

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: CO:T:S:F

DISTRIBUTION: See Signature Page
CUSTOMS DIRECTIVE NO. 4410-016
DATE: APRIL 30, 1992

SUBJECT: ISSUANCE OF PENALTIES FOR MANIFEST OR CARGO DELIVERY VIOLATIONS

1. PURPOSE

To provide guidance to field personnel on appropriate penalty action to be initiated when manifest or cargo delivery violations are discovered. Mitigation guidelines are provided in VES section of the Fines, Penalties, and Forfeiture (FP&F) Handbook.

2. BACKGROUND

There has been a lack of uniformity in penalty actions taken against carriers and other culpable parties who are chargeable for manifest violations which are discovered by Customs. This lack of uniformity is due, in part, to recent changes in manifest discrepancy reporting procedures set out in Customs Directive 3200-33 dated September 29, 1989, as well as regulatory and statutory changes in manifest requirements and penalty provisions for failure to meet those requirements. Additionally, confusion exists as to appropriate penalties to be assessed for cargo misdelivery problems.

It is essential that field officers who are in a position to enforce these requirements be knowledgeable in the appropriate penalty action which should be initiated in the automated FP&F module. The appropriate statute should be cited for similar violations in all districts.

In addition, District/Area Directors who have continued to issue demands or bills for duties in cases of differences between entered and manifested quantities should discontinue this practice and issue penalty cases as appropriate.

3. ACTION

The following list of violations covers the most frequently referenced discrepancies or irregularities involving manifests. If other violations are discovered, please contact your district FP&F officer for guidance.

4. RESPONSIBILITY

It is the responsibility of each Customs officer initiating a liquidated damages or penalty case involving manifest or misdelivery violations to obtain the documents

necessary to establish a violation, promptly initiate the case in the automated FP&F system citing the appropriate statute, regulation or both, and supply any necessary bond information.

Documents should be forwarded to the Fines, Penalties and Forfeitures office within three working days of case initiation. FP&F officers are responsible for quality control over cases initiated by field line officers and case mitigation of all penalties within the district director's delegated authority. District/Area Directors are ultimately responsible for all enforcement actions within their area or district. District/Area Directors may make available for public dissemination the material contained in this directive.

5. EFFECTIVE DATE

This directive is effective immediately and should be followed in cases of manifest and cargo delivery violations.

6. MITIGATION OF GUIDELINES

The mitigation guidelines in the VES section of the FP&F Handbook as published in Change No. 4, dated September 30, 1991, shall be applied to all cases established under this directive.

Commissioner of Customs

Attachment

Distribution:

R-01 Regional Commissioners

F-01 District/Area Directors

F-02 Port Directors

F-10 District FP&F Officers

G-01 All SACs (ENF)

ATTACHMENT

MANIFESTS AND CARGO DELIVERY VIOLATIONS

I. PRESENTATION OF MANIFESTS

The following list of violations covers the most frequently referenced discrepancies or irregularities involving the presentation of manifests.

- A. Carrier does not have manifest in its possession, the master of a vessel or person in charge of a vehicle does not produce the manifest to an officer demanding the same or the carrier does not produce it upon demand by post-audit team:
 - 1. Penalty action against master of vessel or person in charge of rail or truck carrier; assess a penalty of \$1,000 for violation of 19 USC 1584.
 - 2. Penalty action against pilot of air carrier; assess a penalty of \$5,000 for violation of 19 USC 1433, 19 USC 1436, 19 CFR 122.48, and 19 CFR 122.166.

- B. Carrier does not deliver manifest to Customs immediately upon arrival:
 - 1. Penalty action against master of vessel; assess a penalty of \$500 for violation of 19 USC 1439.
 - 2. Penalty action against operator of rail or truck carrier or aircraft pilot; assess a penalty of \$5,000 for violation of 19 USC 1433, 19 USC 1436, and 19 CFR 123.5 (if truck) or 19 CFR 123.6 (if rail carrier) or 19 CFR 122.42(c) (if aircraft).
 - 3. In the case of aircraft pilots, if a pilot incurs numerous penalties for this violation, or exhibits a continuing course of conduct in failing to deliver the manifest to Customs upon arrival, and the assessment of the \$5,000 penalty for violation of 19 USC 1436 has no deterrent effect, an additional \$5,000 penalty may be assessed for violation of 49 USC App. 1474, 19 CFR 122.48, 19 CFR 122.42(c), and 19 CFR 122.161.

II. INACCURACIES OR DISCREPANCIES IN MANIFESTS

The following violations involve manifests that inadequately describe merchandise, include merchandise that is not found (shortage) or fail to manifest merchandise entirely (overage).

- A. Manifest does not contain sufficient description of merchandise included thereon as required by 19 USC 1431. The manifest should contain sufficient detail to enable Customs to verify the type and number of packages. Carriers are obliged to manifest the quantity of packages in their smallest external packaging units; i.e., the manifest description should be the equivalent of that on any pertinent bills of lading or packing lists. Those carriers that accept unit-loaded cargo may use the provisions of 19 CFR 4.7a and indicate Shipper's Load and Count (SLAC) next to

the quantity on the manifest. When discrepancies are discovered for SLAC quantities, the carrier should be warned and permitted to rectify this with the shipper.

1. When these sorts of discrepancies are originally discovered, the carrier should be informed of the problem and counseled as to the correct manner of description of the merchandise contained on the manifest.
2. If carriers continue to make errors or inadequately describe merchandise on the manifest after instruction from Customs, a penalty should be issued for violation of 19 USC 1584 in the amount of the domestic value of the cargo not adequately described. Said penalty cannot exceed \$10,000. A prepenalty notice must be issued if the penalty is to be issued for more than \$1,000. (See 19 CFR 162.76).
3. The penalty may be assessed against any party that is directly or indirectly responsible for the inadequate merchandise description. The penalty is the same for air, sea, or land carriers.

D. Manifest does not contain shipper/consignee names, or identifies the shipper as "various."

1. When these sorts of omissions or insufficiencies are originally discovered, the carrier should be informed of the problem and counseled as to the appropriate designation of shippers or consignee names that should appear on the manifest.
2. If parties responsible for preparing manifests continue to omit names of shippers or consignees or continue to identify them as "various" on the manifest after instruction from Customs, a penalty should be issued for violation of 19 USC 1584 in the amount of the domestic value of the cargo which is not ascribed to a named shipper or consignee. Said penalty cannot exceed \$10,000. A prepenalty notice must be issued if the penalty is to be issued for more than \$1,000. (See 19 CFR 162.76).
3. The penalty may be assessed against any party that is directly or indirectly responsible for the omission. The penalty is the same for air, sea, or land carriers.

C. Manifest quantity is greater than entered or discovered quantity, i.e., manifested but not found (shortage).

1. If Customs receives or there is filed an adequate manifest discrepancy report (MDR) within the time period provided for by regulation (60 days for vessels per 19 CFR 4.12, 30 days for aircraft per 19 CFR 122.49(a)(2), and 60 days for vehicle carrier per 19 CFR 122.9(b), or if during an audit the manifest records indicate that adequate MDR's are present, than no penalty action is warranted.
 2. Manifest discrepancy reports (MDR's) may be filed by any party discovering a discrepancy, including but not limited to the importing carrier, a subsequent in-bond carrier, a cartman or lighterman, or an importer. Manifest discrepancy reporting procedures are chronicled in Customs Directive 3200-33, issued September 28, 1989.
 3. The party last receipting for the full amount of merchandise listed on the manifest, in-bond document, or transfer, document is responsible for reporting discrepancies.
 4. If a clear and concise statement as to the reason for the discrepancy is not provided (such statement supported by proof in the form of bills of lading, signed affidavits, exporter's and shipper's messages and telexes or any other documents that would substantiate the discrepancy) in the discrepancy report, Customs must find that the shortage occurred.
 5. A penalty of \$1,000 shall be assessed under the 19 USC 1584 against any party directly or indirectly responsible for the failure to explain the discrepancy.
- D. Manifest quantity is less than entered or discovered quantity (overage).
1. If Customs receives or there is filed an adequate manifest discrepancy report within the time period provided for by regulation (60 days for vessels per 19 CFR 4.12, 30 days for aircraft per 19 CFR 122.49(a)(2), and 60 days for vehicle carrier per 19 CFR 123.9(b), or if during an audit the manifest records indicate that adequate MDR's are present, then no penalty action is warranted.
 2. Carrier is responsible for the merchandise until it has been placed in G.O. warehouse, exported or entered or receipted for by another party (container freight station, in-bond carrier, etc.)
 3. The party last receipting for the full amount of merchandise listed on the manifest, in-bond document, or transfer document is responsible for reporting discrepancies.

4. If the manifest discrepancy report is not adequate a penalty should be issued under 19 USC 1584 equal to the domestic value of the merchandise or \$10,000 whichever is smaller. The penalty may be assessed against any party directly or indirectly responsible for the manifest discrepancy. (See paragraph C.4 above).
5. Any 1584 penalty for over \$1,000 requires issuance of a prepenalty notice. See 19 CFR 162.76.
6. If the coverage has been released without Customs authorization, a penalty in the amount of the domestic value of the merchandise may be assessed under the provisions of 19 USC 1595a(b) for violation of the provisions of 19 USC 1448 for removal of merchandise from the place of unloading without Customs authorization against any party responsible for the unauthorized release.

III. CARGO DELIVERY VIOLATIONS

This section describes cargo misdelivery by bonded carriers, or other carriers, and describes obligations of container freight stations and centralized examination stations.

A. Failure to deliver merchandise to a Centralized Examination Station or other location designated by Customs.

1. If merchandise is receipted by a cartman for delivery to a Centralized Examination Station and delivery does not occur, or shortages are discovered upon receipt at the CES, a claim for liquidated damages should be assessed against the cartman and his bond in an amount equal to the value of the undelivered or short merchandise for violation of the provisions of 19 CFR 18.8.

NOTE: Once he receipts for a certain quantity of merchandise, the cartman cannot cure a subsequently discovered shortage by filing an MDR. He will still be liable for the shortage under the terms of his custodial bond.

2. If the importing carrier is responsible for delivery to the CES and delivery does not occur issue a penalty in the domestic value of the undelivered cargo under 19 USC 1595a(b) for violation of 19 USC 1448.
3. If the importer voluntarily obligates his importation bond for delivery of merchandise to the CES (See Customs Directive 3270-05,

dated August 31, 1990, then issue a claim for liquidated damages against the importer in an amount equal to the value of the undelivered or short merchandise for violation of the provisions of 19 CFR 113.62(f).

4. If the merchandise is receipted for by the CES operator and then is discovered to be missing or has been delivered without authorization, a claim for liquidated damages against the CES operator shall be issued in an amount equal to the value of the missing or misdelivered goods for violations of the provisions of 19 CFR 113.63(b) regarding safekeeping of merchandise.

B. Merchandise is manifested for delivery at Port B, but is offloaded at Port A before conveyance arrival at Port B (vessels only).

1. If diversion of cargo occurs for reasons other than those expressed in 19 CFR 4.33 and the manifest is not amended to reflect the diversion of cargo, a penalty in the amount of the domestic value of the cargo unladen at the port for which it was not manifested shall be assessed under the provisions of 19 USC 1453. The penalty shall be assessed against any party responsible for the improper unloading of the cargo without a permit.
2. SPECIAL NOTE: If this violation is discovered only because the carrier informs Customs of the offloading, then the above-noted penalties may be waived at the discretion of the district director.

C. Merchandise is manifested for delivery at Port A, but is not offloaded at Port A and is overcarried to Port B (vessels only).

1. If diversion of cargo occurs and the carrier does not amend the manifest pursuant to 19 CFR 4.33 to reflect this diversion, a penalty in the amount of \$500 may be assessed under the provisions of 19 USC 1445. The penalty shall be assessed against the master of the vessel.
2. SPECIAL NOTE: If this violation is discovered only because the carrier informs Customs of the overcarriage, then the above-noted penalty may be waived at the discretion of the district director.

D. Merchandise is delivered with seals intact, but upon examination, either an overage or shortage is discovered.

1. When a container is sealed prior to being received by the carrier, the carrier or any party who is responsible for the accuracy of

the manifest remains legally responsible for inaccuracies in the manifest. However, if Customs receives or there is filed an adequate manifest discrepancy report within the time period provided for by regulation (60 days for vessels per 19 CFR 4.12, 30 days for aircraft per 19 CFR 122.49(a)(2), and 60 days for vehicle carrier per 19 CFR 123.9(b)), or if during an audit, manifest records indicate that a discrepancy was annotated, then no penalty action is warranted.

2. If the explanation provided in the manifest discrepancy report is not acceptable, Customs shall assume that a manifest violation occurred. If the discrepancy is a shortage, a penalty of \$1,000 shall be assessed under 19 USC 1584 against any party directly or indirectly responsible for the shortage. If the manifest discrepancy is an overage, a penalty should be issued under 19 USC 1584 equal to the domestic value of the merchandise or \$10,000 whichever is smaller. The penalty may be assessed against any party directly or indirectly responsible for the manifest discrepancy.
3. If the penalty is for over \$1,000, a prepenalty notice must be issued. See 19 CFR 162.76.

B. Unauthorized delivery of merchandise by carrier.

1. Issue a penalty in an amount equal to the domestic value of the merchandise which is delivered without authorization. The penalty may be assessed against any party that is responsible for the unauthorized delivery, including, but not limited to, NVOCC's, freight forwarders, deconsolidators, container freight station, etc. The penalty is assessed under 19 USC 1595a(b) for violation of the provisions of 19 USC 1448.
2. Districts should not issue demands for duty against carriers in situations involving unauthorized delivery or failure to rectify manifest discrepancies. The penalty which is issued will serve to track the case and amounts equal to estimated duties will be charged in the mitigation process if entry of the merchandise and payment of duties cannot be proved in the petitioning process.
3. If an importer indicates that he has not received all manifested packages from the carrier, this penalty may be assessed against the carrier for delivery without Customs authorization.
 - a. This penalty is appropriate even if the carrier can produce an electronic delivery authorization which indicates that all manifested packages were released for delivery.

- b. The filing of a manifest discrepancy report (MDR) after the short delivery is discovered will not serve to obviate the delivery without authorization violation.
 - c. The filing of a police report, after the report of short delivery, indicating that a theft or pilferage of the merchandise reported short has occurred, will not serve to obviate the violation.
- F. Theft of merchandise from Customs custody.
 - 1. If Customs can identify the individual or individuals who commit a theft of merchandise from Customs custody, penalties equal to the value of the stolen merchandise may be assessed separately against all violators.
 - 2. Penalties are assessed under the provisions of 19 USC 1595a(b) for violation of the provisions of 19 USC 1448.

IV. MANIFEST DISCREPANCY REPORT

- A. Carrier fails to file a manifest discrepancy report or to respond to a manifest discrepancy report issued by Customs within the time period provided for by regulation.
 - 1. This penalty is issued in addition to any 1584 penalties for overages or shortages which may be appropriate.
 - 2. Issue a penalty of \$500 against the master of the vessel, in care of the appropriate carrier, for violation of the provisions of 19 USC 1440. Issue a penalty of \$5,000 against the pilot of an aircraft for violation of 49 USC App. 1474 and 19 CFR 122.49.
 - 3. There is no equivalent provision for failure to file a manifest discrepancy report against a land carrier.
- B. Carrier does not maintain adequate records at the time of audit review.
 - 1. If no manifest exists for a particular conveyance arrival, penalties should be issued in accordance with subparagraph I.A.
 - 2. If manifest discrepancy reports are not maintained, penalties should be issued in accordance with subparagraph IV.A. above.

3. A separate violation will be established for each conveyance arrival for which a manifest or a manifest discrepancy report is not maintained.

V. WHEN IS SEIZURE APPROPRIATE IN MANIFEST DISCREPANCY CASES?

Seizure is appropriate in cases involving manifest violations in the following limited circumstances.

- A. Under the provisions of 19 USC 1584, failure to manifest merchandise belonging or consigned to the master or any crew of vessel or to the owner or person in charge of a vehicle or to the pilot or crew of an aircraft. Only the unmanifested merchandise is subject to seizure and forfeiture. The conveyance carrying the unmanifested merchandise is not subject to seizure and forfeiture under 1584.
- B. Under the provisions of 19 USC 1436, unmanifested merchandise and the transporting conveyance may be seized if the manifest contains substantial material falsity and assessment of a penalty under 19 USC 1436 or 1584 against the person operating the conveyance would have limited enforcement effect.

For example, an independent trucker arrives at the border with a container of telephone equipment. He presents a manifest to Customs indicating that the container has 50 boxes of equipment having a transaction value of \$50,000. Search of the container reveals telephone sets and switching equipment worth in excess of \$500,000. The trucker claims he was given the paperwork by a foreign freight forwarder who received it from the foreign shipper. Unless Customs can develop independent information inculcating the trucker, assessment of a penalty against the independent trucker would have little enforcement value as he was merely transporting merchandise for the benefit of others. Seizure of the merchandise would be appropriate here because it is the most efficient way to reach the apparently culpable party, i.e., the foreign shipper.