significant enforcement objective is involved with respect to the reason for the redelivery order. For example, if goods subject to the redelivery order were stolen or were being exported to a country for which exportations of the specific goods are embargoed, no relief should be given from the liquidated damages claim.

2. For all other cases, the following guidelines apply to the cancellation of the claim for liquidated damages:

a. First violation - Cancel the claim for liquidated damages upon payment of an amount between 10 and 50 percent of the value of the cargo but in no case will the claim be cancelled upon an amount less than two times the freight charges (if calculable). This is necessary in order to offset any economic advantage

that might be gained through a failure to redeliver.

b. Second and subsequent violations - Cancel the liquidated damages claim upon payment of an amount no less than the value of the cargo or five times the freight charges (if calculable), whichever is larger.

XX. Guidelines for Assessment and Cancellation of Claims for Failure or Late Filing of NAFTA Duty Deferral Entries (T.D. 02-20)

A. Filing of NAFTA Duty Deferral Entry

1. If merchandise originally entered into a duty-deferral program here in US (TIB, bonded warehouse or FTZ) and then exported to Canada or Mexico or entered into a duty-deferral program in Canada or Mexico, a NAFTA duty-deferral entry must be filed.

2. A CF 7501 Summary reporting export and duty-owed information must be filed with Customs 10 working days from the date of export or entry into the duty-deferral program in Canada or Mexico.

3. If summary is never filed or filed after 10-working day filing period, a liquidated damages claim citing 19 C.F.R. 113.62(b)(4) and 181.53(a)(2)(iii)(B) may be initiated for a NAFTA duty deferral non- or late file. Claim is assessed at value of merchandise exported

B. Payment of NAFTA Duty Deferral Duties

1. Payment of duties due with the NAFTA duty-deferral entry must be deposited with Customs no later than 60 calendar days from the date of export or entry into the duty-deferral program in Canada or Mexico. See, 19 C.F.R. 181.53(a)(2)(iii)(C). This includes any reduced duties that must be deposited with the filing of any claim for reduced duties per 19 C.F.R. 181.53(a)(3)(ii).

2. Failure to deposit or late deposit of duties will result in the assessment of a claim for liquidated damages for double the unpaid duties or $1,000, whichever is greater, for violation of 19 C.F.R. 113.62(a)(1) and 19 C.F.R. 181.53(a)(2)(iii)(C).

C. Mitigation Guidelines

1. Late file of the duty-deferral entry (no revenue consequence) where 7501 is filed outside the 10-working day period, but the NAFTA deferral duties are paid timely (as in A.3. above) - Option 1 amount of $100. If the principal or surety petitions for relief and cannot

show that the violation did not occur, or only occurred as a result of Customs error, then mitigate to an amount no lower than $200.

2. Failure to deposit duties within 60 calendar days of export or entry into a duty-deferral program in Canada or Mexico, (as in B.2. above), no mitigation shall be afforded until duties are deposited.

3. Late payment of duties after issuance of a claim for failure to deposit duties, Option 1 amount of $200 + interest amount calculated in same manner as for late payment of estimated duties. If the principal or surety petitions for relief and cannot show that the violation did not occur, or only occurred as a result of Customs error, then mitigate to an amount no lower than $300 plus the appropriate interest amount.

4. Late payment of duties when a failure to deposit claim was not issued, Option 1 amount of $100 + interest amount calculated in same manner as for late payment of estimated duties. If the principal or surety petitions for relief and cannot show that the violation did not occur, or only occurred as a result of Customs error, then mitigate to an amount no lower than $200 plus the appropriate interest amount.

XXI. Guidelines for Cancellation of Claims for Violations Arising From Failure to Comply With Trade Fair Regulations (T.D. 02-20)

A. Trade Fair Operators are required to file a Basic Importation Bond covering articles entered for the Fair per 19 C.F.R. 147.2.

B. If payments required by 19 C.F.R. 147.33 (relating to reimbursement to the Government by the fair operator of certain expenses), 19 C.F.R. 147.41 (relating to merchandise removed from the fair not in accordance with regulation) and 19 C.F.R. 147.43 (relating to entry of merchandise from a fair) are not made upon demand, then liquidated damages may be assessed per 19 C.F.R. 147.3 and 19 C.F.R. 113.62(h) or 113.62(g).

C. Failure to use or handle merchandise in a manner which entitles it to duty-free entry (i.e., removing it from the Fair other than in accordance with regulation including failure to make entry, if appropriate) will result in assessment of liquidated damages equal to the value of the merchandise involved in the violation (or three times the value if the merchandise is prohibited, restricted or alcoholic beverages) in accordance with 19 C.F.R. 147.3, 147.41, 147.43, 113.62(h) and 113.62(l)(1).

D. Failing to exonerate the United States from risk or loss relating to the expenses incurred regarding the Fair will result in a claim for those expenses pursuant to 19 C.F.R. 147.3, 147.33 and 113.62(g).

E. Cancellation standards.

1. There will be no mitigation from any claim made for failure to exonerate the Government from risk or loss per 19 C.F.R. 113.62(g).

2. For failure to use or handle the merchandise in a manner entitling it to duty-free entry, the claim will be cancelled upon payment of an amount between one and five times the loss of revenue (if a revenue loss violation) or upon payment of 5 to 30 percent of value (if no revenue loss is involved) depending on the presence of mitigating or aggravating circumstances.

XXII. Guidelines for Cancellation of Claims When Petitions for Relief Are Filed Untimely (T.D. 02-20)

A. Petitions may be accepted at the discretion of the FP&F Officer at any time prior to commencement of any sanctioning action against a bond principal or the issuance of any notice to show cause against a surety.

B. If a petition is received untimely, Customs shall first consider the petition as though it had been filed timely and shall determine the amount of mitigation that would have been afforded in the case had the petition been filed timely. For purposes of these guidelines, this determination shall be known as the base amount.

C. Once the base amount has been determined, Customs shall charge an additional amount in excess of the base amount by calculating the number of calendar days that a petition is late and charging an additional mitigation amount of 0.1 percent (.001) per day, but in no case shall the additional amount be less than $400.

D. If the bond principal fails to file a petition during the time period provided by regulation, but then files a petition during the period in which the surety, by regulation, could file a petition, that petition will be considered as a late petition. The number of days late shall be calculated from the end of the 60-day petitioning period afforded to the principal. The demand on surety will be considered as an additional demand.

NOTE: For purposes of all bond cancellation standards, the term value shall mean value as determined under 19 U.S.C. 1401a.

ADDITIONAL INFORMATION

ADDITIONAL INFORMATION

The Internet

The U. S. Customs Service's home page on the Internet's World Wide Web, provides the trade community with current, relevant information regarding Customs operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. Since December, 1999 the CEBB has been only accessible through the web site. The web site also links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. Customs web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, the U.S. Customs Service launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The Customs Service's web address is http://www.customs.gov

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 1999 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Customs Regulations from April 1998 through March 1999, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin,* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as Customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The 1998 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and the Customs Service by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The 1998 edition contains a new section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between Customs and the import community, wherein Customs communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that Customs is provided accurate and timely data pertaining to his or her importations.

Single copies may be obtained from local Customs offices or from the Office of Public Affairs, U.S. Customs Service, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the Customs web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Video Tapes

The Customs Service has prepared a series of videotapes in VHS format for the trade community and other members of the public. As of the date of this publication, four tapes are available and are described below.

If you would like more information on any of the tapes described below, or if you would like to order them, please send a written request to: U.S. Customs Service, Office of Regulations and Rulings, Suite 3.4A, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a *check or money order drawn on a U.S. financial institution* and made payable to U.S. Customs Service. Prices include postage.

- *Rules of Origin for Textiles and Apparel Products* is a two-hour tape aimed at increasing understanding of the new rules, which became effective July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms, or it can be ordered from the U.S. Customs Service for $20.00.

- *Customs Compliance: Why You Should Care* is a 30-minute tape divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in the importing or exporting business with an overview of

the significant features of the Customs Modernization Act and the reasons to adopt new strategies in order to minimize legal exposure under the Act.

Part II is intended primarily for import/export compliance officers, legal departments and company officers. About 12 minutes long, Part II explains why Customs and the trade can benefit from sharing responsibilities under Customs laws. It also provides viewers with legal detail on record keeping, potential penalties for noncompliance, and on the Customs prior-disclosure program. The cost is $15.00.

- *Account Management: Team Building for World Trade,* a 13-½-minute tape on account management, discusses what account management is and why there is a need for it. Account Management is a new approach to working with the trade in which a company is treated as an account, rather than being dealt with on a transaction by transaction basis. The tape includes discussions with Customs account managers and representatives of importers ("accounts") relating to the benefits of account management from the perspectives of the both the Customs Service and the trade community. The cost is $15.00.

- *General-Order Warehousing: Rules for Handling Unclaimed Merchandise*, 90 minutes long, was prepared jointly by the Customs Service and the trade community on the subject of general-order merchandise (unclaimed goods). The tape includes question and answer discussions that define procedures required to implement the new general-order laws and regulations and why there is a need to have effective procedures for handling unclaimed goods. The cost is $15.00.

Informed Compliance Publications

The U. S. Customs Service has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:…"* series. As of the date of this publication, the subjects listed below were available.

■[4] 1. Customs Value ([1]5/96, Revised 12/99)
■[6] 2. Raw Cotton: Tariff Classification and Import Quotas ([1]5/96, Revised 8/2000)
■[6] 3. NAFTA for Textiles & Textile Articles ([1]5/96, Revised 8/2000)
■[5] 4. Buying & Selling Commissions ([1]6/96, Revised 1/2000)
■[6] 5. Fibers & Yarns Construction and Classification Under the HTSUS ([1]8/96, Revised 9/2000)
■[6] 6. Textile & Apparel Rules of Origin ([1]10/96, Revised [3]11/98, 12/2000)
■ 7. Mushrooms ([1]10/96, Revised 3/01)
■[1] 8. Marble (11/96)
■[1] 9. Peanuts (11/96, Revised 7/01)
■[5] 10. Bona Fide Sales & Sales for Exportation ([1]11/96, Revised 1/2000)

■[2] 11. Caviar (2/97)
■[2] 12. Granite (2/97)
■[5] 13. Distinguishing Bolts from Screws (²5/97, Revised 5/2000)
■[2] 14. Internal Combustion Piston Engines (5/97)
■ 15. Vehicles, Parts and Accessories (²5/97, Revised 2/01)
■[2] 16. Articles of Wax, Artificial Stone and Jewelry (8/97)
■ 17. Tariff Classification (²11/97, Revised 2/01)
■[2] 18. Classification of Festive Articles (11/97)
■[3] 19. Ribbons & Trimmings (1/98)
■[3] 20. Agriculture Actual Use (1/98)
■[3] 21. Reasonable Care (1/98)
■[3] 22. Footwear (1/98)
■[3] 23. Drawback (3/98)
■[3] 24. Lamps, Lighting and Candle Holders (3/98)
■[3] 25. NAFTA Eligibility and Building Stone (398, Revised 12/98)
■[3] 26. Rules of Origin (5/98)
■[3] 27. Records and Recordkeeping Requirements (6/98)
■[3] 28. ABC's of Prior Disclosure (5/01)
■[3] 29. Gloves, Mittens and Mitts (6/98)
■[3] 30. Waste & Scrap under Chapter 81 (6/98)
■[3] 31. Table, Kitchenware, Other Household Articles and Toilet Articles Of Plastics (11/98)
■[3] 32. Textile & Apparel Rules of Origin Index of Rulings (11/98)
■[4] 33. Knit to Shape Apparel Products (black & white 1/99)
■ 33c. Knit to Shape Apparel Products (color 1/99)
■[4] 34. Hats and Other Headgear (under HTSUS 6505) (3/99)
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■[5] 53. Wadding, Gauze, Bandages & Similar Articles (HTSUS 3005) (4/2000)
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■ 69. Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages (4/02)

■ Indicates publications which are, or will be, available for downloading from the Customs web site on the Internet http://www.customs.gov

• Indicates publications, which are available for sale through the Superintendent of Documents, U.S. Government Printing Office.

[1] Denotes reprinted in 30/31 Customs Bulletin No. 50/1, January 2, 1997
[2] Denotes reprinted in 32 Customs bulletin No. 2/3, January 21, 1998
[3] Denotes reprinted in 32 Customs Bulletin No 51, December 23, 1998
[4] Denotes reprinted in 33 Customs Bulletin No. 51, December 22, 1999
[5] Denotes reprinted in 34 Customs Bulletin No. 25, June 21, 2000
[6] Denotes reprinted in 34 Customs Bulletin No. 52, December 27, 2000

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Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Customs Service Internet web site.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

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