

**IMPORTATIONS
CONTRARY
TO LAW**

GUIDELINES FOR REMISSION OF FORFEITURES AND MITIGATION OF PENALTIES FOR IMPORTATIONS CONTRARY TO LAW

Section 1595a(c) of Title 19, United States Code (19 U.S.C. 1595a(c)) is the primary seizure and forfeiture statute that U.S. Customs and Border Protection (CBP) uses to enforce a myriad of civil laws—both those of CBP as well as laws and regulations of other agencies. Those civil laws define what constitutes prohibited merchandise or behavior but many do not otherwise provide an enforcement mechanism to prevent the prohibited merchandise from entering the United States or provide a consequence for engaging in such behavior. 19 U.S.C. 1595a(c) acts as an umbrella statute that CBP utilizes to enforce those civil laws that define the underlying violations. All such violations of 19 U.S.C. 1595a(c) are considered importations or introductions contrary to law. 19 U.S.C. 1595a(c)(1) describes such instances where seizure of the violative merchandise is mandatory; 19 U.S.C. 1595a(c)(2) and (3) describe instances where CBP has the discretion to seize violative merchandise although such an action is not required.

19 U.S.C. 1595a(b) provides CBP with the authority to assess a monetary penalty against parties who direct, assist financially or otherwise, or are in any way concerned in the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law. CBP may, at its sole discretion, both seize merchandise pursuant to 19 U.S.C. 1595a(c) and assess a penalty pursuant to 19 U.S.C. 1595a(b), but seizure is not required for CBP to assess a penalty.

Although CBP is not required to grant relief in any specific case, CBP may reference these guidelines when deciding whether to grant relief in a specific case and, if CBP deems that relief is appropriate, to determine the mitigation, remission, or cancellation amount. CBP reviews the specific facts and circumstances of each case individually and may deviate from these guidelines if CBP determines that such deviation is appropriate. Pursuant to 19 U.S.C. 1618, 1623, as well as other applicable regulatory authorities, duly authorized CBP officials are entitled to grant relief under such terms and conditions as they deem appropriate, sufficient, reasonable and/or just.

Guidelines for Remission of the Forfeiture for Seizures Made Pursuant to 19 U.S.C. 1595a(c)

A. Recommended Forfeiture Remission Amounts¹

NOTE: For purposes of the guidelines below, only violations occurring within the 1-year period preceding the subject violation will be considered as prior violations. The shipment currently under seizure is considered a second or subsequent violation if it was imported by or on behalf of a person or entity whose merchandise was seized pursuant to 19 U.S.C. 1595a(c) within a 1-year period prior to the instant seizure and such prior forfeiture claim was not remitted in full. The underlying violation in a 19 U.S.C. 1595a(c) seizure is not material for a seizure to be considered a second or subsequent offense.

1. First Offense with no aggravating factor(s) present

10-30% of the dutiable value of the seized goods, depending upon the presence of mitigating factors.

2. First Offense with aggravating factor(s) present

30-50% of the dutiable value of the seized goods, depending upon the presence of mitigating factors.

3. Second Offense with no aggravating factor(s) present

30-50% of the dutiable value of the seized goods, depending upon the presence of mitigating factors.

4. Second Offense with aggravating factor(s) present

50-80% of the dutiable value of the seized goods, depending upon the presence of mitigating factors.

5. Third or Subsequent Offense

50-80% of the dutiable value of the seized goods, depending upon the presence of mitigating factors.

B. In addition to a forfeiture remission amount, CBP may require a petitioner to meet other conditions, including, but not limited to:

1. Satisfaction of all costs of seizure (e.g., storage fees and appraisal fees);

2. Manipulation under CBP supervision to bring the violative merchandise into compliance at the petitioner's expense;

¹ These guidelines may also be applied in determining the criteria for **Early Release** of merchandise seized pursuant to 19 U.S.C. 1595a(c).

3. Exportation of the violative merchandise under CBP supervision at the petitioner's expense;² and/or,
4. Submission of a properly executed Hold Harmless Agreement.

C. Examples of **Mitigating Factors** include, but are not limited to:

1. Prior good record of the parties involved in the violation.
2. Clear documentation of remedial measures undertaken to prevent future violations.
3. Inexperience in importing by the parties involved.
4. Extraordinary cooperation with CBP officers in ascertaining the facts establishing the violation.

D. Examples of **Aggravating Factors** include, but are not limited to:

1. Criminal conviction relating to the subject transaction. The criminal violation relating to the transaction resulting in the seizure need not have been committed by the petitioner for this aggravating factor to exist.
2. Repetitive violations of the same import restriction involved in the seizure, including violations for which no seizures were made.
3. Several violations in the same transaction (*e.g.*, violations of laws and/or regulations of multiple agencies in the same shipment).
4. Circumstances suggest an intentional importation contrary to law.
5. The petitioner exhibits a pattern of disregard for its responsibilities under U.S. import laws and regulations.

² If the merchandise is released for export, all export requirements (including any license and Electronic Export Information filing requirements) must be met before export.

Guidelines for Penalties Assessed Pursuant to 19 U.S.C. 1595a(b)

A. Recommended Mitigation Amounts³

NOTE: For purposes of the penalty guidelines below, only penalties assessed pursuant to 19 U.S.C. 1595a(b) within the 1-year period preceding the subject violation will be considered as prior violations. The underlying violation is not material for a penalty to be considered a second or subsequent offense. Penalties that are mitigated in full should not be considered prior violations.

1. First Offense with no aggravating factor(s) present
10-30% of the assessed penalty amount, depending upon the presence of mitigating factors.
2. First Offense with aggravating factor(s) present
30-50% of the assessed penalty amount, depending upon the presence of mitigating factors.
3. Second Offense with no aggravating factor(s) present
30-50% of the assessed penalty amount, depending upon the presence of mitigating factors.
4. Second Offense with aggravating factor(s) present
50-80% of the assessed penalty amount, depending upon the presence of mitigating factors.
5. Third or Subsequent Offense
50-80% of the assessed penalty amount, depending upon the presence of mitigating factors.

B. Examples of **Mitigating Factors** include, but are not limited to:

1. Prior good record of the violator.
2. Clear documentation of remedial measures undertaken to prevent future violations.
3. Inexperience in importing.

³ These guidelines do **not** apply to the mitigation of penalties assessed pursuant to 19 U.S.C. 1595a(b) for the underlying violation of 19 U.S.C. 1448 or 19 U.S.C. 1499. CBP published mitigation guidelines for penalties that arise from violation of 19 U.S.C. 1448 or 1499 in T.D. 99-29 and CBP Dec. 06-34. Those guidelines are also incorporated into the electronic version of the Mitigation Guidelines Informed Compliance Publication, [What Every Member of the Trade Community Should Know About: Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages](#).

4. Extraordinary cooperation with CBP officers in ascertaining the facts establishing the violation.

C. Examples of **Aggravating Factors** include, but are not limited to:

1. Criminal conviction relating to the subject transaction. The criminal violation relating to the transaction resulting in the seizure need not have been committed by the petitioner for this aggravating factor to exist.
2. Repetitive violations of the same import restriction involved in the penalty, including violations for which no penalties were assessed.
3. Several violations in the same transaction (*e.g.*, violations of laws and/or regulations of multiple agencies in the same shipment).
4. Circumstances suggest an intentional importation contrary to law.
5. The petitioner exhibits a pattern of disregard for its responsibilities under U.S. import laws and regulations.