

## **BROKER PENALTIES - 19 U.S.C. 1641**

### **APPENDIX C TO PART 171, CUSTOMS REGULATIONS**

#### **Overview**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Penalty amount:

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

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

C. Customs business includes:

1. Classification and valuation.

2. Payment of duties, taxes or other charges.
3. Drawback or refund of duties.
4. Filing of entries or other documents relating to issues covered by 1–3.

D. Customs business does not include:

1. Marine transactions.
2. In-bond movement or transportation of merchandise.
3. Foreign Trade Zone admissions. See, C.S.D. 84–23.

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

1. No penalty action when importation is conducted on behalf of a family member. For purposes of this subsection, “family member” is defined as a parent, child, spouse, sibling, grandparent or grandchild.
2. No penalty action against an individual who has a power of attorney to act as an unpaid agent on a non-commercial shipment. See, 19 C.F.R. 141.33.
3. A \$250 penalty for:
  - a. First violation when transaction is non-commercial but is conducted on behalf of any business entity, or
  - b. First violation where the importation is commercial in nature (i.e., imported merchandise is for resale) or where the violator is compensated for his action, e.g., an importation of raw material or parts of merchandise that is to be manufactured, refined or assembled here before resale would be a commercial entry because the merchandise eventually would be resold, albeit in another form than that which it was entered.
4. A \$1,000 penalty for repeat violation involving:
  - a. Commercial importation.
  - b. Non-commercial importation made on behalf of a business entity.
  - c. Non-commercial importation for which compensation is received by the violator.

5. A \$10,000 penalty when:

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

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

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

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

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

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

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

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

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

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

B. Material facts include but are not limited to:

1. Facts as to identity.
2. Facts as to citizenship status of an individual.
3. Facts as to moral character of an individual which relate to his fitness to conduct Customs business.
4. The organization of any corporation, association or partnership.
5. The status of the license of a license holder who is a corporate officer or partner.

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

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

1. An applicant states that he is 21 years old (as required by 19 C.F.R. 111.11) and he is not. But for the false statement, the applicant could not meet the age requirement for a license.
2. An applicant provides an alias in the application which is a material false statement as to identity.

E. Mitigation guidelines.

1. Violation due to clerical error (clerical error as defined by 19 U.S.C. 1520(c)(1)), mitigated without payment.
2. Violation due to negligence.
  - a. This is defined as more than clerical error, but not an intentional violation. Examples include:

- i. Failing to list a new corporate office because corporate records have not been kept current.
  - ii. Listing an incorrect address for a reference because applicant has failed to update his records.
- b. Mitigate to \$500 for each \$5,000 penalty assessed.
- c. This category excludes cases of harmless error, *i.e.*, a mistake which could not possibly harm the government's interests. Cases falling in this category should be mitigated in full.
3. Intentional violations—Revocation of a license which has been granted is the preferred sanction. If no license has been granted, no mitigation.

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

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

B. Unlawful conduct must relate to:

1. Importation or exportation of merchandise.
2. Conduct of Customs business (this shall include violations relating to taxes and duties and documents required to be filed with regard to such taxes and duties).
3. Relevant convictions would include:
  - a. 18 U.S.C. 1001—making a false statement to Customs or any other agency with regard to any relevant transaction.
  - b. 18 U.S.C. 545—unlawful importation of merchandise.
  - c. 18 U.S.C. 542—unlawful importation by means of a fraudulent act or omission.
  - d. 22 U.S.C. 2778—illegal exportation of munitions.

C. Monetary penalties may not be imposed in connection with convictions relating to conduct described in subsection 1641(d)(1)(B)(iii) including larceny,

theft, robbery, extortion, counterfeiting, fraudulent concealment or conversion, embezzlement or misappropriation of funds. Either suspension or revocation is the appropriate penalty for these infractions.

D. Penalty amounts.

1. \$15,000 for a misdemeanor conviction.
2. \$30,000 for a felony conviction.

E. Mitigation.

1. For a misdemeanor conviction, mitigation to a lesser amount is permitted if the conviction related to Customs business and the domestic value of the merchandise involved is less than \$15,000. In such case, mitigation to an amount equal to the domestic value of the merchandise is appropriate.
2. For other misdemeanor convictions, no relief.
3. Felony convictions, no relief.

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

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

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

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

1. The penalty notice should also cite 19 C.F.R. 111.19 as the regulation violated. A party operating without a permit is required to apply for one under the above-noted regulation.
2. Assessment amount—\$1,000 per transaction conducted without a permit.



### 3. Mitigation.

- a. Negligence, mitigate to \$250–\$500 per transaction depending on the presence of mitigating factors (lack of knowledge of permit requirement).
- b. Intentional, grant no relief.
- c. No mitigation if permit revoked by operation of law.

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

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

1. The penalty notice should also cite 19 C.F.R. 111.29 as the regulation violated.
2. Assessment amount—an amount equal to the value of any monies up to a maximum of \$30,000, to be deposited with Customs or refunded or accounted for to a client.
3. No mitigation shall be afforded until the monies are properly paid to Customs or refunded or accounted for to the clients.
4. If any claims for liquidated damages result against the client's bond from the failure to pay monies to Customs, no mitigation from the penalty shall be granted until the claim for liquidated damages is settled by the violating broker either through payment of the full claim or a mitigated amount.
5. After monies are paid or accounted for and/or liquidated damages claims are settled as stated in 3. and 4. above, mitigation may be afforded. If the violator is found to be negligent, the penalty may be mitigated to an amount between 25 and 50 percent of the assessed amount, but no lower than \$250. No mitigation from an intentional violation.

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

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

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

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

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

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

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

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

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

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

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

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

J. Mitigation guidelines.

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

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

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

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

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

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

D. Examples of violations of this subsection:

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

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

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

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

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

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

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

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

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

1. If he seeks approval of the Secretary within 30 days after discovery of the existence of the conviction, no penalty will be assessed.
2. If he seeks approval at some time after 30 days from the date of discovery, a \$5,000 penalty would lie.
3. If he does not seek approval until after Customs becomes aware of the violation, a \$25,000 penalty would lie.
4. If he seeks approval, but is denied, and continues to employ the convicted felon, a \$30,000 penalty would lie.

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

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

1. If the application for approval is submitted within 60 days, but after 30 days, mitigate to \$2,000.
2. If there is no application beyond the 60-day period, no mitigation shall be granted. Continued employment will result in further penalties as described above in sections E.3 and E.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NOTE:** All penalties assessed for violation of 1641(b)(4) shall also cite section 1641(d)(1)(C) as the statute violated in all notices issued to the alleged violator.

B. The following penalty amounts shall be assessed against brokers who fail to exercise responsible supervision and control over business conducted at district level.

1. A penalty of \$1,000 against any broker who:

a. Continuously makes the same errors on a particular type of entry;

b. Fails to properly instruct employees about Customs business, thereby resulting in the filing of incorrect entries or the mishandling of transactions relating to Customs business;

c. Knowingly allows his entry bond to be used to effect release of merchandise in districts where he does not have a license or permit (this is imposed in addition to any penalty for conducting Customs business without a license);

d. Fails to comply with regulations or procedures but does not commit violations that would warrant any higher penalty amount as described below.

2. A penalty of \$5,000 against any broker who, when requested, is unable to produce documents relating to specific Customs business which are material to that business (e.g., if the business regards an entry he should have the invoice, packing list, etc.). This requirement excludes documents not required to be kept by a broker.

3. A penalty of \$5,000 against any broker who is unable to satisfy the deciding Customs official that he has a working knowledge of any operation material to his ability to render valuable service to others in the conduct of Customs business.

Examples include:

a. A working knowledge of all automated systems in use in the district;

b. A knowledge of the cash flow procedures in each district of operation;

c. Retention of copies of all surety bonds in proper form and in sufficient dollar amount;

d. Knowledge of filing systems and document record storage in each district;

e. Continuous monitoring to ensure timely payment of all obligations including duties, taxes and refunds.

4. A penalty of \$5,000 against any broker who fails to exercise responsible supervision and control over the Customs business that it conducts as defined in section XI.C. of this appendix.

5. A penalty of \$10,000 against any broker who is found to have failed to maintain satisfactory accounting records or records of documents filed with Customs on any matter.

C. The following factors shall be indicative of a lack of supervision or lack of working knowledge of Customs procedures (the list is not conclusive):

1. A high rate of entry rejections when compared with other brokers in the permitted district.

2. A high rate of late filing liquidated damages cases when compared with other brokers in the permitted district.

3. In the case of entry summaries filed in the broker's name, a high number of missing document cases when compared with other brokers in the permitted district.

4. An inordinate number of entries for which free entry is claimed, but no documentation supporting such claim is submitted, resulting in liquidation of the entries as dutiable.

5. Inability to assist or failure to cooperate with an audit, including failure to provide all records and any other necessary information pertaining to a broker's Customs business to assist auditors.

6. Failure to settle (including petitioning) liquidated damages claims in a timely manner.

7. Evidence to indicate that timely duty refunds to clients are not made or accounted for and adequate records of same are not kept (usually will result in penalty assessed in accordance with section B.5. above).

8. Employing a licensed individual for a minimal number of days each 120- or 180-day period (See, sections 1641(b)(5) and 1641(c)(3) so as to avoid violation of the statute.



a. For purposes of imposition of penalties under this subsection, a minimal number of days shall be 10 working days for each 120-day period or 15 working days for each 180-day period.

b. It shall be presumed that temporary employment of such a licensed individual is undertaken solely to avoid revocation of a license or permit. Such minimal employment shall be prima facie evidence of lack of supervision.

#### D. Mitigation.

1. \$1,000 penalties shall not be mitigated unless the broker can show that extraordinary mitigating factors are present.

2. \$5,000 penalties for failure to produce documents may be mitigated to an amount between \$2,000 and \$3,500 if the documents are produced but not in a timely fashion. No mitigation shall be afforded if the documents are not produced, unless the broker can satisfactorily demonstrate that such failure to produce was caused by circumstances beyond the control of the broker or his client (e.g., a rupture of relations with the party responsible for generating the documents). Full mitigation shall be afforded in the case of destruction of records by events beyond a broker's control, such as theft, flood, fire or other acts of God.

3. \$5,000 penalty for failure to have a working knowledge of any operation for which a broker is licensed to do business may be mitigated to a lesser amount upon a showing by the broker that steps have been taken to improve instruction and supervision of employees and an improvement in the knowledge of his operation occurs.

4. \$5,000 penalty for failure to exercise responsible supervision and control may be mitigated to a lesser amount if the broker immediately corrects the problem which was the basis for the assessment and sufficiently monitors the situation to avoid recurrence.

5. \$10,000 penalty for failure to maintain satisfactory accounting records will only be subject to mitigation in full if the broker can prove that satisfactory accounting records and documents records are being kept. Mitigation in a lesser degree may be afforded upon a showing by the broker that a bona fide attempt was made to establish a satisfactory accounting and/or recordkeeping system, or upgrade a deficient system, but such efforts proved unsuccessful or only partially effective.

6. Penalty equal to the value of monies not properly paid or accounted for.

a. If the broker shows that the monies were paid or accounted for and requisite notifications were made, albeit in an untimely fashion not to exceed 30 days after any due date, the penalty may be mitigated upon payment of 25 percent of the assessed amount, but no less than \$250.

b. If the monies were paid and notifications made more than 30 days after any due date, the penalty may be mitigated upon payment of 50 percent of the assessed amount, but not less than \$1,000.

c. If there is no proof of proper payment of duties, refunds, etc., no mitigation shall be granted.

## **XII. LIMITS OF PENALTY ASSESSMENTS**

A. A broker shall be penalized a maximum of \$30,000 for any violation or violations of the statute in any one penalty notice.

B. If a broker is penalized to the maximum the statute will allow and continues to commit the same violation or violations, revocation or suspension of his license would be the appropriate sanction. Barring such revocation or suspension action, he may again be penalized to the maximum the statute will allow.

C. From any one audit, the maximum aggregate penalty for all violations discovered is \$30,000.

## **XIII. CONSOLIDATION OF CASES**

Whenever multiple penalties arising from a particular fact situation or pattern are contemplated against brokers or individuals operating in different ports, the cases may be consolidated in one port. Approval for consolidation must be sought from the Brokers Compliance Branch, Office of Trade Compliance at Headquarters.