

VESSEL REPAIR PENALTIES (19 U.S.C. 1466)

I. In General

It is a violation of the vessel repair statute if the owner or master of a vessel subject to vessel repair entry requirements willfully or knowingly neglects or fails to report, make entry and pay duties as required; makes any false statements regarding purchases or repairs without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by Customs, is subject to seizure and forfeiture and recoverable from the owner.

II. Statutory/Regulatory Requirements

A. The following items, if provided in a foreign country to a vessel documented under the laws of the U.S. for foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades, (an including vessels documented under U.S. law with a fishery endorsement or undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the U.S.) must be declared and entered and duties paid thereon at the port of first arrival in the U.S.

1. Expenses of any repairs (including labor)
2. Cost of repair parts or materials
3. Equipment (including boats) purchased for vessel

B. In the case of any U.S. vessel that continuously remain outside the U.S. two years or longer, duties shall apply only with respect to:

1. Fish nets and netting
2. Other equipment and parts thereof, repair parts and materials purchased, or repairs made, during the first six months of their absence.

NOTE: even though some costs may not be dutiable because of the six-month rule, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

3. Any vessel designed or used primarily for transporting passengers

or merchandise which depart the U.S. for the sole purpose of obtaining equipment, parts, materials or repairs remain fully liable for duty regardless of the duration of their absence from the U.S.

- C. Liability for declaration, entry and payment of duties accrues at the time of first arrival in the U.S. In lieu of payment of duty at the time of entry, a bond may be provided to secure payment of duty.

III. Elements of Violation/Determination of Liability

- A. Culpable parties

- 1. Owner of vessel, or
- 2. Master of vessel

- B. Culpable party must:

- 1. Willfully or knowingly neglect or fail to:
 - a. Report (declare)
 - b. Make entry
 - c. Pay duties
- 2. Make any false statement without reasonable cause to believe the truth of such statement, or
- 3. Aid in or procure the making of any false statement as to a material matter without reasonable cause to believe the truth of such statement.

- C. Amount of liability

- 1. Monetary amount of **up to** the value of the vessel involved, or
- 2. Seizure and forfeiture of the vessel (**NOTE:** Seizure shall never occur without the approval of the Director, International Trade Compliance Division, ORR)

- D. Failure to declare, file a vessel repair entry or pay duty in a timely manner constitute a violation of the statute.

- E. Inasmuch as willful neglect is the basis for a violation, intent or fraud need not be proven in order for a violation to be found. Simple negligence will be sufficient to sustain a violation.

IV. Penalty Assessment Procedures

- A. Evidence describing a violation may be given by any Customs officer discovering such a violation (which may include the boarding inspector, carrier control, entry control or vessel liquidation unit) to FP&F having jurisdiction in the port where the vessel first arrived.
- B. A prepenalty notice will be issued by FP&F.
- C. The FP&F Officer will determine whether a violation has occurred, but will not make any decision regarding submission of evidence of cost of repairs, casualty or similar matters or grant extensions of time to submit documents for purposes of liquidation of the entry.
- D. The prepenalty notice will contain the following:
 - 1. Description of the circumstances of the alleged violation.
 - 2. Recitation of the statutes and regulations violated.
 - 3. Disclosure of all material facts which establish the alleged violation.
 - 4. A statement of the estimated loss of duties and the amount of the proposed penalty.
 - 5. An indication that the alleged violator has reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued (See, 19 C.F.R. 162.76(b)).
- E. All prepenalty notices shall be issued for an amount equal to four (4) times the loss of revenue or the value of the vessel, whichever is lower, except in the instance where the violation is for the late filing of the entry or documents only. In the latter instance, the prepenalty notice shall be issued for an amount equal to two (2) times the loss of revenue.
- F. After considering representations made by concerned parties concerning the propriety of issuance of the penalty, the FP&F Officer shall determine if a violation occurred.
 - 1. If no violation occurred, the alleged violator shall be notified in writing of such decision and the claim shall be cancelled.
 - 2. If a violation is found to have occurred, the written claim for penalty shall be issued.
- G. The international carrier's bond (See, 19 C.F.R. 113.64) guarantees the

payment of any vessel repair duties and penalties. Accordingly, a copy of any penalty notice should be provided to surety (See, 19 C.F.R. 172.1).

- H. For petition review procedures, see Section 3.4.2 of the Seized Asset Management and Enforcement Procedures Handbook.

V. Mitigation Guidelines

- A. If the violation is for late filing of the entry or any documents relating to such, the following guidelines should be followed:
1. First offense, negligence found, but no fraudulent intent – mitigate to 5 percent of the loss of revenue or \$500, whichever is greater.
 2. Subsequent offenses, negligence found, but no fraudulent intent – mitigate to 10 percent of the loss of revenue or \$1,000, whichever is greater.
 3. If gross negligence found, use guideline for subsequent offense.
 4. Deliberate violation – no relief.
- B. All other violations.
1. First offense, negligence found – mitigate to 10 percent of the loss of revenue or \$5,000, whichever is greater.
 2. Gross negligence found – mitigate to 50 percent of the loss of revenue or \$25,000, whichever is greater.
 3. Deliberate violation – grant no relief.
 4. Subsequent violations shall be mitigated at the next higher culpability level than that found. For example, a subsequent violation occurs and negligence is found. Mitigation should be granted using the gross negligence guidelines.
 5. Refusal to cooperate with Customs may justify a finding of gross negligence.
- C. All mitigation is conditioned upon deposit of any loss of revenue.

**VESSELS AND OTHER
CONVEYANCES
IN FOREIGN AND
DOMESTIC TRADE;
CARGO DELIVERY;
MANIFESTING**

VESSELS AND OTHER CONVEYANCES IN FOREIGN AND DOMESTIC TRADE; CARGO DELIVERY; MANIFESTING

The Customs Service is responsible for administering and enforcing the Customs and navigation laws, including those relating to the entry and reporting of arrival of vessels, vehicles and aircraft and those relating to the manifesting, lading, and unloading of passengers, merchandise, or baggage, and the unlawful importation of any articles. Laws restricting the use of foreign-flag or foreign-built vessels in the coastwise trade or other activities within the waters of the United States are also enforced.

SPECIAL NOTE: THE PROVISIONS OF THIS CHAPTER APPLY ONLY TO THOSE SITUATIONS WHICH DO NOT INVOLVE NARCOTICS OR CONTROLLED SUBSTANCES. FAILURE TO MANIFEST CONTROLLED SUBSTANCES OR THOSE PENALTIES ASSESSED UNDER THE ZERO TOLERANCE PROGRAM ARE COVERED IN OTHER CHAPTERS OF THIS VOLUME.

ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT

I. Arrival Reporting Requirements

Under the provisions of 19 U.S.C. 1433, the following requirements apply to the arrival of the listed conveyances:

A. Vessels. Immediately upon arrival at any port or place in the United States, the following vessels must report arrival immediately at the nearest Customs facility or such other place as the Secretary of the Treasury may prescribe in regulations:

1. Any vessel arriving from a foreign port or place.
2. Any foreign-flag vessel arriving from a domestic port.
3. Any vessel carrying bonded merchandise or foreign merchandise for which entry has not been made.

B. Vehicles

1. Vehicles must only cross at designated border crossing points.
2. The operator of the vehicle must immediately report arrival and present the vehicle and all persons and merchandise for inspection.

C. Aircraft. Aircraft must comply with such advance notification, arrival, reporting and landing requirements as prescribed by Part 122, Customs Regulations.

D. Additional requirements

1. The Master of a vessel, person in charge of a vehicle or pilot of an aircraft shall present all documents, papers, or manifests as may be prescribed by 19 C.F.R. Part 4 (relating to vessels), Part 122 (relating to aircraft), or Part 123 (relating to vehicles).
2. Departure from the place of arrival or discharge of passengers or merchandise may only occur in accordance with Regulations.

E. Boarding of vessels

1. Per 19 C.F.R. 4.1(b) only a pilot of a navigation vessel (e.g., a tugboat), an officer of a U.S. government agency or a vessel agent dealing with vessel entry formalities may board an arriving vessel without the authorization of the port director.
2. Per 19 C.F.R. 4.1(d), the pilot of a tugboat or other vessel shall bring such vessel alongside an incoming vessel and put on board any person thereof except as authorized by law or regulation.
3. Per 19 C.F.R. 4.1(c), no person may leave an arriving vessel, other than for the purpose of reporting arrival, with or without the consent of the master, without the permission of the port director or Customs officer in taking charge of the vessel.

F. Aircraft commander responsibility

If an aircraft lands in the United States and Customs officers have not arrived, the aircraft commander shall hold the aircraft and any merchandise or baggage on the aircraft for inspection. Passengers and crewmembers shall be kept in a separate place until Customs officers authorize their departure. See, 19 C.F.R. 122.36.

II. Making Entry

A. Vessels

1. All vessels are required to report arrival as noted in Part I; all are required to make entry except the following (See, 19 U.S.C. 1441):

- a. Vessels of war and public vessels employed for the conveyance of letters dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade,
 - b. Passenger vessels making three trips or more a week between a U.S. port and a foreign port (including ferryboats),
 - c. Licensed yachts (including foreign-flag yachts with cruising licenses) or undocumented U.S. pleasure vessels not engaged in trade nor in any way violating the Customs laws and not having visited any hovering vessel and vessels carrying passengers on excursion from the U.S. V.I. to British V.I. and returning,
 - d. Vessels arriving in distress or for taking on bunker oil or sea stores and departing within 24 hours of arrival without taking on board any passengers or other merchandise, and
 - e. Tugs enrolled and licensed to engage in foreign and coastwise trade when towing vessels which are required by law to enter and clear.
2. U.S. Vessels (19 U.S.C. 1434, 19 C.F.R. 4.3, 19 C.F.R. 4.9). The master of an American vessel arriving in the U.S. from a foreign port or place or arriving from another U.S. port with unentered foreign merchandise or in-bond merchandise must, within 48 hours of the arrival of the vessel in a Customs district, make formal entry of the vessel at the Customhouse.
 3. Foreign Vessels (19 U.S.C. 1434, 19 C.F.R. 4.9). The master of any foreign vessel must also make entry at the Customhouse within 48 hours of arrival in the Customs district. See, 19 C.F.R. 4.9(c) for requirements regarding delivery of foreign vessel documents.

B. Vehicles

The person in charge of a vehicle carrying merchandise shall present the inward manifest at the time of report of arrival of the vehicle (19 C.F.R. 123.5). When baggage arrives in the actual possession of a traveler, his declaration shall be in lieu of presentation of a manifest (19 C.F.R. 123.3).

C. Aircraft

1. All aircraft are required to make entry except;
 - a. Public aircraft (i.e., aircraft owned by or under the control and management of the U.S. government or one of its agencies), and

- b. Private aircraft (i.e., any flight which is arriving from foreign engaged in a personal or business flight which is not carrying cargo or passengers for commercial purposes).
2. Air cargo manifests shall be presented. In some instances a general declaration may be presented in lieu of an air cargo manifest. See, 19 C.F.R. 122.43.
3. Per 19 C.F.R. 122.42, the aircraft commander shall present all required forms to Customs at once after arrival. Per 19 C.F.R. 122.27(c) he shall present pilot certificate, medical certificate and aircraft registration certificate if requested.

III. Seizures/Penalties

For failure to report arrival, presentation of any false paper or document, violation of any regulation regarding the entry and arrival of conveyances, the discharge of passengers or merchandise, or departure from the place of arrival without customs authorization, the following sanctions, pursuant to the provisions of title 19, United States Code, section 1436, are available:

- A. A civil penalty in the amount of \$5,000 for a first offense or \$10,000 for a subsequent offense assessable **only** against:
 1. The master of a vessel,
 2. The person in charge of a vehicle, or
 3. The pilot of an aircraft.
- B. A civil penalty equal to the value of any merchandise (except sea stores or their equivalent) in or aboard an unreported conveyance may also be assessed against the master, person in charge, or pilot. This penalty is in addition to the \$5,000 or \$10,000 statutory penalty.
- C. Seizure of the conveyance.
- D. Seizure of the merchandise in or aboard the conveyance.

NOTE: Seizure of merchandise should only occur under limited circumstances. See, Section V of this Chapter for clarification.

IV. Penalty Assessment

- A. If the identity of the master of a vessel, person in charge of a vehicle, or pilot of an aircraft can be ascertained, assessment of the \$5,000 or \$10,000 penalty against that party is appropriate.
- B. An additional penalty equal to the value of the merchandise on board may be assessed against the master, pilot, or person in charge only if arrival of the conveyance is not reported or the conveyance is not properly entered and aggravating factors are present. Examples of aggravating factors are:
 - 1. Documentary or other evidence that establishes violator's intent.
 - 2. Informant provides information which tends to establish master, pilot or person in charge's intent to violate the statute.
 - 3. Unmanifested or unreported articles concealed to evade U.S. law rather than for safekeeping.
 - 4. Behavior such as extreme lack of cooperation, verbal or physical abuse, attempted escape, or other behavior which tends to demonstrate a lack of respect for law.
 - 5. Experience in importing. For purposes of these guidelines, an experience in importing is established by showing that an individual, through prior arrivals into the United States or other commercial experience, should have known of conveyance entry and documentation presentation procedures.
 - 6. A failure to report arrival could result in the possible importation of prohibited or restricted merchandise.
- C. The penalty described in paragraph B. shall be assessed in an amount equal to the domestic, rather than transaction, value of the merchandise.
- D. These penalties are assessable only against the master, person in charge or pilot. They may not be assessed against passengers in an unreported conveyance, importers of merchandise, consignees of merchandise, brokers or freight forwarders.
 - 1. This penalty cannot be assessed against a passenger on any conveyance that does not report arrival. For example, when a vehicle which enters without inspection (EWI) contains a driver and a passenger, the penalty for failure to report arrival is assessed against the operator of the vehicle. The passenger in the vehicle is not liable for this penalty.

2. If the violator is a conveyance operator who is an employee of a corporate entity (e.g., airline, steamship company, trucking company), the penalty notice may be issued against the conveyance operator in care of the corporate entity and mailed to the employing entity. If a petition is filed by the airline, steamship company, trucking company, etc., on behalf of the employee, as a matter of policy the petition should be considered and mitigation afforded based on the case record.
 3. If the employing company pays the penalty on behalf of the employee conveyance operator, the payment should be accepted and the case processed per standard operating procedures.
- E. Multiple violations on the same arrival, or on a continuous voyage.
1. If a first-time violator fails to report arrival, he necessarily does not present a manifest as required by regulation. While these acts constitute two violations of the statute, separate penalties of \$5,000 should not be assessed for each violation. As a matter of policy, a single \$5,000 penalty for the failure to report arrival incident is sufficient sanction.
 2. As a general rule, a violator who fails to report arrival at numerous ports on a continuous sea voyage or fails to report at more than one airport on the same contemporaneous journey, should be considered as a first-time violator at each port if no element of intent exists for the violation. Intent will be presumed if Customs has advised the violator of the reporting requirements after discovery of the violation at any of the ports where arrival was not reported and violations continue. Barring a finding of intent, each violation should be considered a first violation and the ports where each violation occurred may assess a separate \$5,000 penalty. No port should issue a \$10,000 penalty as a subsequent violation.
 3. As a general rule, a penalty for departure from the place of arrival without authorization should not be assessed against a violator who fails to report arrival entirely. In order for this penalty to lie, the violator must have first reported to a Customs officer and then departed without authorization.
- F. Presentation or display of a false or altered user fee decal shall be considered to be presentation of a false document for purposes of 1436 penalty assessment. A penalty shall be assessed in the amount of \$5,000 against the operator of the vehicle for a first offense. A \$10,000 penalty should be assessed for a second or subsequent offense.

G. Penalties Against Aircraft Pilots

1. Under the provisions of 19 C.F.R. 122.166, civil penalties against a pilot of an aircraft shall be assessed as provided by 19 U.S.C. 1436 with respect to the following actions:
 - a. Advance notification of arrival
 - b. Report of arrival
 - c. Landing of aircraft
 - d. Presentation of documentation
 - e. Departure from the port, place or airport of arrival without authorization
 - f. Discharge of passengers or merchandise (to include baggage) without authorization.
2. If an aircraft pilot violates any of the regulations promulgated in Part 122 that deal with something other than those actions listed in a. through f. above, a penalty of \$5,000 should be assessed under the provisions of 19 U.S.C. 1644a. The penalty notice, in addition to section 1644a, should also reference the specific regulation violated and provide a detailed description of the violation.
3. All second or subsequent penalties issued for violation of section 1644a shall also be issued for \$5,000.
4. Consistent with the policy articulated in paragraph IV.E.1., above, if an aircraft pilot commits multiple offenses on one arrival (i.e., fails to give advance notification of arrival and fails to report arrival) he shall incur one penalty for that arrival.

H. Presentation of false documents, manifests, etc.

1. If there is a manifest discrepancy that is not attributable to a deliberate smuggling attempt, penalties should be assessed pursuant to 19 U.S.C. 1584 for failure to manifest.
2. Manifest discrepancies for which a penalty generally should not be assessed under section 1436 are as follows:
 - a. The manifest does not contain shipper or consignee names
 - b. The manifest has an inadequate description of the cargo or has incorrect values, either of which could be attributable to paperwork error or mistake.

- c. There is a shortage or overage that can be attributable to paperwork errors or mistakes in tabulation of the amount of cargo on the conveyance by parties other than the operator of the conveyance.
3. Manifest penalties under 1436 are appropriate for the presentation of any false manifest information or data.

NOTE: Manifest presentation and discrepancy violations should be processed under the provisions of this section entitled MANIFEST OR CARGO DELIVERY VIOLATIONS.

4. If there is a substantial material falsity between the amount of merchandise manifested and invoiced and the amount of merchandise actually discovered on the conveyance, then seizure of the merchandise may be appropriate. See, Section VI., below.
5. **NOTE:** The provisions of 19 C.F.R. 123.5 require a manifest listing baggage and other merchandise, certified by the person in charge, to be presented to the Customs officer at the time the report of arrival is made. If the operator of commercial vehicle arrives without a completed manifest, he will be required to complete a manifest and present it to the appropriate Customs officer. He may be the subject of a penalty under **19 U.S.C. 1584** at the discretion of the local port director.

V. Recreational Vessel Reporting

1. Port Directors in ports which have numerous pleasure vessels that frequently touch foreign or traverse in foreign waters and return to U.S. waters shall have enforcement discretion in the assessment of penalties for failure to report arrival.
2. In lieu of penalty action, port directors may, at their discretion, issue warning letters to first-time violators who are masters of pleasure vessels that fail to report arrival.

VI. Seizures

- A. Unless there is a compelling reason to do so, a conveyance involved in a violation of 19 U.S.C. 1436 shall not be seized for a first violation.
- B. Notwithstanding subparagraph A., above, seizure of a conveyance is always appropriate if:
 1. The failure to report is part of a deliberate smuggling attempt,

2. The violation occurs in association with other unlawful activity (not necessarily limited to smuggling).
 3. There is a lack of information necessary to assess a penalty. E.g., if a vehicle runs a port and the identity of the person in charge of the vehicle at the time of the violation cannot be ascertained, later seizure of the vehicle would be appropriate.
 4. Seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an entry without inspection occurs and the operator of the vehicle is a foreign national and the likelihood of collection of a monetary penalty is remote). The conveyance also may be held under the provisions of 19 U.S.C. 1594 in order to secure payment of the penalty.
- C. Statutory limitations regarding the seizure of common carriers, as provided for in 19 U.S.C. 1594, are applicable. When a violation of section 1436 is the only violation present, a common carrier will not be seized unless the violation is intentional in nature.
- D. As a general rule, merchandise which is owned by someone other than the master of a vessel, operator of a vehicle or pilot of an aircraft should not be seized unless there is evidence of other unlawful activity or there is evidence to indicate that the owner of the property, or the agent of the owner, is responsible for the violation for which seizure could be effected (See, paragraph E. below).
- E. **NOTE:** In land border situations, if a significant manifest discrepancy exists, and it is determined that the operator of the vehicle did not know of the discrepancy and it appears that the false documents were prepared by the owner of the property or his broker, freight forwarder or other agent, seizure of the merchandise is appropriate. If the significant discrepancy is attributable to the negligence of the operator of a commercial vehicle, seizure would not be appropriate. A monetary penalty against the operator of the vehicle is the appropriate sanction.

VII. Mitigation/Remission Guidelines

The following guidelines should be used for violations of section 1436 that do not involve controlled substances.

- A. Penalties - \$5,000 first offense for failure to report arrival.
1. If the violation involves a recreational vessel master who fails to report arrival, mitigate to an amount not less than \$100 nor more

than \$500, depending upon the presence of aggravating circumstances (See, IV.B. above).

2. If the violation involves the operator of a non-commercial conveyance who fails to report arrival after entry into the United States at an unmanned port of entry or airport, mitigate to an amount not less than \$100 nor more than \$500, depending on the presence of aggravating circumstances (See, IV.B. above).
3. If the violation involves a situation involving failure to report arrival that is not described in subparagraphs 1., and 2., above, mitigate to an amount between \$500 and \$2,500 depending on the presence of aggravating factors (See, IV.B. above).
4. If the violator can show that the failure to report arrival occurred because of a medical emergency, inclement weather or arrival of a conveyance in distress, the district director may remit the penalty without payment.
5. If multiple violations occurred on the same arrival, but only one penalty was issued (See, paragraphs IV.E.1. and IV.G.4. above), mitigation to an amount in the higher range of the guidelines is permitted.

- B. Penalties - \$5,000 first offense for presentation of false document or manifest, failure to have manifest, failure to deliver manifest to Customs, or departure from place of arrival without Customs authorization; mitigate to an amount not less than \$500 nor more than \$2,500 depending on the presence of aggravating circumstances (See, IV.B. above).

NOTE: Relief may be denied if any document pertaining to the registry of the vessel, vehicle or aircraft is counterfeit or otherwise forged or altered.

- C. Penalties - \$10,000 subsequent offense for failure to report arrival, mitigate to an amount not less than \$1,000, nor more than \$5,000 depending on the presence of aggravating factors. If the payment of a mitigated amount has no deterrent effect on a chronic violator, relief may be denied and the full penalty amount collected.
- D. Penalties - \$10,000 subsequent offense for presentation of a false document or manifest, failure to have a manifest, or departure from the place of arrival without Customs authorization; mitigate to an amount not less than \$1,000 nor more than \$5,000 depending upon the presence of aggravating circumstances (See, IV.B. above).

- E. Penalties equal to the value of the merchandise aboard a conveyance which was not properly reported or entered, mitigate to an amount equal to between 5 and 20 percent of the penalty depending on the presence of aggravating factors. If an intentional smuggling attempt on an unreported conveyance can be proven, then mitigation to an amount higher than 20 percent or even denial of relief from the penalty may be appropriate.
- F. Penalties assessed for violation of the provisions of 19 U.S.C. 1644a and Part 122 of the Customs Regulations, mitigate the penalties in accordance with guidelines provided in subparagraph B. above.
- G. Seizure of Conveyances
 - 1. If the seizure results because the conveyance is used in association with other unlawful activity or is used as part of a deliberate smuggling attempt, grant no relief unless the claimant can show that he was neither privy to nor had reason to believe the illegal activity would occur.
 - 2. If the seizure results to secure payment of a penalty assessed for violation of section 1436, remit the forfeiture following the guidelines for mitigation of \$5,000 or \$10,000 penalties based on the number of violations attributable to the person in charge of the conveyance.
 - 3. If the seizure results because assessment of a penalty could not be made because the identity of the master, person in charge or pilot was not known, remit the forfeiture following the guidelines for mitigation of \$5,000 or \$10,000 penalties based on the number of violations attributable to the conveyance.
 - 4. If seizure occurs in addition to a monetary penalty, remit the forfeiture of the conveyance upon payment of an amount equal to the mitigation afforded with regard to the monetary penalty. This amount cannot exceed the domestic value of the conveyance.
- H. Seizure of merchandise
 - 1. If the seizure results because the merchandise is being deliberately smuggled, grant no relief.
 - 2. If the seizure results because of a significant manifest discrepancy and there is a calculable loss of revenue because of the discrepancy, remit the forfeiture upon payment of an amount equal to no less than two times and no more than six times the loss of revenue depending on the presence of aggravating circumstances

(See, IV.B. above). If the merchandise would be absolutely or conditionally free of duty, remit the forfeiture upon payment of an amount between one and ten percent of the domestic value depending on the presence of aggravating circumstances.

- I. Every remission shall be conditioned upon payment of the costs of seizure and storage (if any) and execution of an agreement to hold Customs harmless from any other possible claimants to the seized property who may come forward and make claims against that property.

PASSENGER/CREWMEMBER VIOLATIONS

I. Specific Violations

- A. An individual boards an arriving vessel before Customs grants authorization.
1. No person except a pilot in connection with the navigation of the vessel or an officer of Customs, Coast Guard, APHIS or an agent of the vessel exclusively for purposes relating to Customs formalities, shall go on board any vessel arriving from outside the Customs territory without the permission of Customs. (See, 19 C.F.R. 4.1(c)(1))
 2. Penalty of \$5,000 against the master for violation of 19 U.S.C. 1436 and 19 C.F.R. 4.1(c)(1).
- B. An individual departs an arriving conveyance before Customs authorization.
1. Vessels
 - a. No person may leave an arriving vessel except for the purpose of reporting arrival without the permission of the Customs officer in charge.
 - b. Penalty of \$5,000 against the master for violation of 19 U.S.C. 1436 and 19 C.F.R. 4.1(c)(2).
 2. Aircraft
 - a. The commander of an aircraft is responsible for keeping arriving passengers and crewmembers in a separate place until Customs authorizes their departure.
 - b. Penalty of \$5,000 against the aircraft commander for violation of 19 U.S.C. 1436 and 19 C.F.R. 122.36.
- C. A carrier unloads passengers without Customs permission.
1. Vessels or vehicles

Penalty of \$1,000 for the first passenger unladen and \$500 for every subsequent passenger unladen without a permit to be assessed against the master of the vessel or any person involved in the unloading. 19 U.S.C. 1454.

2. Aircraft

Penalty of \$5,000 against the aircraft pilot for violation of 19 U.S.C. 1436, 19 C.F.R. 122.166, and 19 C.F.R. 122.38.

- D. A passenger or crewmember individual leaves a reported conveyance without Customs authorization.

For a first violation, penalty of \$5,000 against the individual for violation of 19 U.S.C. 1459. For a second or subsequent violation, a penalty of \$10,000.

- E. A passenger or crewmember arriving on a reported conveyance fails to report immediately to the designated Customs facility.

For a first violation, penalty of \$5,000 against the individual for violation of 19 U.S.C. 1459. For a second or subsequent violation, a penalty of \$10,000.

- F. A passenger or crewmember arriving on a reported conveyance departs the designated Customs facility without authorization.

For a first violation, penalty of \$5,000 against the individual for violation of 19 U.S.C. 1459. For a second or subsequent violation, a penalty of \$10,000.

- G. An individual arriving on an unreported conveyance fails to report his or her arrival to a Customs officer.

For a first violation, penalty of \$5,000 against the individual for violation of 19 U.S.C. 1459. For a second or subsequent violation, a penalty of \$10,000.

- H. A crewmember attempts to land articles and does so in a manner so as to avoid inspection.

Seizure of the merchandise plus a personal penalty against the crewmember equal to the value of the merchandise landed in a manner so as to avoid inspection pursuant to 19 U.S.C. 1453 and 19 C.F.R. 148.67(a).

- I. A crewmember fails to declare all merchandise, which he has landed and upon which duties are owed.

Seizure of the merchandise plus a personal penalty against the crewmember equal to the value of the merchandise not declared (to be

treated as merchandise unladen without a permit) pursuant to 19 U.S.C. 1453 and 19 C.F.R. 148.67(b).

- J. A crewmember files a declaration but omits certain articles from that declaration.

Treat as a regular 19 U.S.C. 1497 failure to declare case. See, 19 C.F.R. 148.67(c).

II. Mitigation Guidelines

- A. For all violations of 19 U.S.C. 1436 or 19 U.S.C. 1459 described in I. above, mitigate in accordance with guidelines provided in **ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT**, Section VI., above, for departure from the place of arrival without Customs authorization.
- B. For all violations of 19 U.S.C. 1453 or 19 U.S.C. 1497 described in I. above, mitigate in accordance with guidelines for 19 U.S.C. 1497 violations.
- C. For all violations of 19 U.S.C. 1454 described above, mitigate in accordance with guidelines for 19 U.S.C. 1454 penalties provided in **IV. OTHER VESSEL PENALTIES** below.

MANIFEST AND CARGO DELIVERY VIOLATIONS

I. Presentation of Manifests

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

A. Carrier does not have manifest in its possession, the master of a vessel or person in charge of a vehicle does not produce the manifest to an officer demanding the same or the carrier does not produce it upon demand by post-audit team:

1. Penalty action against master of vessel or person in charge of rail or truck carrier; assess a penalty of \$1,000 for violation of 19 U.S.C. 1584.
2. Penalty action against pilot of air carrier; assess a penalty of \$5,000 for violation of 19 U.S.C. 1433, 19 U.S.C. 1436, 19 C.F.R. 122.48 and 19 C.F.R. 122.166.
3. **NOTE:** The provisions of 19 C.F.R. 123.5 require a manifest listing baggage and other merchandise, certified by the person in charge, to be presented to the Customs officer at the time the report of arrival is made. If the operator of commercial vehicle arrives without a completed manifest, he will be required to complete a manifest and present it to the appropriate Customs officer. He may be the subject of a penalty under 19 U.S.C. 1584 at the discretion of the local port director.
4. Mitigation to \$500 may be afforded from any penalty assessed under 1584 against the master of vessel or operator of vehicle or under 1436 against the pilot of an aircraft. No relief will be afforded to a repeat violator of this section who incurs a penalty under 1584 for failing to present a manifest upon the demand of a Customs officer. Notwithstanding any mitigation provisions under 19 U.S.C. 1436 guidelines, as a general rule mitigation to \$1,000 will be afforded to any pilot of an aircraft who is a repeat violator.

B. Carrier does not deliver manifest to Customs immediately upon arrival:

1. Penalty action against master of vessel; assess a penalty of \$5,000 for violation of 19 U.S.C. 1433.
2. Penalty action against operator of rail or truck carrier or aircraft pilot; assess a penalty of \$5,000 for violation of 19 U.S.C. 1433, 19

U.S.C. 1436, and 19 C.F.R. 123.5 (if truck) or 19 C.F.R. 123.6 (if rail carrier) or 19 C.F.R. 122.42(c) (aircraft).

3. Notwithstanding any mitigation provisions under 19 U.S.C. 1436 guidelines, mitigation may be afforded to an amount not less than \$250 nor more than \$1,000. Mitigation of penalties assessed against rail and truck carrier operators and pilots of aircraft should be consistent with that afforded to masters of vessels who have similar records of prior violations.
4. In the case of aircraft pilots, if a pilot incurs numerous penalties for this violation, or exhibits a continuing course of conduct in failing to deliver the manifest to Customs upon arrival, and the assessment of the \$5,000 penalty for violation of 19 U.S.C. 1436 has no deterrent effect, an additional penalty may be assessed for violation of 19 U.S.C. 1644a, 19 C.F.R. 122.48, 19 C.F.R. 122.42(c) and 19 C.F.R. 122.161. That penalty shall be mitigated in accordance with guidelines in effect for mitigation of penalties incurred for violation of 19 U.S.C. 1436.

II. Inaccuracies or Discrepancies in Manifests

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

- A. Manifest does not contain list all inward cargo as required by 19 C.F.R. 4.7a(c). The manifest should contain sufficient detail as required by the CF-1302 Cargo Declaration. The manifest description should include the number and kind of packages and description of the goods. Those carriers that accept unit-loaded cargo may use the provisions of 19 C.F.R. 4.7a and indicate Shipper's Load and Count (SLAC) next to the quantity on the manifest. When discrepancies are discovered for SLAC quantities, the carrier should be warned and permitted to rectify this with the shipper.
 1. When these sorts of discrepancies are originally discovered, the carrier should be informed of the problem and counseled as to the correct manner of description of the merchandise contained on the manifest.
 2. If carriers continue to make errors or inadequately describe merchandise on the manifest after instruction from Customs, a penalty should be issued for violation of 19 U.S.C. 1584 in the amount of the domestic value of the cargo not adequately described. Said penalty cannot exceed \$10,000. A prepenalty

notice must be issued if the penalty is to be issued for more than \$1,000. See, 19 C.F.R. 162.76.

3. The penalty may be assessed against any party that is directly or indirectly responsible for the inadequate merchandise description. The penalty is the same for air, sea, or land carriers.
4. For these violations, the penalties may be mitigated to the domestic value of the merchandise inadequately described or \$500, whichever is less. If the violator is responsible for numerous description inadequacies and the mitigation afforded has had no deterrent effect, the penalties may be mitigated upon payment of amounts in excess of \$500. In no case can mitigation be in an amount that exceeds the assessed penalty.

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

1. When these sorts of omissions or insufficiencies are originally discovered, the carrier should be informed of the problem and counseled as to the appropriate designation of shippers or consignee names that should appear on the manifest.
2. If parties responsible for preparing manifests continue to omit names of shippers or consignees or continue to identify them as "various," on the manifest after instruction from Customs, a penalty should be issued for violation of 19 U.S.C. 1584 in the amount of the domestic value of the cargo which is not ascribed to a named shipper or consignee. Said penalty cannot exceed \$10,000. A prepenalty notice must be issued if the penalty is to be issued for more than \$1,000. See, 19 C.F.R. 162.76.
3. The penalty may be assessed against any party that is directly or indirectly responsible for the omission. The penalty is the same for air, sea or land carriers.
4. For these violations, the penalties may be mitigated to the domestic value of the merchandise inadequately described or \$500, whichever is less. If the violator is responsible for numerous and continuous omissions and the mitigation afforded has had no deterrent effect, the penalties may be mitigated to amounts in excess of \$500. In no case can mitigation be in an amount that exceeds the assessed penalty.

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

1. If Customs receives or there is filed an adequate manifest discrepancy report (MDR) within the time period provided for by regulation (60 days for vessels per 19 C.F.R. 4.12, 30 days for aircraft per 19 C.F.R. 122.49(a)(2), and 60 days for vehicle carrier per 19 C.F.R. 123.9(b)), or if during an audit the manifest records indicate that adequate MDR's are present, then no penalty action is warranted.
2. Manifest discrepancy reports (MDR's) may be filed by any party discovering a discrepancy, including but not limited to the importing carrier, a subsequent in-bond carrier, a cartman or lighterman, or an importer. Manifest discrepancy reporting procedures are chronicled in Customs Directive 3240-067A.
3. The party last receipting for the full amount of merchandise listed on the manifest, in-bond document or transfer document is responsible for reporting discrepancies.
4. If a clear and concise statement as to the reason for the discrepancy is not provided (such statement supported by proof in the form of bills of lading, signed affidavits, exporter's and shipper's messages and telexes or any other documents that would substantiate the discrepancy) in the discrepancy report, Customs must find that the shortage occurred.
5. A penalty of \$1,000 shall be assessed under 19 U.S.C. 1584 against any party directly or indirectly responsible for the failure to explain the discrepancy.
6. Mitigation may be afforded to an amount equal to no less than \$200 for violations of this type. If violations continue and mitigation has no deterrent effect on a violator, the district director, in his discretion, may deny relief from this penalty.

D. Manifest quantity is less than entered or discovered quantity (overage).

1. If Customs receives or there is filed an adequate manifest discrepancy report within the time period provided for by regulation (60 days for vessels per 19 C.F.R. 4.12, 30 days for aircraft per 19 C.F.R. 122.49(a)(2), and 60 days for vehicle carrier per 19 C.F.R. 123.9(b)), or if during an audit the manifest records indicate that adequate MDR's are present, then no penalty action is warranted.

2. Carrier is responsible for the merchandise until it has been placed in G.O. warehouse, exported, entered or receipted for by another party (container freight station, in-bond carrier, etc.).
3. The party last receipting for the full amount of merchandise listed on the manifest, in-bond document or transfer document is responsible for reporting discrepancies.
4. If the manifest discrepancy report is not adequate a penalty should be issued under 19 U.S.C. 1584 equal to the domestic value of the merchandise or \$10,000 whichever is smaller. The penalty may be assessed against any party directly or indirectly responsible for the manifest discrepancy.
5. Any 1584 penalty for over \$1,000 requires issuance of a prepenalty notice. See, 19 C.F.R. 162.76.
6. If the overage has been released without Customs authorization, a penalty in the amount of the domestic value of the merchandise may be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of the provisions of 19 U.S.C. 1448 for removal of merchandise from the place of unloading without Customs authorization against any party responsible for the unauthorized release.
7. Mitigation of any 1584 penalty assessed for an overage should be afforded to an amount between 10 and 50 percent of the assessed amount, but no less than \$200. If a violator is a chronic one and the above mitigation does not have a deterrent effect, mitigation to an amount in excess of 50 percent is permitted.
8. Mitigation of section 1595a(b) penalties for violation of section 1448, follow mitigation guidelines found in section III.B. below.

E. Failure to file manifest discrepancy reports

1. Vessel - No specific penalty for this failure, assess 19 U.S.C. 1584 penalty for overage or shortage resulting from the failure to report the discrepancy.
2. Air – while a \$5,000 can be assessed against the pilot for 19 U.S.C. 1644a and 19 C.F.R. 122.49, as a matter of policy only the 1584 penalty for overage or shortage resulting from the failure to report the discrepancy (as in the vessel environment).

3. Land carrier - No specific penalty for this failure, assess 19 U.S.C. 1584 penalty for discrepancy as above.
5. Failure to file a manifest discrepancy report shall be considered to be an aggravating factor when mitigating any 1584 penalty that results against a land carrier for a shortage or overage.
6. Mitigation from penalties arising under 19 U.S.C. 1584 against a party for failing to file a manifest discrepancy report shall be under guidelines stated in sections C. and D. above.

F. Carrier does not maintain adequate records at the time of audit review.

1. If no manifest exists for a particular conveyance arrival, penalties should be issued and mitigated in accordance with subparagraph I. A. above.
2. If manifest discrepancy reports are not maintained, penalties should be issued and mitigated in accordance with subparagraph E. above.
3. A separate violation will be established for each conveyance arrival for which a manifest or a manifest discrepancy report is not maintained.
4. Recordkeeping penalties pursuant to 19 U.S.C. 1509 may be pursued.

G. Unmanifested merchandise when container is delivered with seals intact, but upon examination, either an overage or shortage is discovered.

1. When a container is sealed prior to being received by the carrier, the carrier or any party who is responsible for the accuracy of the manifest remains legally responsible for inaccuracies in the manifest. However, if Customs receives or there is filed an adequate manifest discrepancy report within the time period provided for by regulation (60 days for vessels per 19 C.F.R. 4.12, 30 days for aircraft per 19 C.F.R. 122.49(a)(2), and 60 days for vehicle carrier per 19 C.F.R. 123.9(b)), or if during an audit manifest records indicate that a discrepancy was annotated, then no penalty action is warranted.
2. If the violator can show that it had no knowledge of the violation, and the evidence indicates that neither tampering with the seals nor carrier records has occurred, the penalty may be remitted in full.

3. If the carrier is responsible for placing seals on the containers, full mitigation will not be afforded and the guidelines noted above for shortages and overages should be followed.

H. Seizure of merchandise

1. Under the provisions of 19 U.S.C. 1584, failure to manifest merchandise belonging or consigned to the master or any crew of a vessel or to the owner or person in charge of a vehicle or to the pilot or crew of an aircraft. Only the unmanifested merchandise is subject to seizure and forfeiture. The conveyance carrying the unmanifested merchandise is not subject to seizure and forfeiture under 1584.
2. Remission of forfeitures incurred under section 1584 should be consistent with penalty mitigation guidelines articulated in section VI.H., ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT, above.

III. Delivery of Cargo Without Customs Authorization (19 U.S.C. 1595a(b) for Violation of 19 U.S.C. 1448 and/or 19 U.S.C. 1499)

- A. Penalty Assessment. Penalties for removal of merchandise from the place of unloading without authorization will be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of the provisions of 19 U.S.C. 1448 or penalties for delivery of merchandise without Customs examination will be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1499.
1. These penalties may be assessed against any party who is deemed to be responsible for the unauthorized removal or delivery (e.g., non-vehicle operating common carrier [NVOCC], container freight station, independent trucker, anyone who removes merchandise without Customs authorization.
 2. Penalties are assessed in an amount equal to the domestic value of the merchandise removed or delivered without authorization.
 3. Penalties of these types assessed against holders of international carrier bonds are secured by the terms and conditions of the bond up to the limit of the bond. Penalties may be collected in full from the violator. Collection from a surety is limited to the amount of the bond.
 4. Double penalties should not be assessed, i.e., while the same misdelivery may be without Customs authorization and may involve

avoidance of examination, only one assessment equal to the value of the merchandise should be made. If multiple assessments from the same transaction occur, mitigation should reflect the policy that only a single penalty should have been assessed.

B. Penalty Mitigation (See, T.D. 99-29)

1. If the violator can show that the violation occurred solely as a result of Customs error, the penalty should be cancelled.
2. If the violator can show that the merchandise was never received or landed, the penalty should be mitigated without payment.
3. If the merchandise which was removed without authorization or delivered without examination could have been the subject of an informal entry, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.
4. If the violator comes forward and discloses the violation to Customs, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus \$50.
5. If the merchandise which was removed without authorization was not designated for Customs examination and the violator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon or that the merchandise was exported, the penalty may be mitigated upon payment of an amount between \$250 and \$2,000 depending on the presence of aggravating or mitigating factors.
6. If the merchandise which was removed without authorization was not designated for Customs examination and the violator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon or that the merchandise was exported, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between \$300 and \$2,500 depending on the presence of aggravating or mitigating factors.
7. If the merchandise which was removed without authorization or delivered without examination was designated for Customs examination and the violator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon or that the

merchandise was exported, the penalty may be mitigated upon payment of an amount between \$2,500 and \$20,000 depending on the presence of aggravating or mitigating factors. In no case shall the mitigated amount be lower than any costs chargeable to the importer which are incident to such examination. Conversely, the mitigated amount can never exceed the value of the shipment.

8. If the merchandise which was removed without authorization or delivered without examination was designated for Customs examination and the violator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon or that the merchandise was exported, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between \$3,000 and \$25,000 depending on the presence of aggravating or mitigating factors. In no case shall the mitigated amount be lower than any costs chargeable to the importer which are incident to such Customs examination. Conversely, the mitigated amount can never exceed the value of the shipment.
9. If the violator has a history of removal of merchandise from the place of unloading without Customs authorization or delivery without Customs examination or particularly aggravating circumstances exist with regard to a violation, the Fines, Penalties and Forfeitures Officer may mitigate the penalty upon payment of a higher amount than that authorized by these guidelines; however, the advice of HQ, ORR, Penalties Branch will be sought to determine appropriate mitigation.
10. Theft of merchandise from Customs custody. Merchandise which is stolen from the carrier prior to having been released by Customs shall be treated as having been delivered without Customs authorization. The carrier will be liable for penalties and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1448 or 1499 may also be assessed against the individuals who steal the merchandise from Customs custody. In those instances, no mitigation will be afforded to the person or persons primarily responsible for the illegal act. Aiders and abettors may receive mitigation to 25-50 percent of the penalty, depending upon the degree of complicity.

C. Mitigating and Aggravating Factors.

1. Mitigating Factors
 - a. Violator inexperienced in the handling of cargo.

- b. Violator has a general good performance and low error rate in the handling of cargo.
 - c. Violator demonstrates remedial action has been taken to prevent future violations.
2. Aggravating Factors
- a. Violator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
 - b. Violator has a rising error rate, which is indicative of deteriorating performance in the handling of cargo.
- D. Restricted or Prohibited Merchandise. If Customs has reason to believe that the merchandise which was removed from the place of unloading without authorization or which was delivered without examination may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in mitigation at the high end of the mitigation range.
- E. If an importer indicates he hasn't received all cargo, this penalty can be generated against carrier. Filing of MDR, police report of theft or other explanation of discrepancy after a short delivery will not eliminate any penalty assessment. Such action taken after discovery of the shortage will be considered in mitigation.

IV. Other Vessel Penalties

- A. Penalties Against Carrier for Failure to Notify Customs of Presence of Unentered Merchandise (G.O. Notification Penalties)
- 1. Obligation to notify Customs

Any merchandise or baggage regularly landed but not covered by a permit for its release will be allowed to remain at the place of unloading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the master, pilot, operator or owner of the conveyance or the agent thereof must notify Customs of any such merchandise or baggage for which entry has not been made. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system.
 - 2. Penalty assessment

Failure to provide such notification may result in assessment of a monetary penalty of up to \$1,000 per bill of lading against the master, pilot, operator or owner of the conveyance or the agent

thereof for violation of the provisions of title 19, United States Code, section 1448 (19 U.S.C. 1448). If the value of the merchandise on the bill is less than \$1,000, the penalty will be equal to the value of such merchandise.

3. Mitigation

- a. If notification of the presence of unentered merchandise is provided outside the time period allowed by law or regulation, the penalty may be mitigated to an amount between 10 and 50 percent of the assessment, but not less than \$100, depending on the presence of aggravating or mitigating circumstances.
- b. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

4. For claims for liquidated damages arising against the arriving carrier for failure to notify the bonded warehouse of the presence of unentered merchandise, against the in-bond carrier or receiver of the merchandise under a Customs-authorized permit-to-transfer to notify Customs and the bonded warehouse of the presence of unentered merchandise and against the bonded warehouse for failure to collect merchandise for which it had received notification, see sections XII, XIV, and XV of the Liquidated Damages Chapter of this Handbook.

B. Unlading or lading merchandise from a vessel or vehicle without a permit (19 U.S.C. 1453).

1. This violation generally involves failure to obtain a CF-3171 to unlade merchandise, commencement of unlading prior to Customs officer's supervision of unlading, or unlading merchandise which has not been properly manifested.
2. This violation may also involve diversion of merchandise if merchandise is manifested for delivery at Port B, but is offloaded at Port A before conveyance arrival at Port B (vessels only) or overcarriage of merchandise if merchandise is manifested for delivery at Port A, but is overcarried to Port B and unladen there. If this diversion of cargo occurs for reasons other than those expressed in 19 C.F.R. 4.33 and the manifest is not amended to reflect the diversion/overcarriage of cargo, a penalty under the provisions of 19 U.S.C. 1453 may be assessed. If this violation is discovered only because the carrier informs Customs of the offloading, then the

above-noted penalties may be waived at the discretion of the port director.

3. Penalty may be assessed against the master of vessel, person in charge of vehicle and all parties responsible for the violation.
4. Penalty amount - domestic value of merchandise unladen or laden without a permit.
5. Statute also permits seizure of merchandise and vessel. Do not seize without Headquarters, ORR, Penalties Branch, approval.
6. Mitigation to \$500-\$5,000 is appropriate. If penalty is for less than \$500 grant no relief.
7. If the \$500 to \$5,000 mitigation does not have a deterrent effect, mitigation to an amount exceeding \$5,000 may be appropriate.
8. For aircraft, penalty of \$5,000 shall be assessed against pilot (if a first violation) for violation of 19 U.S.C. 1433, 19 C.F.R. 122.38 and 19 C.F.R. 122.166. Penalty is \$10,000 for subsequent violations. Notwithstanding any other 1436 mitigation guidelines, mitigate consistent with 5. and 6. above.

C. Unlading passengers without a permit (19 U.S.C. 1454).

1. Penalty may be assessed against master of vessel, person in charge of vehicle and every other person who knowingly is concerned or who aids in the violation.
2. Penalty amount - \$1,000 for the first passenger unladen and \$500 per each subsequent passenger unladen without a permit.
3. Applies to the unlading of passengers – not crew members.
4. Mitigation to \$100-\$250 per passenger depending on the presence of aggravating factors. See, IV.B. in ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT.
5. If a party continues to violate the statute and the \$100-\$250 mitigation does not have a deterrent effect, grant no relief.
6. Penalty of \$5,000 against aircraft pilot for permitting passengers to depart without Customs permission under 19 U.S.C. 1644a and 19 C.F.R. 122.36. Penalty is \$5,000 per incident and not \$5,000 per

passenger. Mitigate consistent with paragraph 3. above based on number of passengers permitted to depart.

- D. Failure of a vessel or vehicle which, at any authorized place, fails to come to a stop when signaled to do so by a Customs officer displaying proper insignia 19 U.S.C. 1581(d).
1. Penalty is to be assessed against the master, owner, operator or person in charge of the conveyance.
 2. Penalty is in the amount of not more than \$5,000 nor less than \$1,000.
 3. As a general rule, no mitigation should be granted. If the violator can show that there was a true misunderstanding and that no loss of revenue was incurred due to the failure to come to a stop, then extraordinary mitigation may be afforded to an amount to be determined by the FP&F Officer.
- E. Obstruction of boarding officer (19 U.S.C. 1455). See also 46 U.S.C. App. 324 relating to obstruction of boarding officer checking licensing or registry. Same penalty assessment and mitigation.
1. Assess penalty against any officer, owner, agent of the owner, or member of the crew of such vessel who obstructs or hinders the customs officer in the performance of his duty.
 2. Penalty amount - \$500.
 3. As a general rule, no relief.
- F. Presentation by a master of a vessel of forged, altered or false document to an examining officer who has boarded the vessel in accordance with the authority granted by 19 U.S.C. 1581(a) to examine a manifest or other documents and 19 U.S.C. 1581(b) to pursue and arrest any person engaged in the breach of the navigation laws. This is a violation of 19 U.S.C. 1581(c).
1. Penalty may only be assessed against a master of a vessel.
 2. The master must have knowledge that the document was forged, altered or false.
 3. Penalty amount is between \$500 and \$5,000.
 4. No mitigation should be granted.

5. This penalty should not be assessed against a master who presents a manifest with a discrepancy as to merchandise amounts or descriptions which are more properly penalized under 19 U.S.C. 1584.
- G. Unlawful unloading or transshipment (19 U.S.C. 1586)
1. Penalty against master of vessel for unloading merchandise after arrival in Customs waters but before arrival at place for discharge and before receiving permit to unload - twice the value of the merchandise unloaded but not less than \$10,000. Vessel and cargo are subject to seizure and forfeiture. 19 U.S.C. 1586(a).
 2. Penalty against master of vessel for transshipment of merchandise from a vessel located at a point adjacent to the Customs waters to a vessel which may introduce such merchandise into the U.S. in violation of law - twice the value of the merchandise transshipped but not less than \$10,000. Vessel and cargo are subject to seizure and forfeiture. 19 U.S.C. 1586(b).
 3. Penalty against master of vessel for transshipment of merchandise from a vessel located at a point adjacent to the Customs waters to a U.S. vessel twice the value of the merchandise transshipped but not less than \$10,000. Vessel and cargo are subject to seizure and forfeiture. 19 U.S.C. 1586(c).
 4. Penalty against master of vessel that receives illegally transshipped merchandise or any other person who aids or assists in such transshipment - twice the value of the merchandise transshipped but not less than \$10,000. Vessel and cargo are subject to seizure. 19 U.S.C. 1586(d).
 5. Above penalties are not incurred if transshipment results because of accident or stress of weather. 19 U.S.C. 1586(f).
 6. As a general rule, no mitigation from penalties or forfeitures shall occur for these violations.
 7. For violations involving the transfer of merchandise between an aircraft and a vessel, see the provisions of 19 U.S.C. 1590.
- H. Failure to comply with direction of boarding officer (19 U.S.C. 1587).

1. Penalty amount - not more than \$5,000 nor less than \$500. Seizure and forfeiture of vessel and cargo may also be incurred for this violation.
2. As a general rule, no mitigation from this penalty or forfeiture.

V. Departure of Vessels; Transportation in Coastwise Trade

Failure to comply with clearance procedures upon departure to a foreign port or place (19 U.S.C. 1436)

1. All vessels bound for a foreign port or place are required to clear except (See, 19 C.F.R. 4.60):
 - a. Any documented vessel with a pleasure license endorsement or an undocumented American pleasure vessel,
 - b. A documented vessel with a Great Lakes license that will touch foreign only to take on bunker fuel,
 - c. Vessels exempted from entry by 19 U.S.C. 1441,
2. Documents required for clearance are provided for by 19 C.F.R. 4.63 including CF-1302A, Cargo Declaration Outward with Commercial Forms.
3. Violations:
 - a. Departure without obtaining clearance from Customs.
 - b. Delivery of false outward manifest, data or information (which would include "rollovers", i.e., merchandise manifested for an outbound conveyance, but actually placed on a second outbound conveyance).
 - c. Prior to departure, failing to present SED for validation when merchandise covered by the SED is licensable by the Department of State or the Department of Commerce.
 - d. Failing to file outward manifest.
4. Penalty amounts - \$5,000 for first violation, \$10,000 for any subsequent violation, assessable for violation of 19 U.S.C. 1436 against the master of the vessel, pilot of the aircraft or operator of the vehicle, consistent with the rules set forth in Section IV., **ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT**, above.

5. Mitigation shall be consistent with mitigation guidelines in Section VI.B., **ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT**, above.
 6. The 19 U.S.C. 1436 penalty will generally not be assessed for late filing of a complete outward manifest or late filing of Shipper's Export Declarations (SEDs).
 7. Both a 19 U.S.C. 1436 and claims for liquidated damages for late filing of SEDs (15 C.F.R. 30.24) and/or late filing of the complete outward manifest (19 C.F.R. 113.64(c)) can arise from the same conveyance departure.
 8. Slot Charters (vessels)
 - a. Slot charter operators cannot incur penalties under 1436. Those penalties must be assessed against the master of the vessel.
 - b. There is nothing in the regulations which bars the holder of a slot charter from obligating his bond in lieu of that submitted by the arriving or departing carrier or agent of that carrier for any liquidated damages that may arise due to the holder of the slot charter's failure to comply with outbound document submission requirements. However, 1436 penalties must be assessed against the master of the vessel.
- A. Failure to have permit to proceed or failure to have a certified copy of manifest (19 U.S.C. 1436).
1. Penalty amount - \$5,000 for first violation; \$10,000 for each subsequent violation assessed against the master of the vessel.
 2. Mitigation shall be consistent with mitigation guidelines in Section VI.B., **ARRIVAL AND ENTRY OF VESSELS, VEHICLES AND AIRCRAFT**, above.
- B. Use of nonqualified vessel to tow any other vessel other than a vessel in distress (46 U.S.C. App. 316(a))
1. Penalty of between \$250 and \$1,000 to be recovered from owner or master plus \$50 per ton on the measurement of the towed vessel. Penalty should be based on gross tonnage rather than net tonnage.
 2. Mitigate to between 25 and 50 percent of claim for first violation, no relief for subsequent violations.

- C. Offering vessels for sale when the vessels have entered under a cruising license (19 U.S.C. 1595a(a), 19 C.F.R. 4.94, Chapter 89, Additional U.S. Note 1, Harmonized Tariff Schedules of the United States (HTSUS)).
1. Vessels which enter the United States under a cruising license may not be offered for sale. See, 19 C.F.R. 4.94.
 2. Offer for sale of such a vessel renders it subject to seizure and forfeiture under the provisions of 19 U.S.C. 1595a(a) for violation of 46 U.S.C. App. 104 and 19 C.F.R. 4.94.
 3. Remit the forfeiture upon payment of an amount between 2 and 6 times the loss of revenue. If the vessel would have been absolutely free of duty upon entry, e.g., as American Goods Returned, remit the forfeiture upon payment of one-half percent of the value or \$100 whichever is higher.
- D. Coastwise Transportation of Merchandise and Passengers in Non-coastwise Qualified Vessels (46 U.S.C. App. 883 for merchandise and 46 U.S.C. App. 289 for passengers)
- 1) Provisions of these statutes prohibit the carriage of merchandise and passengers, respectively, between coastwise points in the United States by a non-coastwise qualified (e.g. foreign-flag) vessel. These statutes are enacted specifically to preserve for U.S. vessels the transportation of goods and people within points encompassed by U.S. territorial waters. They are strictly applied by Customs, as intended by Congress.
 - 2) Statutory citations - 46 U.S.C. App. 883 (merchandise); 46 U.S.C. App. 289 (passengers); The foregoing laws are part of, and known loosely as, the "Jones Act." Regulations: 19 C.F.R. 4.80 (general); 19 C.F.R. 4.80b, 171.11(c) (merchandise); 19 C.F.R. 4.80a (passengers)
- a) Merchandise violations – Penalty Assessment
- The penalty (see below) may be assessed against any person transporting the merchandise, or causing it to be transported. This includes the importer, consignee, master of the vessel, vessel agent, or owner of the vessel. Typically, the assessment is made against the vessel agent or owner (if the owner is located in the U.S.).

Merchandise violation – Example

A vessel that is not coastwise qualified loads merchandise at Norfolk, Virginia, and unloads it at Savannah, Georgia. If the transportation does not fall into an exception, discussed below, or one of the 13 provisos to section 883, it would be a violation of the coastwise law.

b) Merchandise violations – Seizure.

Although the statute provides for seizure of the merchandise transported illegally, the approval of the Headquarters Penalties Branch must be obtained before seizure.

c) Merchandise violations – Penalty Amounts.

The statute also provides for a penalty *up to* the domestic value of the merchandise (or the actual cost of the transportation, whichever is greater).

Note: No penalty should be assessed in an amount higher than \$100,000, regardless of the value of the merchandise in violation or cost of transportation, if the violation arose from an emergency to the vessel that required, for reasons of safety or other humanitarian cause, that coastwise transportation occur. An example would be a violation directly caused by a hurricane or other force of nature. In case of a violation caused by such an emergency, the penalty must be assessed, and mitigation left to the discretion of the Fines, Penalties and Forfeitures Officer. There is no limit on the amount of penalty to be assessed when the violation occurred due to commercial expediency.

d) Merchandise violations – Mitigation.

a. The Fines, Penalties & Forfeitures Officer may remit in full if the petition for relief establishes that the violation occurred as a direct result of the arrival of the transporting vessel in distress (See, 19 C.F.R. 171.11(c)).

b. If the vessel is not in distress, but the coastwise movement occurred due to some other humanitarian concern, e.g. disembarkation of a crew member because of a life threatening injury or illness, that somehow involved the unloading of domestic cargo, then the penalty would be assessed, but mitigated in full.

- c. However, if neither of the foregoing situations--distress or humanitarian reason--are present, then the violation will be considered to have been committed for commercial expediency (even where no monetary gain is realized by the violator). In that case, the assessed penalty will be mitigated to an amount equal to between 10 and 50 percent of that assessed.
- d. **NOTE:** The unavailability of a coastwise-qualified vessel is NOT a mitigating factor in a case where commercial expediency has been found. Mitigation normally will be accomplished at the 10 percent level for a first violation that is not aggravated. Examples of aggravating factors would be a second or subsequent violation, or a violation that was deliberate, in that Customs obtains evidence or information that the violation was premeditated, or that the violation occurred *after* the violator was informed by Customs that the anticipated transportation would constitute a violation of section 883.
- e. However, in either situation, a non-aggravated first violation or an aggravated violation, Customs reserves the ability in a given case to recover a liability in an amount that would offset any economic gain that inured to the violator as a result of the violation, even if that amount would exceed the mitigated penalty that would otherwise have been taken. For example, if the normal mitigated penalty amount were 10 percent of the domestic value of the cargo illegally transported, or \$15,000, but the vessel avoided costs of \$30,000 by committing the violation as a commercial expedient, then Customs could take a mitigated penalty of \$30,000, rather than \$15,000.

e) Passenger Violations – Penalty Assessment.

The penalty for a violation will be assessed against the master of the vessel.

1. Passenger Violations – Penalty Example

A non-coastwise qualified vessel embarks passengers at New York, New York, transports them to Miami, Florida, and allows them to disembark there, either temporarily, or to terminate the voyage. That transportation would violate section 289.

2. Passenger Violations – Penalty Amount.

The law prescribes the amount of the penalty to be assessed: \$200 per passenger transported and landed. **NOTE:** The term “passenger” is defined in 19 C.F.R. 4.50(b) as “any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.” So, it does not include crewmembers.

3. Passenger Violations – Mitigation.

- a. 46 U.S.C. App, 320 provides for the mitigation by Customs of a penalty assessed under section 289, when the offense was not “willfully committed.” Thus, if the violation was deliberate or intentional, then no mitigation of the \$200 per passenger statutory liability should be granted.
- b. Violations that occur because of commercial expediency will be considered to be deliberate. Violations that may occur due to a force of nature, the vessel being in distress, or by reason of safety or humanitarian concern, will be assessed at the statutory amount, but then mitigated in full by the Fines, Penalties and Forfeitures Officer or Headquarters Penalties Branch.

A first violation that is not intentional normally may be mitigated to \$100 per passenger. No mitigation will be granted in second or subsequent violations.

VI. International Carrier Bond

A. Bond Conditions; Guarantee of Payment of Penalties

Under the terms of the International Carrier Bond, if any vessel, vehicle or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft incurs a penalty, duty, tax or other charge provided by law or regulation the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs (19 C.F.R. 113.64(a)). This is the **only** bond that guarantees the payment of penalties.

- B. If a carrier or employee of a carrier (i.e., an aircraft pilot, truck driver or vessel master) incurs a monetary penalty and the carrier, as bond principal, either does not petition or does not comply with a mitigation decision, a demand on surety for the penalty amount should be made. The surety will then have the same petitioning rights as the principal. The bond amount provides the maximum of the surety's liability. The full penalty amount (even if it exceeds the bond) may still be sought from the principal. See, 19 C.F.R. Part 172 for administrative procedures.

- C. Unlike liquidated damages claims, monetary penalties may be assessed in amounts that exceed the bond.