

NEW GUIDELINES FOR MITIGATION OF PENALTIES FOR MERCHANDISE DELIVERED FROM THE PORT WITHOUT CBP AUTHORIZATION OR EXAMINATION; PUBLIC SAFETY - 19 U.S.C. 1595a(b), 1448, and 1499 (CBP Dec. 06-34)

Pursuant to section 1448 of Title 19, United States Code (19 U.S.C. 1448), among other things, merchandise shall not be delivered from the place of unloading without CBP authorization. Pursuant to 19 U.S.C. 1499, among other things, merchandise that has been designated by CBP to be inspected, examined or appraised shall not be delivered from customs custody (except, in some instance, under bond) until the merchandise has been inspected, appraised, or examined. In instances in which merchandise is removed or delivered from the place of unloading, the terminal, or the port without CBP authorization or examination, or both, a monetary penalty shall be assessed in an amount equal to the domestic value of the merchandise under the provisions of 19 U.S.C. 1595a(b), for a violation of the provisions of 19 U.S.C. 1448 (delivery from the place of unloading without authorization), or 19 U.S.C. 1499 (delivery without CBP examination).

On November 29, 2006, CBP published “**New Guidelines for Mitigation of Penalties for Merchandise Delivered from the Port Without CBP Authorization or Examination; Public Safety**” in the CBP Bulletin and Decisions as CBP Dec. 06-34. The guidelines below are based on that publication.

I. Enforcement in General

The unauthorized removal or delivery from the ports of merchandise constitutes a violation of the customs laws and creates an unacceptable risk to the public security, health, and safety of the United States. By the guidelines below, CBP conveyed the seriousness of its concerns to the importing community with respect to the recurrence of these violations. In instances in which merchandise is removed or delivered from the place of unloading, the terminal, or the port without CBP authorization or examination, or both, CBP may assess a monetary penalty in an amount equal to the domestic value of the merchandise under the provisions of 19 U.S.C. 1595a(b) for a violation of the provisions of 19 U.S.C. 1448 (delivery from the place of unloading without authorization) or 19 U.S.C. 1499 (delivery without CBP examination). The guidelines below apply to penalties that CBP assesses pursuant to 19 U.S.C. 1595a(b) for violations of 19 U.S.C. 1448 or 19 U.S.C. 1499 when CBP considers the removal or delivery of the merchandise from the place of unloading, the terminal, or the port without CBP authorization or examination, or both, to place the security, health, or safety of the populace at risk. Prior to the issuance of CBP Dec. 06-34, CBP had issued separate guidelines for penalties that are assessed pursuant to 19 U.S.C. 1595a(b) for violations of 19 U.S.C. 1448, or 19 U.S.C. 1499, which appear in T.D. 99-29, as amended. Any violation involving removal and/or delivery without authorization, or examination, or both, that is deemed by CBP to fall outside these guidelines may be mitigated in accordance with the guidelines in T.D. 99-29.

II. Mitigation of Penalties

Under 19 U.S.C. 1618, CBP has authority to mitigate penalties. Exercise of such mitigation authority is within the sole discretion of CBP. Under these guidelines, if CBP considers the removal or delivery of the merchandise from the place of unloading, the terminal, or the port without CBP authorization or examination, or both, to place the security, health, or safety of the populace at risk, the penalty assessed under 19 U.S.C. 1595a(b) for violations of 19 U.S.C. 1448 or 19 U.S.C. 1499, may be mitigated as follows:

A. First Violation

If CBP considers a removal or delivery of merchandise to place the security, health, or safety of the public at risk, the assessed penalty may be mitigated upon payment of the lesser of: 1) 75% of the domestic value of the merchandise removed or delivered without authorization and/or examination, or 2) a flat sum between \$10,000 and \$25,000, as determined by CBP.

B. Second Violation

If CBP considers a removal or delivery of merchandise to place the security, health, or safety of the public at risk, the assessed penalty may be mitigated upon payment of the lesser of: 1) 75% of the domestic value of the merchandise removed or delivered without authorization and/or examination, or 2) a flat sum between \$25,001 and \$50,000, as determined by CBP.

C. Third and Subsequent Violations

If CBP considers a removal or delivery of merchandise to place the security, health, or safety of the public at risk, the assessed penalty may be mitigated upon payment of the lesser of: 1) 75% of the domestic value of the merchandise removed or delivered without authorization and/or examination, or 2) a flat sum between \$50,001 and \$75,000, as determined by CBP.