

*What Every Member of the  
Trade Community Should Know About:*  
**Customs Administrative  
Enforcement Process: Fines,  
Penalties, Forfeitures and  
Liquidated Damages**



AN INFORMED COMPLIANCE PUBLICATION

FEBRUARY 2004

**U.S. CUSTOMS and BORDER PROTECTION**

**NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

Publication History

First Published: April 2000  
Revised: February 2004

**PRINTING NOTE:**

This publication was designed for electronic distribution via the CBP website (<http://www.cbp.gov>) and is being distributed in a variety of formats. It was originally set up in Microsoft Word97<sup>®</sup>. Pagination and margins in downloaded versions may vary depending upon which word processor or printer you use. If you wish to maintain the original settings, you may wish to download the .pdf version, which can then be printed using the freely available Adobe Acrobat Reader<sup>®</sup>.

## 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 laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection 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 U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP 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 the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the International Trade Compliance Division, ORR, is a guideline on the Customs Administrative Enforcement Process. “Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures and Liquidated Damages” is part of a series of informed compliance publications regarding Customs procedures. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant 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 Regulations of U.S. Customs and Border Protection, 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 and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

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# **Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures & Liquidated Damages**

## **I. INTRODUCTION**

Enforcement of the Customs, navigation and related laws has been an important function of the U. S. Customs Service, since the foundation of the Federal government under the U.S. Constitution in 1789. The second act of the new Federal government was the Act of July 4, 1789, "laying duties on goods, wares and merchandises (sic) imported into the United States." The third act was the Act of July 20, 1789 "imposing duties on tonnage" of vessels. These and subsequent tariff acts were to be the major sources of Federal revenue until the income tax arrived in the early twentieth century. In order to administer and enforce these important revenue laws, the fifth act of Congress, the Act of July 31, 1789, established a Customs Service, consisting of collectors, naval officers and surveyors in 59 districts in the eleven states which had ratified the new Constitution (North Carolina and Rhode Island had not yet ratified the Constitution and were treated as foreign countries under the tariff laws).

The Act of July 31, 1789 also established fines and penalties and subjected merchandise to forfeiture for breaches of the various provisions. The authority to make seizures and enforce any fines, penalties or bond provisions was vested in the Customs field personnel, and the collectors were authorized to institute judicial proceedings to perfect any forfeitures and collect any fines or penalties which had accrued. In the early years, all fines, penalties, and forfeitures required judicial enforcement, and there was no provision allowing the granting of equitable relief. However, these problems were partially remedied in the Act of March 3, 1797, when the authority to grant equitable relief from a penalty or forfeiture, by way of remission or mitigation, was vested in the Secretary of the Treasury, after a petition seeking such relief had been filed in court and a judge had reported the facts to the Secretary.

The original procedures were very cumbersome. The collector transmitted all enforcement actions to the United States district attorney (now renamed the U. S. Attorney) who instituted the judicial collection or forfeiture action. A person seeking relief had to admit the violation, or await a court judgment finding a violation, and submit a petition for relief explaining the facts and circumstances that led to the violation. The judge then examined the circumstances and reported the facts to the Secretary of the Treasury, who could mitigate or remit the fine, penalty or forfeiture and order discontinuance of the litigation.

Subsequent legislation, simplified the procedures by allowing petitions for relief to be filed directly with the Secretary, prior to commencement of litigation and by establishing administrative procedures for forfeiture and penalty assessment. Initially, these procedures only applied to cases involving low value forfeitures or small monetary fines or penalties (under \$50) but, eventually, these procedures were extended to all cases.



In the early years, the Secretary of the Treasury, personally, exercised the authority to remit or mitigate fines, penalties or forfeitures. Over the years, as the country grew and the Secretary's responsibilities increased the Secretary's authority to remit or mitigate penalties and forfeitures was delegated to subordinate officials in the Department and the Customs Service. The present remission and mitigation authority is contained in 19 U.S.C. 1618 and 19 U.S.C. 1623(c) which provide:

19 U.S.C. 1618:

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

19 U.S.C. 1623(c):

The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

The Secretary has also been granted the authority to compromise claims. This authority is presently contained in 19 U.S.C. 1617, which provides:

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.

## **II. DELEGATION OF AUTHORITY FROM TREASURY OVER FUNCTIONS RELATING TO FINES, PENALTIES, FORFEITURES AND LIQUIDATED DAMAGES**

Customs has full authority to assess penalties and liquidated damages claims and to seize merchandise for violations of Customs or other laws enforced by the Customs Service. Except for certain specific instances where the Treasury Department has retained administrative authority to decide petitions and supplemental petitions for relief, Customs has been delegated broad authority to remit, mitigate, cancel, or compromise claims for forfeitures, penalties, and liquidated damages.

Treasury Decisions 00-57 and 00-58, and other orders or directives, set forth the latest delegation of authority to decide petitions and supplemental petitions submitted. Such provisions have been incorporated in Parts 171 and 172 of the Customs Regulations, as follows:

### **A. ORIGINAL PETITIONS FOR RELIEF**

Fines, Penalties, and Forfeitures Officers (FPFO): Generally, assessments of forfeitures, penalties and liquidated damages claims are made by the local FPFOs throughout Customs. There are currently forty-three (43) FPFOs and four (4) National Seizure and Penalties Officers (NSPOs), located at the various Customs field offices.

1. Liquidated damages. The FPFO can decide petitions for relief from all claims for liquidated damages arising from breach of the basic importation bond, for failing to file or late filing of entry summaries, or failing to pay or late payment of estimated duties. The FPFO can decide petitions for relief with regard to any other claim for liquidated damages, for breach of any Customs bond, or for any other reason, when the amount of the claim does not exceed \$200,000.
2. 19 U.S.C. 1592, 19 U.S.C. 1593a. The FPFO can decide petitions for relief from all claims for any penalties incurred under the provisions of these sections, when the total assessed amount of those fines, penalties, or forfeitures, does not exceed \$50,000.

3. 19 U.S.C. 1436, 1453, 1595a(b) and 1641. The FPFO can decide petitions for relief from all fines, penalties, or forfeitures incurred under the provisions of sections 1436, 1453 and 1641, and any penalties incurred under section 1595a(b), for delivering merchandise from the place of unloading without Customs authorization, or without appropriate examination in violation of the provisions of section 19 U.S.C. 1448 or 19 U.S.C. 1499, respectively, when the amount of the claim does not exceed \$200,000.
4. Except as noted above or where the Secretary of the Treasury has retained jurisdiction, the FPFO can decide petitions for relief from any fines, penalties, or forfeitures incurred under any other law administered by Customs, when the total amount of the fines, penalties, and forfeitures does not exceed \$100,000.

Chief, Penalties Branch, International Trade Compliance Division, Office of Regulations and Rulings. The Chief of the Penalties Branch at Customs Headquarters, is delegated authority to decide all initial petitions for relief submitted with regard to cases, which are neither enumerated as remaining under the original jurisdiction of the Secretary of the Treasury, nor have been delegated to the Fines, Penalties, and Forfeitures Officers.

Assistant Commissioner, Office of Regulations and Rulings. Notwithstanding any other delegation of authority, the Assistant Commissioner, Office of Regulations and Rulings at Customs Headquarters, or his delegate, has authority to remit or mitigate any penalties assessed against super carriers for failure to manifest narcotic drugs pursuant to 19 U.S.C. 1584(a)(2).

Secretary of the Treasury. The Secretary of the Treasury, or his delegate, retains jurisdiction over original petitions for relief filed with regard to the following cases:

1. Certain civil monetary penalties. Full jurisdiction over the remission or mitigation of monetary penalties imposed for violation of the provisions of title 31, United States Code, 5321;
2. Certain monetary instrument seizures. Seizures, subject to forfeiture under the provisions of title 31, United States Code, section 5317, of monetary instruments for violation of the provisions of title 31, United States Code, section 5316, when the value of the monetary instruments exceeds \$500,000;
3. Export control. Seizures of merchandise subject to forfeiture under the provisions of title 22, United States Code, section 401, when the value of the merchandise exceeds \$500,000;
4. Failure to declare merchandise. All fines, penalties, and forfeitures arising from failure to declare merchandise in violation of the provisions of title 19, United States Code, section 1497, when total liability exceeds \$250,000; and

5. Conveyance seizures. Seizures of conveyances for violations other than those involving importation or transportation of controlled substances when the value of the conveyance exceeds \$500,000.

## **B. SUPPLEMENTAL PETITIONS FOR RELIEF**

Decisions of Fines, Penalties, and Forfeitures Officers. Supplemental petitions filed on cases, where the original decision was made by the Fines, Penalties, and Forfeitures Officer will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating additional relief to the petitioner.

If the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to an NSPO assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641, by Customs brokers, where the amount of the penalty assessed exceeds \$10,000, will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, for review and decision.

Decisions of the Chief of the Penalties Branch, International Trade Compliance Division, Office of Regulations and Rulings. Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, where the Chief, Penalties Branch, believes that no further relief is warranted, will be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision. For purposes of this document, references to the International Trade Compliance Division, hereinafter referred to as "ITC Division", includes the Chief of the Penalties Branch and the Director of the International Trade Compliance Division.

Decisions of the Assistant Commissioner, Office of Regulations and Rulings. Supplemental petitions filed on cases where the original decision was made by the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters, or his delegate, will be retained by the Assistant Commissioner, Office of Regulations and Rulings, for review and decision, and will not be delegated. Furthermore, any authority granted to any Headquarters official is also vested in the Assistant Commissioner, or his designee.

Decisions of Treasury Department. Supplemental petitions filed on cases where the original decision was made in the Treasury Department will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who will forward the supplemental petition to the Department along with a recommendation for disposition by the Department.

### **C. CONCEPT OF ACCORD AND SATISFACTION**

By regulation, the payment of a mitigated amount in compliance with an administrative decision on a petition for relief acts as an accord and satisfaction of the Government claim. See 19 CFR 171.23(b), for unsecured penalties and seizures and 19 CFR 172.22(b), for secured penalties and claims for liquidated damages. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

## **III. ADMINISTRATIVE PROCESS FOR FORFEITURE CLAIMS IN CASES OF SEIZURE OF PROPERTY FOR VIOLATIONS OF CUSTOMS OR OTHER LAWS**

### **A. What Is A Seizure And When May It Occur?**

Property may be “seized” for certain violations of the Customs and related laws. In a seizure, a government official takes physical possession of the merchandise or other article, such as a vehicle, vessel, or aircraft.

Under the Customs laws, there are two types of seizures. The first is where a law provides for “forfeiture” of the property. In these situations, if the forfeiture is perfected through appropriate judicial or administrative means, the seized property will become the property of the Federal government and the owner and any other claimants will lose their interest in the property. In most of these cases, the forfeiture “relates back” to the time of the offense and the United States obtains good title from that date. In the second type of seizure, the property is seized to secure payment of a monetary penalty. If the penalty is not paid, the property will be sold to pay the penalty, with the balance being subject to claims of the owners, lien holders or other lawful claimants.

To initiate a seizure, Customs must have probable cause to believe that there was a violation of a customs law or other law enforced by Customs with respect to specific property (e.g., undeclared or smuggled property; counterfeit trademark goods). If, pursuant to statutory authority and Customs seizure policy, property is seized, the seizure represents enforcement action against the property (i.e., a claim for forfeiture). Except in the case of seizures to secure payment of a penalty, the property, not the importer, is considered the violator.

Types of seized merchandise and infractions include:

- prohibited merchandise (e.g., controlled substances, pornography, counterfeit goods, etc.);
- restricted merchandise (e.g., restrictions imposed by textile quota agreements, Consumer Product Safety Commission, Foreign Assets Control, Environmental Protection Agency, Food and Drug Administration/USDA, etc.);
- undeclared, unreported or smuggled merchandise (e.g., goods undeclared by passengers entering the U.S., unreported currency over \$10,000, etc.); and

- goods which aid or facilitate the illegal importation of merchandise (e.g., conveyances or merchandise used to hide or conceal illegal goods).

Customs may consider various alternatives in lieu of, or prior to, seizure. First, Customs can reject or deny entry. Second, Customs may detain goods. Detention represents a formal Customs procedure, which requires notice to the importer within five (5) days from the decision that a restriction applies. Third, if the goods are not prohibited, they may be entered into a bonded warehouse or a foreign trade zone (FTZ) with subsequent withdrawal once the defect or restriction is corrected. Fourth, Customs may issue a monetary penalty (e.g., 19 U.S.C. 1592 or 1595a(b)) in lieu of seizure if the defect or restriction pertaining to the good is corrected. By policy, prospective seizures of certain property having a domestic value of \$100,000, or greater, require advance referral to, and approval by Headquarters.

## **B. When May Customs Proceed With A Forfeiture?**

Generally, administrative forfeiture pursuant to 19 U.S.C. 1607 is appropriate if the seized goods are:

- of a forfeiture value of \$500,000 or less;
- a conveyance used to smuggle drugs;
- prohibited merchandise; or
- monetary instruments in any amount.

However, the claimant also may obtain judicial forfeiture by filing a cost bond in the penal sum of the lesser of \$5,000 or 10% of the forfeiture value of the claimed property, but not less than \$250. (See 19 U.S.C. 1608 and 19 CFR 162.47.)

In almost all other cases, judicial forfeiture pursuant to 19 U.S.C. 1610 is appropriate.

In the case of goods or other property subject to administrative forfeiture, a Notice of Seizure is sent to known parties having an interest in the seized property, which advises them of their options. Generally, these parties may:

- choose to do nothing, in which case the government will begin forfeiture proceedings by publishing a notice in a newspaper on the date specified in the notice;
- request that Customs begin forfeiture proceedings sooner than the date specified in the notice;
- file a petition for relief (with a waiver of immediate institution of forfeiture proceedings);
- make an offer in compromise, under 19 U.S.C. 1617, to settle the case; or
- file a claim and cost bond to initiate immediate referral to the U.S. Attorney for the institution of judicial forfeiture.

In the case of goods subject to judicial forfeiture, parties known to have an interest are sent a Notice of Seizure and a Notice of Election of Proceedings (option to petition for administrative relief under 19 U.S.C. 1618, or to request the institution of immediate forfeiture).

In connection with any seizure of property that may be related to a possible criminal prosecution, Customs must report the matter to the appropriate U.S. Attorney. If requested by the U.S. Attorney, the administrative processing of seizures may be delayed to avoid interference with any criminal prosecution. Assuming criminal prosecution is declined, or, if accepted, Customs has received consent of the U.S. Attorney to proceed administratively, the notices discussed above will be issued.

Generally, most claimants of seized property waive their rights to immediate forfeiture and elect to file a petition for administrative relief from the forfeiture. With the exception of certain instances where the Secretary of Treasury specifically has retained jurisdiction, Customs has been delegated broad authority, pursuant to 19 U.S.C. 1618, to remit or mitigate claims for forfeitures (i.e., provide administrative relief) through its petition decisions.

In cases subject to administrative forfeiture, if no petition for relief is filed, or claim and bond given pursuant to 19 U.S.C. 1608, Customs will proceed to forfeit the conveyance or merchandise by publishing a notice for at least three successive weeks in a newspaper circulated at the Customs port and in the judicial district where the property was seized. Alternatively, such notice will be posted in the Customhouse nearest the place of seizure in a conspicuous place that is accessible to the public, with the date of posting noted thereon, and will be kept posted for at least three successive weeks, after which the property is deemed forfeited (unless during that time a claim and cost bond is filed). (See 19 U.S.C. 1609.)

### **C. When Will Customs Permit Early Release Of Seized Property?**

Pending a final decision on the section 1618 petition (see discussion below), Customs also entertains requests for early release of the seized property, provided:

- a decision is made that forfeiture is not appropriate;
- the importation is not prohibited (NOTE: early release may be allowed if merchandise is merely restricted and the restriction is remedied);
- the petitioner deposits a sum that approximates the final amount for remission of the forfeiture;
- petitioner agrees to hold the Government harmless and pay administrative (e.g., storage) charges and other costs (e.g., liens) in connection with the seizure; and
- there is no pending criminal investigation or parallel criminal proceeding.

The local FPFO responsible for the seizure makes the early release decision in cases where the forfeiture value of the seized property is less than or equal to

\$100,000. OR&R, ITC Division, must approve the decision where the forfeiture value is greater than \$100,000.

## **D. The Civil Assets Forfeiture Reform Act of 2000**

On April 25, 2000, the President signed into Law the Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, (hereinafter referred to as "CAFRA"). The new rules relating to civil forfeiture created by CAFRA, constitute an effort to reform civil asset forfeiture laws and are meant to make the procedure more equitable and fair. As enacted, CAFRA prospectively amends a myriad of statutes and implements new seizure and forfeiture statutory provisions, which streamline, both substantively and procedurally, federal seizures and forfeitures occurring on or after August 23, 2000.

Most CAFRA provisions and requirements are not applicable to forfeitures under The Tariff Act of 1930, or any other provision of law contained in title 19, United States Code, or other traditional Customs forfeitures, such as 19 U.S.C. 1497, (failure to declare), §1595a(a) (conveyances facilitating unlawful importations), §1595a(c) (importations contrary to law); the Internal Revenue Code of 1986; the Federal Food, Drug and Cosmetic Act (F.F.D.C.A.), 21 U.S.C. 301, et seq.; the Trading with the Enemy Act, 50 U.S.C. App. 1, et seq.; and the Neutrality Act, 22 U.S.C. 401; (primary forfeiture provision for exports contrary to law). However, seizures under any other statutory provisions including, but not limited to, civil forfeitures for currency/monetary instrument seizures under the Bank Secrecy Act, 31 U.S.C. 5317(c), money laundering violations under the Money Laundering Control Act, 18 U.S.C. 981, and the Contraband Act, 49 U.S.C. 80302, et seq., are subject to CAFRA's new requirements.

**Hence, the bulk of the seizures and forfeitures handled by Customs will continue to be governed by the standard and more traditional rules described in preceding sections A, B, and C of this publication.** The CAFRA provisions are meant to work in unison with other existing forfeiture provisions to insure fairness to individuals whose property may be seized and forfeited, while protecting the needs of law enforcement. The sweeping changes galvanized by CAFRA have, in some degree, impacted every agency, which seizes and forfeits property.

### **1. CAFRA seizure and forfeiture procedure**

As a general rule, if the forfeitures are not specifically excluded from the CAFRA provisions, Customs must issue a CAFRA notice of seizure **within 60 days of the seizure** to any person with an interest in the property, unless:

- The seizure was first made by state or local authorities and is adopted by Customs to complete federal forfeiture. In such instances, the CAFRA notice of seizure must be issued within **90 calendar days** after the date of the seizure by the state or law enforcement agency (not within 90 days from referral or adoption).



- The identity or interest of a claimant is not determined until after the seizure, but is determined before forfeiture is complete. In that instance, Customs will have **60 calendar days** from the date that the identity or interest is determined to issue a timely notice.
- The circumstances are such that the Assistant Commissioner of the Office of Investigations extends the time to issue the notice of seizure by 30 calendar days (*i.e.*, from 60 to 90 days from the date of the seizure, based on investigative interests). **Only one 30-day extension** may be obtained administratively. Hence, any subsequent additional extensions of time must be granted by the court.
- A court order is obtained which allows for issuance of the notice of seizure beyond the 60 days (or 90 days with the added administrative extension).

Generally, if the CAFRA seizure notice is not issued in a timely manner, Customs will return the property to the claimant, unless the property is contraband (*i.e.*, marijuana, cocaine, etc.) or if the claimant is not legally entitled to possess the property (*i.e.*, a convicted felon who may not legally possess a firearm), without prejudice to the right of the Government to commence a forfeiture proceeding at a later time.

For example, if the same property is subsequently used in a different offense, the government is not precluded from seizing and forfeiting the property based on the new offense. Also, the government may re-seize the property (after release) for purposes of initiating criminal forfeiture for the same underlying offense.

## 2. Claim Under CAFRA

Claims for seized property may be filed no later than the deadline set in any notice of seizure (**and in no case will that be earlier than 35 days after the date of mailing of the notice of seizure**). If such notice of seizure is not received, then the claim may be filed **no later than 30 days after the final publication of the notice of forfeiture of the property**.

CAFRA further abolishes the requirement of posting a cost bond for a claim in a CAFRA seizure, unlike the claim and cost bond in a regular title 19 or export seizure. The claim must include the following requirements:

1. Must be in writing;
2. Must be under oath, subject to penalty of perjury;
3. Must identify the specific property being claimed; and
4. Must state the claimant's interest in the property.

As previously discussed, if a claimant fails to meet the above criteria in filing the claim, the submission will be treated as a petition for relief under 19 CFR Part 171.

### 3. Release of Property Pending Resolution of the Case

Pursuant to CAFRA provisions, if Customs has seized property and the continued seizure will result in a substantial hardship to the claimant, he or she may seek immediate release of that seized property pending the conclusion of the forfeiture process. Even if a request for immediate release of the property, due to a substantial hardship has not been made, early release of the property pending final administrative decision (as described in Section III C of this publication and per 19 CFR Part 171) may still be accomplished.

However, this does not apply to contraband, currency, and other monetary instruments or electronic funds, unless they constitute the assets of a legitimate business that has been seized. It also does not apply to property to be used as evidence of a violation, or to property that by reason of design or other characteristic is particularly suited for use in illegal activities (*i.e.*, a vessel with secret compartments) or is property that is likely to be used in the commission of criminal acts.

If a claim (as opposed to a petition) has been filed by a claimant to a seized property and such property is of the kind and character that could be subject of a hardship petition, a notice must be issued to the claimant advising him or her of the right to file a hardship petition. The distinctions between a petition and a claim will be further discussed in this document.

The decision to grant or deny the request for immediate release lies within the sole discretion of the FP&F Officer. In this regard, a request for release that is **not decided** within **15 calendar days** of the date of the request will be deemed **denied**. The party seeking the release can then go to court and seek judicial redress.

#### **E. What Are The Steps To The Petition Process For Remission Of A Forfeiture?**

After receiving the Notice of Seizure, a person having an interest in the seized property may file a petition for relief with the local FPFO. There is no requirement for any specific format for the petition for relief. In this regard, a letter detailing the underlying facts and circumstances is sufficient. However, Customs may require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. Pursuant to 19 CFR § 171.1, the petition must set forth the following:

1. A description of the property involved (if a seizure);
2. The date and place of the violation or seizure;
3. The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and
4. If a seizure case, proof of a petitionable interest in the seized property.

The petition for remission or mitigation must be signed by the petitioner, his/her attorney, or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a responsible employee representative of such corporation.

In non-commercial violations, a non-English speaking petitioner (or a petitioner who has a disability, which may impede the filing of a petition) may assign a representative (i.e., a family member) to file a petition on his or her behalf. Proof of such representation may be required by the deciding Customs officer, prior to entertaining such petition. Additionally, it is noteworthy to indicate that under the new regulations, electronic signatures are also acceptable.

Generally, dispositions of petitions adhere to very specific guidelines for granting or denying relief based upon mitigating factors (e.g., cooperation by the petitioner with the Customs investigation above and beyond that normally expected) or aggravating factors (e.g., prior record of a similar violation by the petitioner). If relief is granted, in lieu of forfeiture the property, Customs collects from the petitioner a monetary amount, generally, based upon specified percentages of the dutiable value of the seized property (e.g., remission upon payment of 30-50 percent of the dutiable value for first time, intentional importation contrary to law). Normally, dutiable value (the value upon which Customs assesses duties) is less than the forfeiture (domestic) value of the seized goods.

***The petition period normally is limited to thirty (30) days, unless the FPFO extends the period. As previously discussed, subsequent to the issuance of an administrative decision on the petition for relief, petitioner may file a supplemental petition seeking further review of the petition. In cases where the violator does not file a petition, the case may be referred to the U.S. Attorney for judicial forfeiture, or processed administratively, for summary forfeiture disposition.***

A claimant to seized property being processed under CAFRA may file a petition for relief under the Customs regulations, if he or she elects to file a petition (rather than file a claim) and so indicates on the election of proceedings form.

Additionally, with regard to jurisdictional amounts and for purposes of deciding a petition for relief under CAFRA, the same structure of delegation of authority discussed in section II of this document applies. Likewise, all property, which shall be judicially forfeited because of its value, would still have to be judicially forfeited, whether a CAFRA case or not.

## **F. What Are Customs Dispositions For Remission Of A Forfeiture And What Action May Customs Take If A Petitioner Does Not Comply With Such Relief?**

Customs remits may forfeitures (i.e., returns the property) upon payment of a monetary amount and costs associated with the seizure (e.g., storage) as well as upon execution of a Hold Harmless Agreement by the petitioner. In many cases, including the introduction (or facilitation of the introduction) of merchandise contrary to law under 19 U.S.C. 1595a(c), Customs will release the seized property upon payment of an amount within the following ranges:

- First offense with mitigating, but no aggravating factors: payment of 10-30% of the dutiable value of the seized goods.
- First offense with aggravating factors or second offense with no aggravating factors: payment of 30-50% of the dutiable value of the seized goods.
- Second offense with aggravating factors or third/subsequent offense: payment of 50-80% of the dutiable value of the seized goods.

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:

- Substantive Violations (i.e., failure to obtain a State or Commerce Department license)
- First offense: \$2,500 or the invoiced value of the violative goods, whichever is lower.
- Second offense: \$3,500 or the invoiced value of the violative goods, whichever is lower.
- Third offense: \$5,000 or the invoiced value of the violative goods, whichever is lower.
- Fourth offense: \$7,000 - \$10,000 (depending on mitigating or aggravating factors), or the invoiced value of the goods, whichever is lower.
- Technical Violations (i.e., failure to validate, present, or reference a State or Commerce Department license)

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

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

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

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.

For the remission of liability in cases of the **failure to declare merchandise under 19 U.S.C. 1497**, Customs utilizes the guidelines set forth in 19 CFR Part 171, App A. Although these guidelines should be consulted for a full explanation of the mitigating and aggravating factors, as well as the class of violation, Customs, generally, will remit the liability upon payment of an amount within the following ranges:

- Violations Involving Dutiable Articles:

If first offense, where there is knowledge of the declaration requirements, the undeclared articles are discovered by the Customs officers, and there are no mitigating or aggravating factors: Three times duty (but not less than \$50), or the domestic value, whichever is lower.

If mitigating factors are present: From one and one-half to three times the duty, or the domestic value, whichever is lower.

If extraordinary mitigating factors are present: Customs may reduce the mitigated amount to one times the duty.

If aggravating factors are present: From three to six times the duty (but not less than \$100), or the domestic value, whichever is lower.

If extraordinary aggravating factors are present: From six to eight times the duty, (but not less than \$250), or the domestic value, whichever is lower, in cases where the offense is a second or subsequent violation. Denial of relief or mitigation to no less than eight times the duty, or the domestic value, whichever is lower, in cases where the offense is a second or subsequent violation and there are aggravating factors.

- Violations Involving Absolutely Free (duty free HTSUS provisions) or Conditionally Free (Generalized System of Preferences [GSP], Chapter 98, HTSUS, etc.) Articles:

If first offense, involving conditionally free articles: One time the duty that would have been due if the articles had not been entitled to the benefit.

If first offense, involving absolutely duty-free articles: From one to five percent of the domestic value, but not less than \$50 (or the domestic value, whichever, is less) nor more than \$1,000.

If mitigating factors are present: Customs may reduce the mitigated amount to a lower figure.

If aggravating factors are present: For conditionally free articles, from one to two times the duty (but not less than \$100), or the domestic value, whichever is lower, and for absolutely free articles, from five to ten percent of the domestic value (but not less than \$100).

For the remission of goods subject to forfeiture in cases of **monetary instrument or currency reporting violations under 31 U.S.C. 5316 and 5317**, Customs, generally, will release the monetary instrument or currency transported (where the reporting violation has no connection to illegal activity) upon payment of the following standard amounts. These standard amounts are based on the amount being transported:

- Transport of \$15,000 or less: \$500 standard amount;
- Transport of \$15,001 - \$25,000: \$1,000 standard amount;
- Transport of \$25,001 - \$40,000: \$2,500 standard amount;
- Transport of \$40,001 - \$70,000: \$5,000 standard amount;
- Transport of \$70,001 - \$120,000: \$10,000 standard amount;
- Transport of \$120,001 - \$200,000: \$20,000 standard amount;
- Transport of \$200,001 - \$500,000: \$30,000 standard amount;
- Transport of \$500,001 - \$1,000,000: \$50,000 standard amount;
- Transport of more than \$1,000,000: decided in accordance with Customs Treasury delegations and policy.

[Note that Treasury approval is required in cases where the forfeiture value is greater than \$500,000.]

With regard to the disposition of any forfeiture case, **mitigating factors**, when applicable, may decrease the penalty amount the petitioner must pay for remission of the forfeiture 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. Extraordinary mitigating

factors may warrant remission of all, or a significant portion of the standard amount. Generally, mitigating factors include:

- inexperience;
- cooperation with, or voluntary disclosure of a violation to, Customs officers;
- contributory Customs negligence; and
- impaired communication with violator (because of language barrier, mental condition, or physical ailment).

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.

Claims for forfeiture of monetary instruments under 31 U.S.C. §§ 5316 and 5317 are subject to the provisions of 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.

CAFRA provisions further allow for the granting of attorneys fees, interest and costs in any case where a claimant “substantially prevails” in any civil proceeding relating to forfeited property. In no case will a remission of the forfeiture be considered “substantially prevailing” for purposes of paying attorneys fees, interests or costs. Hence, these fees, interests, and costs, will only be granted by a court to a claimant who has substantially prevailed in a civil judicial proceeding.

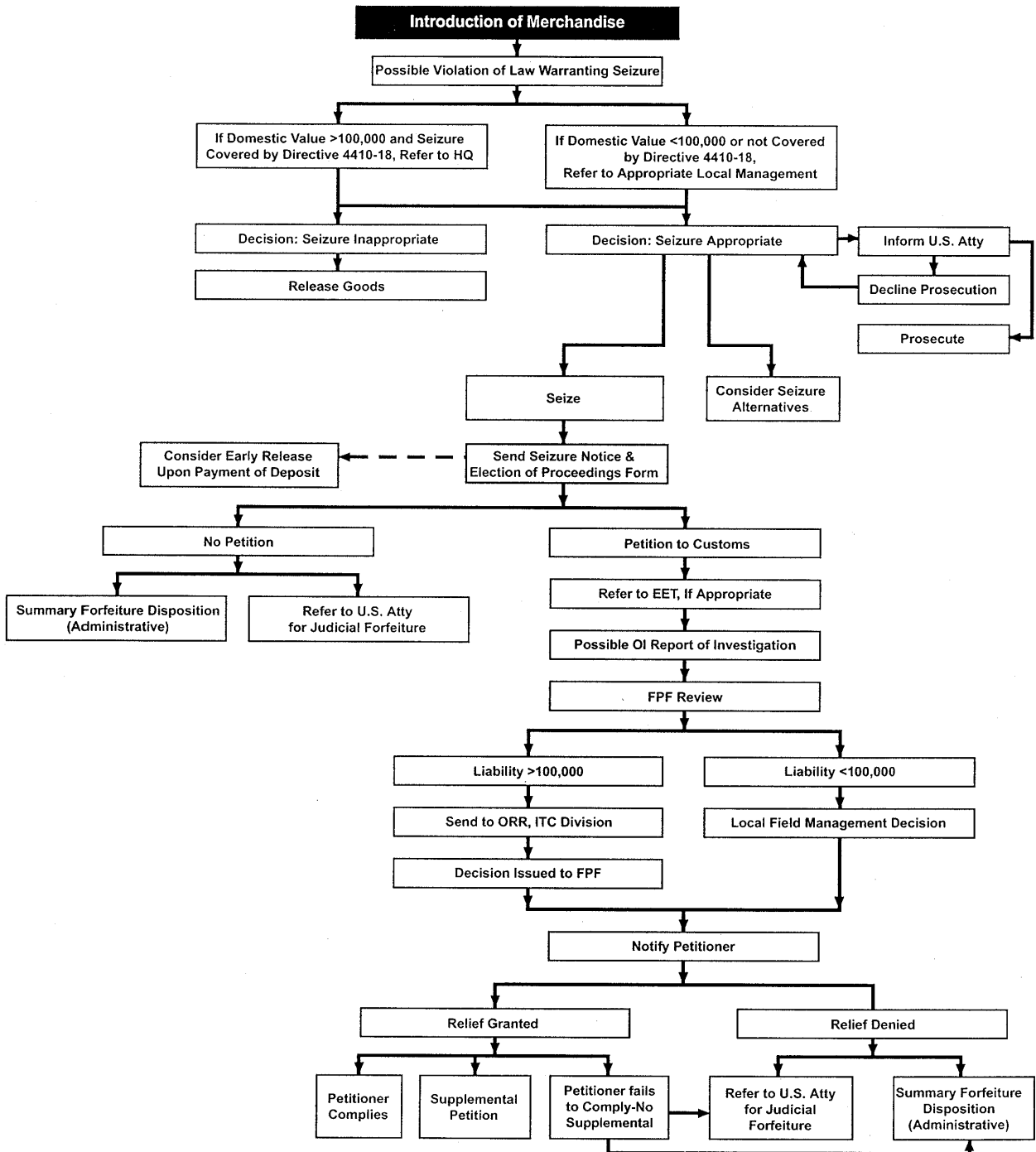
With regard to excessive fines and proportionality review, CAFRA’s amendments of 18 U.S.C. § 983(g) provide that a claimant may petition the court to determine whether the forfeiture was constitutionally excessive. In this regard, CAFRA has codified the standard set forth in U.S. v. Bajakajian, 524 U.S. 324 (1998).

## **G. Statute of Limitations For Civil Forfeiture Actions**

CAFRA modifies 19 U.S.C. § 1621 and provides the time limit in which the Government can bring an action for forfeiture. This amendment applies to all Customs seizures for forfeiture and provides the same five (5) year limitation, from the discovery of the violation, but adds a provision requiring the commencement of the proceeding within the above-cited five (5) year period, or within two (2) years of discovery of the property’s involvement in the crime, whichever is later.

[See next page for a chart of the seizure process]

## Administrative Process: Seizures





## **IV. ADMINISTRATIVE PROCESS FOR MONETARY PENALTIES ASSESSED AGAINST INDIVIDUALS INVOLVED IN A VIOLATION**

### **A. When Is A Penalty Assessed Against An Individual?**

When a violation of Customs laws or laws enforced by Customs is discovered, in addition to, or in lieu of, seizure and/or referral for criminal prosecution, Customs usually has the option of assessing a personal penalty against the alleged violator(s). In some cases, commercial violations are first reviewed by a multidiscipline Enforce Evaluation Team (EET) to determine whether a penalty should be issued or whether another action would be more appropriate under the circumstances. The EET may recommend actions ranging from compliance improvement plans to referral for criminal prosecution.

### **B. What Are The Steps To The Penalty Process?**

#### **1. Customs Issues Prepenalty And/Or Penalty Notices**

While the penalty process generally begins with the FPFO's issuance of the Penalty Notice (CF 5955A) to the alleged violator, some statutes require the issuance of a prepenalty notice and opportunity for response before Customs makes its penalty claim (i.e., issues a penalty notice).

A prepenalty notice is a written notice that Customs is "contemplating" issuance of a penalty against a named person and/or entity. At this preliminary stage, the named person and/or entity is given information regarding the alleged violation and provided an opportunity to present reasons why Customs either should not issue the penalty claim at all, or should not issue the penalty claim in the contemplated amount.

Penalties requiring the issuance of a prepenalty notice before issuance of a penalty notice include:

- commercial fraud and negligence (19 U.S.C. 1592);
- drawback penalties (19 U.S.C. 1593a);
- customs broker penalties (19 U.S.C.1641);
- recordkeeping penalties (19 U.S.C. 1509);
- falsity or lack of manifest (19 U.S.C.1584(a)(1)); and
- equipment and vessel repairs (19 U.S.C. 1466).

Generally, the alleged violator has thirty (30) days from the date of mailing of the prepenalty notice for response.

Penalties not requiring the issuance of a prepenalty notice include, but are not limited to:

- penalties for aiding unlawful importation (19 U.S.C. 1595a(b));
- drug related manifest penalties (19 U.S.C. 1584(a)(2));
- counterfeit trademark penalties (19 U.S.C. 1526(f));
- conveyance arrival, reporting, entry, and clearance violations (19 U.S.C. 1436); and
- coastwise trade (Jones Act) violations (46 U.S.C. App. 883).

## 2. Alleged Violator Responds And/Or Petitions

Upon receipt of the alleged violator's prepenalty response, the FPFO either will proceed to issue a penalty claim if the violation is substantiated or issue a written statement that Customs has chosen not to assess a penalty.

If the FPFO assesses a penalty, generally, the alleged violator has sixty (60) days from the date of mailing the penalty notice to file a petition for relief. If the alleged violator provides no response (petition), Customs may refer the case for collection action.

Most penalties are assessed at the statutory maximums applicable to the alleged violation (e.g., most section 1592 fraud penalties are assessed at the maximum domestic value amount). However, in most cases, petitions for mitigation are filed under 19 U.S.C. 1618. Petitioners may be permitted to make oral presentations to Customs officials, depending on the law and regulations involved.

For instance, when the penalty incurred is for a violation of 19 U.S.C. 1592 or 1593a, petitioner has a legal right to make an oral presentation. In all other violations, the granting of an opportunity for oral presentation lies within the discretion of the official of the Customs Service or Treasury Department, authorized to act on the petition or supplemental petition.

Customs decides to grant or deny mitigation of penalties in accordance with established guidelines for the particular penalty statute involved. For instance, guidelines for section 1592 and section 1641 penalties are set forth as Appendices B and C, respectively, to Part 171 of the Customs Regulations.

The alleged violator may file a supplemental petition for further relief from the penalty. Generally, the office unit that decided the initial petition may grant further relief. However, if the request for further relief is recommended to be denied, a higher-level office unit must decide the matter.

## 3. Customs May Refer Claims For Collection Action And/Or Judicial Enforcement

If the assessed or mitigated penalty is **not** paid within:

- the time stated in the penalty notice (e.g., cases where a petition for relief is not filed in response to Customs penalty claim); or

- the time stated in the decision on the petition (or supplemental petition),
- the penalty claim will be referred for collection action.

#### 4. Customs Also May Compromise Or “Settle” Claims

In addition to the authority to remit and mitigate penalties and forfeitures pursuant to 19 U.S.C. 1618, the authority delegated by the Secretary of the Treasury to the Commissioner of Customs includes the authority to compromise (settle) penalty claims pursuant to 19 U.S.C. 1617, upon the recommendation of the General Counsel of the Treasury Department or his designee (usually the Office of Chief Counsel of Customs). The only relevant factors in deciding whether to compromise a claim are:

- the risks in litigation for the government’s recovery of the assessed penalty amount; and
- the financial inability of the alleged violator to pay the assessed or mitigated penalty.

The alleged violator may make an offer in compromise at any time during the course of the penalty proceeding.

Claims under section 1592(d) for the loss of duties lawfully owed Customs (i.e., duty demands) as a result of a commercial fraud, gross negligence or negligence violations, may be compromised only by the Secretary of the Treasury, or his designee, upon approval by the Office of General Counsel, or his designee. The Secretary of the Treasury has not delegated his authority to compromise duty claims to Customs.

### **C. What Are The Specific Elements Comprising the Various Monetary Penalties?**

#### 1. Commercial Fraud and Negligence Penalties (19 U.S.C. 1592)

19 U.S.C. 1592 provides for penalties against any person who:

- by fraud (i.e., voluntarily and intentionally), gross negligence (i.e., with actual knowledge or wanton disregard), or negligence (i.e., fails to exercise reasonable care),
- enters or introduces (or attempts to enter or introduce) any merchandise into the commerce of the U.S.,
- by means of any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material (i.e., the falsity has the potential to alter the classification, appraisement, or admissibility of merchandise, or the liability for duty or if it tends to conceal an unfair trade practice under the antidumping, countervailing duty or similar statute, or an unfair act involving patent or copyright infringement).

Section 1592 provides for the assessment of penalties against the alleged violator at a maximum of:

- the domestic value of the merchandise in the case of fraud violations;
- four times the loss of lawful duties, taxes, and fees deprived the government, or the domestic value or, if the violation did not affect the assessment of duties 40% of the dutiable value if the violation did not affect the assessment of duties (but in no case to exceed the domestic value of the merchandise), in the case of gross negligence violations; and
- two times the loss of lawful duties, taxes, and fees deprived the government or 20% of the dutiable value if the violation did not affect the assessment of duties (but in no case to exceed the domestic value of the merchandise), in the case of negligence violations.

Pursuant to 19 U.S.C. 1592(d), Customs also may issue duty demand claims, in addition to penalties, for violations of section 19 U.S.C. 1592(a), which have resulted in the loss of lawful duties. The FPFO issues notice to any person liable for payment of the actual duties (e.g., the violator, the importer or, if unable to pay, the surety).

Petitions for relief from section 1592 penalties may be filed pursuant to 19 U.S.C. 1618. All petitions are filed with the FPFO of the port at which the penalty is assessed. The FPFO and NSPO decide petitions and supplemental petitions in cases where the penalty claim is less than or equal to \$50,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty claim is greater than \$50,000.

Customs considers various mitigating and aggravating factors throughout the petition stage.

- **Mitigating factors** justifying further relief include: contributory Customs error, cooperation with the investigation, immediate remedial action, inexperience in importing, and prior good record.
- **Extraordinary mitigating factors** justifying further relief include: inability to obtain jurisdiction or to enforce a judgment against the violator, inability to pay the mitigated penalty, extraordinary expenses for the alleged violator, and Customs knowledge of the violation.
- **Aggravating factors** include: obstructing the investigation, withholding evidence, providing misleading information concerning the violation, textile transshipment, and prior substantive 1592 violations with a final administrative finding of culpability.

Generally, Customs may mitigate section 1592 penalties to amounts within the following ranges:

- Fraud – from a minimum of 5 times to a maximum of 8 times the total duty loss, or 50% to 80% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise;
- Gross negligence – from a minimum of 2.5 times to a maximum of 4 times the total duty loss, or 25% to 40% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise; or
- Negligence – from a minimum of 0.5 times to a maximum of 2 times the total duty loss or 5% to 20% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise.

A person who discloses the circumstances of the section 1592 violation, before or without knowledge of the commencement of a formal investigation (i.e., makes a prior disclosure) can receive substantially reduced penalties.

- In the case of **negligence or gross negligence** violations, if there is an **actual** revenue loss (i.e., loss of duties, taxes or fees after Customs already has liquidated the entries as final), the reduced penalty is an amount equal to interest from the date of liquidation until the duties are paid.
- In the case of **negligence or gross negligence violations**, if there is a **potential** revenue loss (i.e., loss of duties, taxes or fees prior to Customs liquidation of the entries as final), the penalty is remitted in full.
- In the case of **fraud** violations, the reduced penalty always equals one times the actual and potential revenue loss (or 10% of the dutiable value, if the violation did not affect the assessment of duties).

For further information concerning prior disclosures, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: The ABC's of Prior Disclosure*, dated May, 1998.

By delegation, the OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a section 1592 penalty action, submitted pursuant to section 1617. The alleged violator may make an offer in compromise at any time, regardless as to whether Customs already has issued a prepenalty or penalty notice.

Generally, Customs will not seize merchandise subject to a section 1592 penalty action. However, Customs will seize such merchandise in cases where it possesses a reasonable belief that:

- the alleged violator is insolvent;
- the alleged violator is beyond the jurisdiction of the U.S.;
- the seizure is essential to protect the revenue; or
- the seizure is essential to prevent the introduction of prohibited or restricted merchandise.

## 2. Drawback Penalties (19 U.S.C. 1593a)

Section 1593a provides for penalties against any person who:

- by fraud or negligence,
- seeks, induces, 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 or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material.

Drawback, in pertinent part, is the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax (in connection with the importation of merchandise) imposed under Federal law. A drawback claim represents the drawback entry and related documents required by regulation in order to request drawback payment. (For further information concerning drawback, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Drawback*, dated March, 1998.)

Customs also may issue claims for duties, in addition to penalties, pursuant to 19 U.S.C. 1593a(d), for violations of section 1593a(a), which have resulted in a loss of revenue to the government. The notice of the duty claim may be issued to any person liable for payment of actual duties (e.g., the importer or, if unable to pay, the surety).

Generally, Customs may mitigate section 1593a penalties to amounts within the following ranges:

- Fraud - three (3) times to one and one-half (1 1/2) times the actual or potential loss of revenue;
- Repeat negligence violation - fifty percent (50%) to twenty five percent (25%) the actual or potential loss of revenue; and
- First negligence violation - twenty percent (20%) to ten percent (10%) the loss of revenue.

The FPFO decides petitions in cases where the assessed penalty is less than or equal to \$50,000 and OR&R, ITC Division, decides those petitions in cases where the assessed penalty is greater than \$50,000. The NSPO decides those supplemental petitions in cases where the assessed penalty is less than or equal to \$50,000, and OR&R, ITC Division, decides those supplemental petitions in cases where the assessed penalty is greater than \$50,000.

Similar to the recordkeeping compliance program provided under section 1509 (discussed below), in the absence of fraud or repetitive negligent violations, participants of the drawback compliance program may receive a written notice of the violation in lieu of their first monetary penalty.

Customs considers the same mitigating and aggravating factors previously set forth for section 1592 penalties. Additionally, prior voluntary disclosures of the circumstances of the section 1593a violation also may result in substantially reduced penalties.

As stated earlier with regard to 19 U.S.C. 1592 penalties, the OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a drawback penalty action, pursuant to section 1617.

Customs promulgated its final drawback penalty regulations in 65 Fed. Reg., 3803, Jan. 25, 2000. Consistent with these regulations, Customs can assess drawback penalties against anyone who filed a false drawback claim on or after November 25, 1998 (i.e., the date of implementation of the automated drawback selectivity program).

### 3. Broker Penalties (19 U.S.C. 1641)

Generally, Customs will assess penalties against customs brokers (i.e., those licensed to transact customs business on behalf of others, pursuant to 19 CFR Part 111) up to a maximum of \$30,000 for the violations included in any one penalty notice. Customs may issue penalties or may revoke or suspend a broker's license or permit for violations of the broker's statutory or regulatory responsibility. (See our publication, *What Every Member of the Trade Community Should Know About: Customs Brokers* (March, 2000) for more detail. These include:

- failure of a broker to exercise responsible supervision and control over customs business. See 19 U.S.C. 1641(b)(4);
- cases in which a customs broker:
  - 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;
  - at any time after the filing of a license or permit application, was convicted of certain enumerated felonies or misdemeanors;
  - has violated any provision of any laws enforced by Customs, or the rules or regulations issued under any such provision;
  - has counseled, induced, knowingly aided or abetted another person's violations of any law enforced by Customs, or the rules or regulations issued under any such provision;
  - without written approval of the Secretary of the Treasury, has knowingly employed, or continues to employ, any person convicted of a felony; and
  - has, in the course of Customs business, with intent to defraud, willfully and knowingly deceived, misled, or threatened any client or prospective client. (See 19 U.S.C. 1641(d)(1) and (d)(2)(A)).

In addition, pursuant to 19 U.S.C. 1641(b)(6), Customs may issue penalties (not to exceed \$10,000 for each transaction) against any person who intentionally transacts

customs business, other than solely on its own behalf, without holding a valid customs broker's license.

In cases where the broker allegedly has violated any of the laws, rules or regulations enforced by Customs (i.e., 19 U.S.C. 1641(d)(1)(C)), in a fraudulent manner, it is appropriate for Customs to impose additional penalties under 19 U.S.C. 1592. It is Customs policy, in cases of negligence or gross negligence, to impose additional penalties under 19 U.S.C. 1592, only where the broker shared in the financial benefits to an extent over and above the prevailing brokerage fees.

The FPFO decides all initial petitions in broker penalty cases. The NSPO decides supplemental petitions in cases where the penalty claim is less than or equal to \$10,000. OR&R, ITC Division, decides supplemental petitions in cases where the penalty claim is greater than \$10,000.

OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a broker penalty action, submitted pursuant to section 1617.

#### 4. Recordkeeping Penalties (19 U.S.C. 1509)

Certain persons who fail to produce, upon demand, an entry record enumerated in the Customs Regulations pursuant to 19 U.S.C. 1509(a)(1)(A), commonly known as the "(a)(1)(A) list," may be subject to recordkeeping penalties. The (a)(1)(A) list refers to records required by law or regulation for the entry of merchandise (whether or not Customs required their presentation at the time of entry). See 19 CFR Part 163 App.

The parties potentially liable for recordkeeping penalties include, but are not limited to,

- owners,
- importers,
- consignees,
- importers of record or entry filers.

Customs may assess a recordkeeping penalty against these parties, or their agents (including customs brokers), when they: import merchandise into the U.S., file drawback claims, transport or store merchandise carried or held under bond, or knowingly cause the importation or transportation or storage of merchandise carried or held under bond into or from the U.S. Customs also may assess recordkeeping penalties against those parties who engage in activities which require the filing of a declaration and/or entry, as well as against those parties who complete and sign a NAFTA Certificate of Origin.

Customs imposes recordkeeping penalties based on one of two possible levels of culpability. These two levels of culpability are **willful failure** and **negligence**. If a party's failure to comply with Customs demand for an entry record resulted from a willful



failure to produce that record, Customs may penalize that party for each release (*i.e.*, per C.F. 3461) of merchandise in an amount not to exceed \$100,000, or an amount equal to seventy five percent (75%) of the appraised value of the merchandise, whichever is less. If a party's failure to comply with Customs demand for an entry record is due to negligence, Customs may penalize that party for each release of merchandise in an amount not to exceed \$10,000 or an amount equal to forty percent (40%) of the appraised value of the merchandise, whichever is less.

A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements. The recordkeeping requirements are established either under the recordkeeping compliance program or an alternative program negotiated to suit the needs of the recordkeeper and Customs. Participants of the recordkeeping compliance program, in the absence of willful or repetitive negligent violations, may receive from Customs a written notice of a violation in lieu of a monetary penalty. However, repetitive negligent violations by the recordkeeper may result in Customs issuance of penalties and removal of certification under the program until corrective action is taken to Customs satisfaction.

Customs commenced the imposition of section 1509 recordkeeping penalties, for the failure to provide entry records lawfully demanded from July 15, 1996, the date the "(a)(1)(A) list" was published in the *Federal Register*. Prior to the FPFO's issuance of a recordkeeping prepenalty notice, it is necessary for the local Customs office contemplating the issuance of the prepenalty first to obtain review and approval from OR&R, ITC Division. This review procedure has been in effect from the time Customs could begin to issue recordkeeping penalties (*i.e.*, July 15, 1996) and will remain in effect until one year from the implementation date of the final recordkeeping guidelines (until November 8, 2001). After this time, OR&R, ITC Division, may review any recordkeeping prepenalty notice, in its own discretion, if warranted by the circumstances.

In deciding petitions for relief from a recordkeeping penalty, Customs considers mitigating and aggravating factors similar to those set forth above for section 1592 penalties. (For further information concerning recordkeeping, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Records and Recordkeeping Requirements*, dated June, 1998.)

#### 5. Falsity or Lack of Manifest (19 U.S.C. 1584(a)(1))

Any vessel master or person in charge of any vehicle bound to the U.S. who fails to produce a manifest to the demanding Customs officer is liable for a penalty of \$1,000. Additionally, in cases where Customs finds that the vessel master or responsible party has failed to manifest any merchandise on board the vessel, aircraft, or vehicle (an overage), the vessel master or responsible party is liable for a penalty equal to the lesser of \$10,000 or the domestic value of the merchandise. Where merchandise is manifested, but not found, a penalty of \$1,000, may be assessed for the shortage.

An importing carrier, bonded carrier, container freight station operator, bonded cartman, bonded warehouse or foreign trade zone proprietor, importer or broker that detects any manifest discrepancy must report the discrepancy. Such parties should file a manifest discrepancy report, or MDR, to report and correct discrepancies in manifested quantities or data elements.

Only section 1584(a)(1) penalties over \$1,000 require the FPFO's issuance of a prepenalty notice. Section 1584 penalties may be secured by the international carrier's bond (i.e., a contract between a carrier or his agent, and a surety, with Customs as the beneficiary, under which Customs can collect a penalty or liquidated damages). Because section 1584(a)(1) penalties may only be assessed up to \$10,000, the FPFO has been delegated the authority to decide all petitions and the NSPO has the delegated authority to decide all supplemental petitions.

#### 6. Drug Related Manifest Penalties (19 U.S.C. 1584(a)(2))

If any unmanifested merchandise (as provided for in 19 U.S.C. 1584(a)(1)), consists of certain controlled substances (illegal drugs such as marijuana, cocaine or smoking opium), Customs assesses penalties against the vessel master, person in charge of the vehicle, owner of the vessel or vehicle, or any other responsible party based on the quantity. For example, \$500 per ounce of marijuana or \$1,000 per ounce of heroin or cocaine. Section 1584 penalties are secured by the international carrier's bond.

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the penalty liability is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than \$100,000. However, in all such cases involving Super Carrier Initiative Program signatories, regardless of the penalty liability, the Assistant Commissioner for OR&R decides the petitions.

The two main elements of a section 1584(a)(2) Carrier Initiative claim are: a) knowledge and b) highest degree of care and diligence. If Customs finds the carrier knew drugs were placed on the shipment or conveyance (i.e., knowledge), there will be no mitigation of penalty assessed. If there is no such knowledge and the carrier exercised the highest degree of care and diligence, Customs will provide full mitigation of the penalty. In all other cases, the amount of relief depends upon the level of culpability.

Generally, OR&R will mitigate penalties for unmanifested drugs as follows:

- In cases of negligence, penalties will be mitigated from ten (10) to twenty-five (25) percent of the original penalty assessment; and
- In cases of gross negligence, penalties will be mitigated from twenty-five (25) to fifty (50) percent of the original penalty assessment.

## 7. Equipment and Vessel Repairs (19 U.S.C. 1466)

The owners or masters of vessels documented under U.S. laws to engage in foreign or coasting trade are liable for entry and payment of a 50 percent *ad valorem* duty on the costs incurred in any foreign country for:

- equipment purchased for the vessel;
- repair parts or materials to be used in connection with the vessel; and
- repair expenses.

If the vessel owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties, or makes any false statement regarding such purchases or repairs without having reasonable cause to believe the truth of such statements or aids or procures the making of any false statement as to any material matter without reasonable cause to believe the truth of such statement, Customs may assess a penalty up to the value of the vessel or seize and forfeit the vessel.

Under current guidelines, the FPFO issues all pre-penalty notices concerning equipment and vessel repair violations at the lower of four (4) times the loss of revenue (duty) or the value of the vessel. If the violation only consists of the late filing of documents, the FPFO will issue the pre-penalty notice at two (2) times the loss of revenue. Section 1466 penalties are secured by international carrier's bond.

The FPFO and NSPO decide petitions and supplemental petitions, in cases where the penalty amount is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty amount is greater than \$100,000.

## 8. Penalties for Aiding Unlawful Importation (19 U.S.C. 1595a(b))

Under 19 U.S.C. 1595a(b), Customs may assess penalties equal to the domestic value of any articles introduced or attempted to be introduced into the U.S. contrary to law. Any person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity provided for in 19 U.S.C. 1595a(a), is liable to a penalty equal to the domestic value of the article or articles introduced or attempted to have been introduced. Section 1595a(a) concerns the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the U.S. contrary to law. Introduction of prohibited merchandise and restricted merchandise, are common examples of the cases where Customs may issue a section 1595a(b) penalty. Some specific violations for which Customs issues section 1595a(b) penalties include: 19 U.S.C. 1304 (improper country of origin marking), 19 U.S.C. 1448 (removal from Customs custody without authorization), 19 U.S.C. 1499 (delivery of merchandise without Customs examination) and 21 U.S.C. 331 (introduction of adulterated or misbranded food).

Generally, the FFO decides petitions, and the NSPO decides supplemental petitions, in cases where the domestic value of the merchandise is less than or equal to \$100,000. OR&R, ITC Division, decides petitions and supplemental petitions in those cases where the domestic value is greater than \$100,000. The mitigation guidelines for remission of section 1595a(c) seizures apply to mitigation of 1595a(b) penalties. Except that for 1595a(b) penalties, assessed for delivery of merchandise from the place of unloading without Customs authorization in violation of the provisions of 19 U.S.C. 1448, or delivered without Customs examination in violation of 19 U.S.C. 1499, the mitigation guidelines appear in T.D. 99-29.

#### 9. Counterfeit Trademark Penalties (19 U.S.C. 1526(f))

Section 1526(f) provides for fines against anyone who directs or assists (financially or otherwise) the importation of merchandise, for sale or public distribution, that is seized pursuant to 19 U.S.C. 1526(e). Section 1526(e) provides for the seizure of merchandise bearing a counterfeit mark, imported in violation of 15 U.S.C. 1124 and the forfeiture of such merchandise in the absence of written consent of the trademark owner. [A counterfeit trademark is a spurious trademark that is identical to, or substantially indistinguishable from, a registered trademark. 19 CFR 133.21(a).] (For further information concerning counterfeit goods, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Customs Enforcement of Intellectual Property Rights*, dated June, 1999.)

Customs will assess section 1526(f) penalties as follows:

- First seizure – penalties up to the value of the genuine merchandise based on the manufacturer's suggested retail price (MSRP).
- Subsequent seizures – penalties up to twice the value of the genuine merchandise based on the MSRP.

The FFO and the NSPO decide petitions and supplemental petitions, in cases where the fine is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the fine is greater than \$100,000.

Customs may mitigate the section 1526(f) penalties to amounts within the following ranges:

- First offense with mitigating, but no aggravating factors: 10-30% of the MSRP of the seized goods.
- First offense with aggravating factors or second offense with no aggravating factors: 30-50% of the MSRP of the seized goods.
- Second offense with aggravating factors or third/subsequent offense: 50-80% of the MSRP of the seized goods.

Customs applies the same mitigating and aggravating factors previously set forth concerning the mitigation of forfeitures, under section 1526(e).

## **10. Arrival, Reporting, Entry, and Clearance Violations (19 U.S.C. 1436)**

Any master of a vessel, person in charge of a vehicle, or aircraft pilot who commits any of the following violations is liable for a \$5,000 penalty for the first violation and a \$10,000 penalty for each subsequent violation for:

- failure to comply with 19 U.S.C. 1431 (i.e., presenting manifests), 19 U.S.C. 1433 (i.e., reporting vessel, vehicle and aircraft arrival), 19 U.S.C. 1434 (i.e., filing vessel entry), or 46 U.S.C. App. 91 (i.e., obtaining vessel clearance);
- presenting or transmitting any forged, altered or false document, information or manifest to Customs, without revealing the facts, under 19 U.S.C. 1431, 19 U.S.C. 1433(d), 19 U.S.C. 1434, or 46 U.S.C. App. 91; or
- failure to make entry or to obtain clearance as required by 19 U.S.C. 1434, 19 U.S.C. 1644 (i.e., civil air navigation laws and vessel entry and clearance regulations), or 46 U.S.C. App. 91.

Additionally, any conveyance used in connection with such violation is subject to seizure and forfeiture. Generally, Customs does not seize a conveyance unless aggravating factors are present or another violation of law is in evidence.

Section 1436 penalties may be secured by international carrier's bond.

The FPFO and NSPO decide petitions and supplemental petitions, in cases where the penalty liability is less than or equal to \$200,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than \$200,000.

## **11. Coastwise Trade (Jones Act) Violations (46 U.S.C. App 883)**

Section 46 U.S.C. App. 883 prohibits foreign flag vessels from transporting merchandise laden at a coastwise port to any other coastwise port (whether directly or via a foreign port). Section 883 provides for seizure and forfeiture of improperly transported merchandise or assessment of a monetary penalty equal to the domestic value of such merchandise. Customs may assess a penalty against the master, owner, or any party responsible for the improper transportation.

Section 883 penalties may be assessed in amounts up to the value of the merchandise moved coastwise in a nonqualified vessel or the cost of the transportation, whichever is greater. If the violation arose because of an emergency to the vessel that required, for reasons of safety or other humanitarian cause, that coastwise transportation occur, the penalty should not exceed \$100,000. If the violation occurred for commercial expediency, Customs does not limit the penalty amount. Section 883 penalties generally are secured by international carrier's bond.

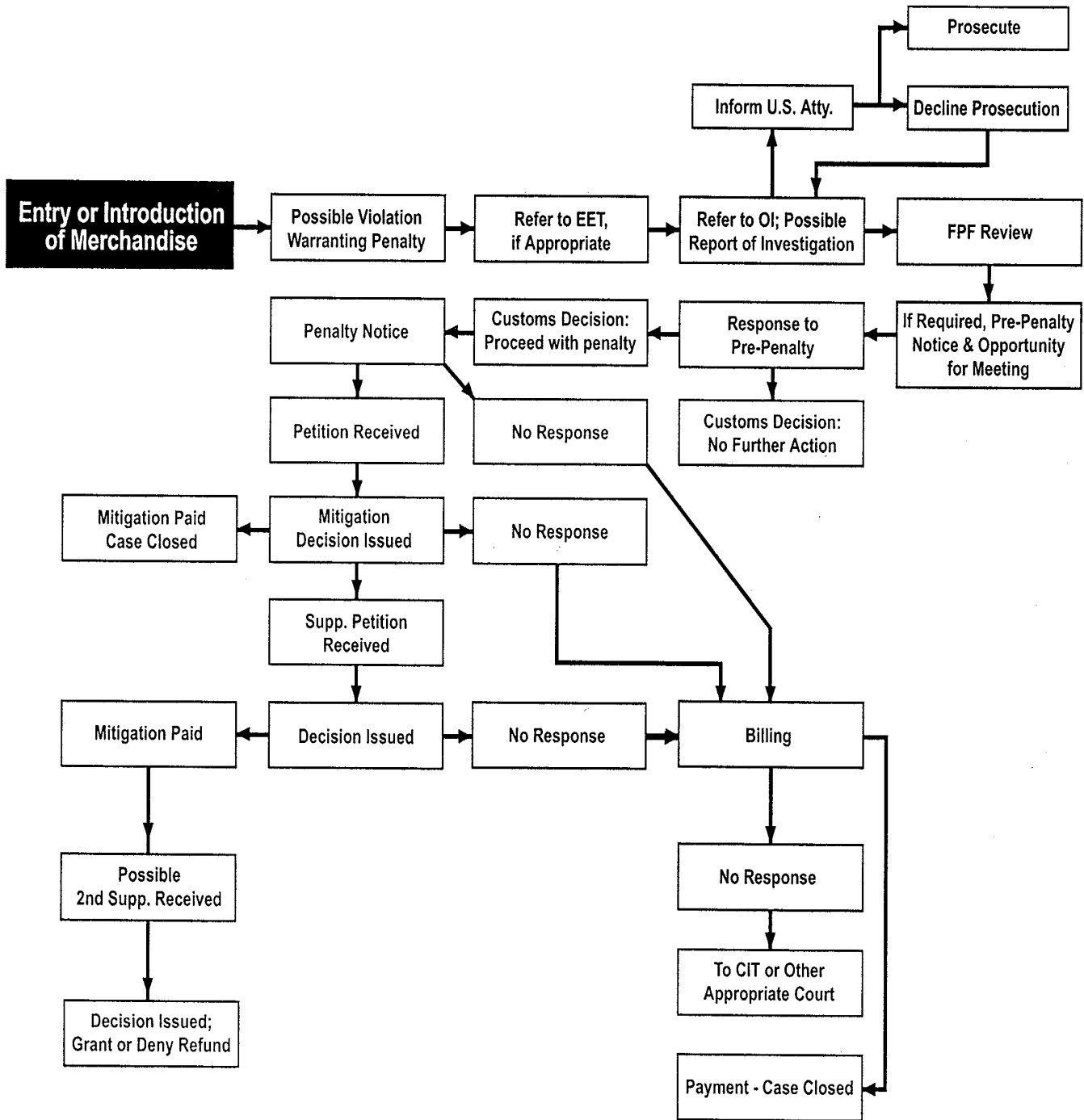
The FPFO and NSPO decide petitions and supplemental petitions, in cases where the penalty liability is less than or equal to \$100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than \$100,000.

If the petition for relief establishes that the violation occurred as a direct result of an arrival of the transporting vessel in distress, such that the vessel was in peril or due to an act of God (e.g., hurricane) full mitigation is appropriate. If the vessel was not in distress, but the transportation occurred because of some other humanitarian reason (e.g., disembarkation of crewman with life threatening injuries), the claim may be mitigated in full. If the violation resulted because of commercial expediency, Customs may mitigate the penalty to an amount between 35 and 50 percent of that assessed.

[See next page for a chart of the penalties process]

## Administrative Process:

# Penalties



Offers in compromise may be submitted at any point in the process. All are subject to approval by ORR, ITC Division and Chief Counsel.

## **V. ADMINISTRATIVE PROCESS FOR LIQUIDATED DAMAGES ASSESSED AGAINST PARTIES LIABLE FOR VIOLATION OF BOND CONDITIONS**

### **A. What Is A Bond And When May Breach Of A Bond Obligation Give Rise To Liquidated Damages Claims?**

Customs laws and regulations require bonds to be filed by the importer of record, warehouseman, and other custodians of merchandise, and in bond and international carriers of merchandise, to ensure compliance with a variety of obligations, relating to the entry, transportation, and storage of imported goods, into and through, the United States. The bond is a contract between the principal (e.g., importer, carrier, warehouseman, etc.) and the surety with Customs as the beneficiary on the bond.

If there is a breach of an obligation under a bond (e.g., failure of the importer to comply with a proper request to redeliver merchandise to Customs custody), Customs may issue a claim for liquidated damages at an amount prescribed under the regulation for the type of breach involved. (As an example, for failure to redeliver FDA rejected foods, Customs currently assesses liquidated damages against the importer at an amount equal to three times the appraised value of the goods involved in the breach.) As the guaranteeing party, the surety is legally liable, or “stands in the shoes” of the bond principal, if the principal fails to pay a liquidated damages claim.

Normally, penalties are not secured by bonds. There is one exception, the International Carrier Bond. Although Customs may assess and collect a penalty amount against the party responsible for the breach (the principal) up to the amount provided for by law, Customs is limited to the amount provided for by the bond in a collection action against the surety.

### **B. What Are The Primary Types Of Bonds And What Types Of Infractions Do They Cover?**

The three primary types of bonds are **importation bonds**, **custodial bonds**, and **international carrier bonds**.

First, parties such as importers and customs brokers, file importation bonds with Customs. Some examples of the types of infractions that may constitute a breach of an importation (or entry) bond include:

- late filing or non-filing of entry summaries;
- late payment or non-payment of estimated duties;
- temporary importation violations; and
- failure to redeliver merchandise into customs custody



See 19 CFR 113.62 for basic importation and entry bond conditions.

Second, parties such as in-bond carriers, as well as operators of warehouses, container freight stations (CFS), centralized examination stations (CES), and duty free stores, file custodial bonds with Customs. Some examples of the types of infractions that may constitute a breach of a custodial bond include cases where:

- merchandise cannot be located or accounted for in a duty-free store, or bonded warehouse; or
- merchandise has been removed without permit or inconsistent with regulation; or
- merchandise has been deposited, manipulated, manufactured, or destroyed without permit or inconsistent with the activity described in the permit; or
- merchandise that is misdelivered or irregularly delivered by an in-bond carrier.

See 19 CFR 113.63, for basic custodial bond conditions and 19 CFR 113.73, for foreign trade zone operator bond conditions.

Third, parties such as carriers responsible for manifests and cargo delivery, file international carrier bonds with Customs. Some examples of the types of infractions that may constitute a breach of an international carrier bond are:

- conveyance arrival or reporting violations (e.g., failure to immediately report a vessel arrival to Customs);
- manifest penalties (e.g., failure to have a manifest, deliver a manifest upon arrival, possess an adequate manifest, or file a manifest discrepancy report to Customs); and
- cargo delivery or unlading violations (e.g., failure to deliver merchandise to a CES, delivery of merchandise without Customs authorization, unlading without a permit, failure to timely notify Customs of unentered or unclaimed general order merchandise, or coastwise trade violations.)

## **C. What Are The Steps To The Liquidated Damages Process?**

### **1. Customs May Consider “Option 1” Resolution**

When a bond breach or infraction occurs, depending on the kind and character of the violation, Customs first will consider whether “**Option 1**” resolution may be possible. Option 1 resolution can be described as a “parking ticket” approach insofar as it involves the payment of a pre-set amount to eliminate petitioning and, therefore, settle cases quickly. Of note, Customs still assesses the liquidated damages claim at the normal amount (i.e., an amount provided by regulation not to exceed that for which the bond is written) even when the Option 1 procedure is available.

Option 1 settlement only applies to those cases where all facts are known to Customs at the time of initial review and the harm to the government is readily quantifiable and understood. The most common examples of liquidated damages

claims which may be resolved through the Option 1 procedure are claims relating to the late filing of an entry summary, invoice or other entry document.

Option 1 settlement would not be available for those cases where the merchandise was not held for Customs examination and the facts surrounding the release of the merchandise are unknown. Similarly problematic, are cases involving temporary import bonds (TIBs) where Customs only has an open entry. In this case, Customs does not know whether the merchandise either continues to remain in the U.S., has been exported outside the bond period, or has been exported timely but without the required Customs supervision. Insofar as Customs would learn the facts only after presentation of a petition for relief, Option 1 would not be feasible and it would be necessary to resolve the matter through the petition process.

If Option 1 resolution is unavailable, or when offered to the violator the Option 1 amount is not paid, Customs will notify the principal of its liability for liquidated damages along with a demand for payment. The sureties on the bond, simultaneously, will be advised of the liability incurred by the principal, and will be given the opportunity to pay the Option 1 amount in cases where the principal does not pay.

## **2. Parties May File Petitions For Relief**

The FPFO and NSPO decide petitions and supplemental petitions in cases where the liquidated damages claim is less than or equal to \$200,000. In addition, the FPFO maintains jurisdiction regardless of the amount of the liquidated damages claim, in all non-filing and late filing of entry summary cases and non-payment or late payment of estimated duty cases. With the exception of the foregoing cases, OR&R, ITC Division, decides petitions and supplemental petitions in cases where the liquidated damages claim is greater than \$200,000. The Department of the Treasury does not review any liquidated damages cases.

## **3. Customs May Refer Claims For Collection Action And/Or Judicial Enforcement**

If Customs issues a petition decision and any party liable for liquidated damages fails to file a supplemental petition for relief or to pay the liquidated damages within sixty (60) days (or such additional time as the FPFO may grant) from the date of mailing the notice of the decision, the FPFO will refer the claim to the appropriate office of the Chief Counsel for preparation for referrals of the claim to the Department of Justice for collection.

## **4. Customs Also May Compromise Or “Settle” Claims**

By delegation, the FPFO may approve all offers in compromise upon the recommendation of the Associate Chief Counsel, Indianapolis/Account Services Division, for settlement of liquidated damages claims or any penalty secured by bond, pursuant to section 1617, in any case where he or she has original petition jurisdiction.

The Chief, Penalties Branch, OR&R, ITC Division, with the recommendation of the Office of Chief Counsel (or his delegate) approves all offers in compromise in which he has jurisdiction to decide a petition for relief.

#### **D. What Are Customs Standards For Mitigation Or Cancellation Of Claims For Liquidated Damages?**

Pursuant to 19 U.S.C. 1623, Customs may cancel any bond or any claims for liquidated damages made against such a bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as Customs deems sufficient. All guidelines for bond cancellation are published. Current guidelines appear in:

- *Treasury Decision (T.D.) 99-29*, which covers claims relating to General Order notification, misdelivery of inbond cargo and delivery of merchandise from Container Freight Stations or Centralized Examination Stations without Customs authorization;
- *T.D. 98-53*, which covers claims relating to the presentation of permits for softwood lumber;
- *T.D. 94-38*, which covers claims relating to late filing of entry summaries, TIBs, failure to redeliver merchandise to Customs custody, bonded warehouses, foreign trade zones, Shipper's Export Declaration (SED) and outbound (export) violations, and airport security;
- *T.D. 94-38*, which covers claims relating to late filing of entry summaries, TIBs, failure to redeliver merchandise to Customs custody, bonded warehouses, foreign trade zones, Shipper's Export Declaration (SED) and outbound (export) violations, and airport security; and
- *T.D. 01-41*, which covers claims arising from violation of foreign trade zone regulations.

Customs made recent changes under T.D. 99-29 to the cargo misdelivery guidelines, raising mitigation amounts significantly. Particularly, when Customs examination was required for the shipment involved in the breach.

Under the 1994 revisions (T.D. 94-38) to bonded warehouse and foreign trade zone guidelines (T.D. 01-41) Customs adjusted amounts to correlate more accurately to the harm suffered. For example, for breaches involving loss of merchandise, Customs now bases its disposition amount upon a multiple of the revenue loss involved. On the other hand, Customs disposition amounts for breaches not involving merchandise (e.g., document filing, file folder updating) involve flat sums. Customs also revised the TIB guidelines to account for the severity of the breach (e.g., document-filing breaches involve less harsh guidelines than breaches involving exportation without supervision).

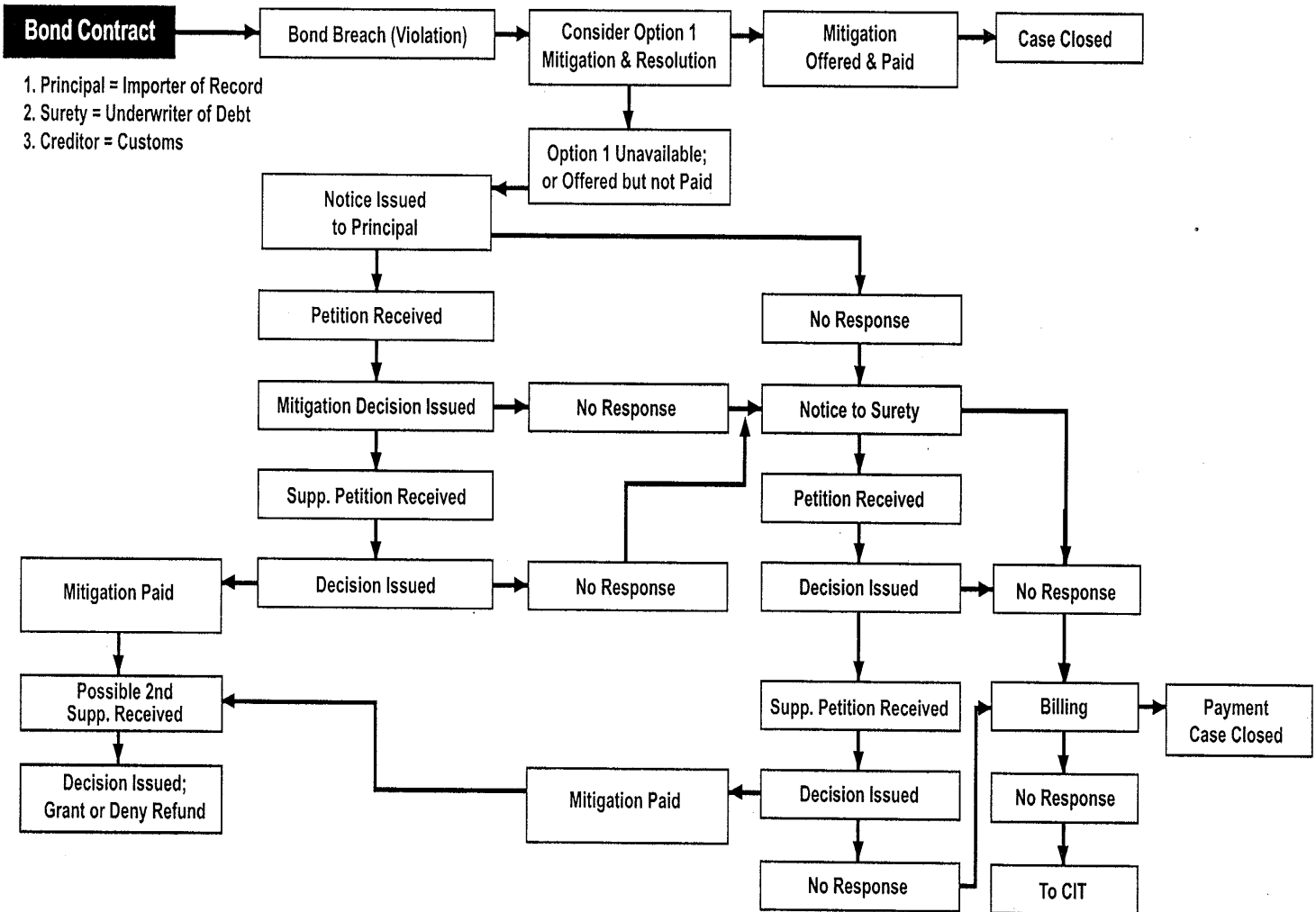
While these cited Treasury Decisions should be consulted for a full explanation, some mitigation ranges for liquidated damages claims include the following:

- Non-filing or late filing of entry summary: \$100 or \$200 plus payment of all estimated duties due plus interest.
- Temporary Importation Bond breaches: From one to five percent (1 to 5%) of the claim but no lower than \$100 (late filing of export documents), to no relief (double the duties, taxes and fees if the merchandise is not exported or destroyed).
- Failure to redeliver to Customs custody: From one to five percent (1 to 5%) of the claim but no lower than \$100 (merchandise redelivered beyond the permissible time period), to no relief (up to three (3) times the value of the goods) for restricted or prohibited merchandise.
- In-bond misdelivery: From \$100-\$500 for late delivery of documents or merchandise to Customs, to no relief (up to three (3) times the value of the goods) for misdelivery of restricted merchandise.
- Warehouse/Foreign Trade Zone bond breaches:
  - Violations involving merchandise – From one to six (1 to 6) times the loss of revenue in lost merchandise cases; no relief (three (3) times value) for restricted merchandise.
  - Violations not involving merchandise (generally document related) – \$100 per breach.
- Airport security bond breaches: From \$100 for document violations, to no relief (\$1,000 per violation) for failing to relinquish badges, unauthorized presence in a secured area or failing to follow the orders of a Customs officer.
- Late filing of export documents (SEDs/bills of lading): From \$50 for one day late (per regulation), to no relief (\$1,000) for non-filing.
- General Order eligibility notifications (per bill of lading): From \$100 (late notification), to no relief (\$1,000) for failure to notify.

Note that Customs maintains the authority to deviate from these guidelines based on the particular facts and circumstances surrounding any case.

[See next page for chart of the liquidated damages process]

## Administrative Process: Liquidated Damages\*



1. Principal = Importer of Record
2. Surety = Underwriter of Debt
3. Creditor = Customs

\* This process also applies to collections from sureties of penalties secured by bonds.

Offers in compromise may be submitted at any point in the process. They are subject to approval by ORR, ITC Division and Chief Counsel if >100,000.

## **ADDITIONAL INFORMATION**

### **The Internet**

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, 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 also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.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, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, 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 February 2002 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 U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP 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.

## **Informed Compliance Publications**

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

## Value Publications

*Customs Valuation under the Trade Agreements Act of 1979* is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

*Customs Valuation Encyclopedia* (with updates) is comprised of relevant statutory provisions, CBP 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 Internet web site of U.S. Customs and Border Protection.

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 CBP 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.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.



## **“Your Comments are Important”**

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

**REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA**



**Visit our Internet web site: <http://www.cbp.gov>**