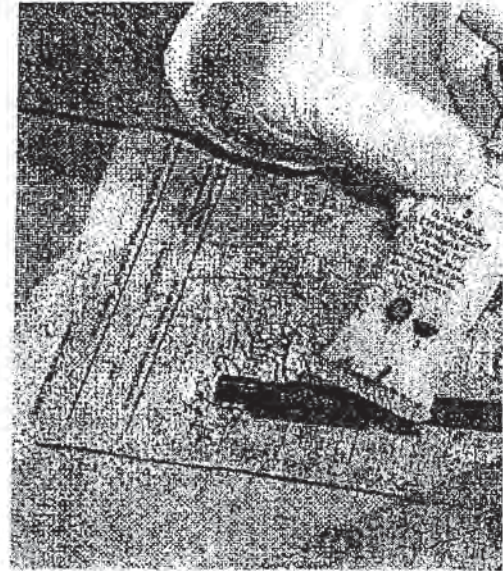


Seized Asset Management and Enforcement Procedures Handbook



CIS HB 4400-01A

January 2002

Office of Field Operations

Office of Investigations

Office of Internal Affairs

Office of Finance



U.S. CUSTOMS SERVICE

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Chapter 8 FP&F/SP Office Management Procedures

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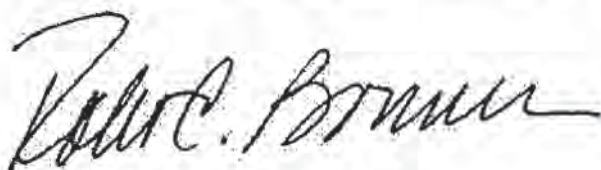
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This handbook contains the standards that Customs personnel must follow when initiating seizure, penalty, or liquidated damages actions; processing and managing cases; and handling seized property. It is intended to aid inspectors, special agents, import specialists, entry specialists, cashiers, paralegal specialists, and seized property specialists in applying Fines, Penalties, and Forfeitures/Seized Property programs. The handbook delineates roles and responsibilities for those personnel, as well as for their supervisors, port directors, SAICs, FP&F Officers, Directors of Field Operations, and Headquarters offices.

The Office of Field Operations, Seizures and Penalties Division in coordination with the Office of the Commissioner, Seized Property Systems will periodically review and update this handbook with the most current information and statutory changes that affect the policies and procedures for documenting, processing, tracking, and reconciling Customs enforcement actions regarding seizures, seized property, penalties, and liquidated damages. Changes, additions, and updates to this handbook from any office or division must be processed through the Director, Seizures and Penalties Division. Any publications issuing instructions, directives, handbooks, or other official publications affecting any processes with regard to seizures, seized property, penalties, and liquidated damages must be routed through the Director, Seizures and Penalties Division. Comments or suggestions about the handbook should be forwarded to the Office of Field Operations, Seizures and Penalties Division, 1300 Pennsylvania Avenue, N.W., Room 5.2C, Washington, D.C. 20229.

Any deviation from these guidelines must be requested in writing and jointly approved by the concerned Assistant Commissioners to ensure uniformity, establish accountability, and promote communication.



Commissioner of Customs

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Seizure Cases

This chapter is designed to provide guidance to Customs officers in seizure case initiation, tracking, analyzing, adjudicating, and closure. In addition, it provides the standards that govern the management of seized assets.

Customs approaches seizure case initiation and processing from a [REDACTED] perspective; that is, [REDACTED]

[REDACTED] Seizures expose Customs to the highest level of risk since they involve the taking of property and the attendant due process and property protection requirements.

Additional information on seizure case processing can be found in the OR&R Mitigation Handbook.

Part 1 Initiation

2.1.1 General

Port Directors and SAICs are responsible for seizure case initiation. They are responsible for establishing the facts of the case, seizing property if appropriate, and timely and accurate case initiation. Case initiators and their supervisors are responsible for knowing the regulatory, statutory, and policy basis for all enforcement actions and for quality case initiation (legally sufficient and fully documented cases).

FP&F is responsible for verifying that cases are fully supported and documented so they can be effectively processed to completion and for the integrity of the seized property under Customs custody. Initiating officers should keep FP&F informed of local trends and problems encountered in their compliance mission.

FP&F will act as a conduit to seizing officers to transmit information received from counsel, OR&R, and other agencies when regulatory or policy changes occur. FP&F will provide training and constructive feedback to seizing officer supervisors when cases require additional support or documentation.

[REDACTED]

2.1.2 Alternatives to Seizure

Seizures are made against property ("in rem") and are intended to keep inadmissible property out of the commerce or to deprive violators of the fruits of a crime. A seizure is a drastic and severe action, involving arrest of the asset. Just as the arrest of an individual sets in motion a judicial process with a very time-sensitive protocol, so does the seizure of an asset.

The right to property is protected by the Constitution. Therefore, when the government contemplates taking someone's property it must not only ensure that due process of law is afforded, but also consider whether or not an alternative to physically taking possession of that property is viable.

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[REDACTED]

1) Detention

Reference: [REDACTED]

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Detention is withholding release of property pending review for admissibility or proper importation or exportation. Often, detention is a viable alternative to seizure where merchandise can be detained for rehabilitation or for clarification of the underlying issues (e.g., country of origin marking, trademark authorization, anti-dumping). When reviewing potentially violative imports and exports, officers should not overlook the use of detention.

19 U.S.C. 1499(c) covers the general rules Customs must follow when processing detained imported merchandise. (Section 1499 excludes detentions made on behalf of other government agencies, e.g., Food and Drug Administration (FDA), Consumer Products Safety Commission (CPSC), etc.; follow instructions of the other agency.) It is the responsibility of the detaining officer to send a notice of detention that includes the data elements contained in 19 U.S.C. 1499(c)(2). Although detention is an alternative to seizure, it is still an action that deprives someone of property. Due process of law requires timely notice of detention.

A detention can evolve into a seizure. In that event, the notice of detention becomes part of the seizure-supporting documentation forwarded to FP&F. If FP&F determines that detention procedures were not followed or that notice was not properly issued, the seizure action may be cancelled and the property returned.

Customs must safeguard detained property. Seized property personnel will not become involved in storing detained property.

There are specific situations that require the detention of violative merchandise. Information obtained during the detention must be documented and forwarded to FP&F as part of the seizure supporting documentation. If a detention develops

into a seizure, a copy of the detention notice must be part of the supporting documentation forwarded to FP&F. The following are examples:

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a) **Detention of Cultural Property—References:** [REDACTED]

[REDACTED] Also reference 19 CFR 12.104 for additional guidance.

- b) **Detention for Copyright, Trademark, Patent—References:** CD 099 2310-005A, 4/7/00, Copyright Protection; CD 099 2310-006A, 12/16/99, Exclusion Orders; CD 099 2310-008A, 4/7/00, Trademark and Trade Name Protection; CD 099 2310-010A, 12/11/00, Detention and Seizure Authority for Copyright and Trademark Violations; and CD 099 2310-011A, 1/24/00, Personal Use Exemption: Unauthorized Trademark; and 19 CFR 133.43.

2) **Refusal of Admission/Denial of Entry**

In instances where the law does not require seizure or detention, refusing admission of violative merchandise achieves the same result by preventing the introduction of prohibited or restricted merchandise into the commerce of the United States. At a land border, simply making the importer return immediately to the foreign country with the merchandise solves the problem.

Importers and/or their authorized agents (e.g., a Customs broker) should be advised of reasons for the refusal of admission. In addition, importers should be warned that future violative behavior could result in seizure of their merchandise or the assessment of a penalty. [REDACTED]

(b)(7)(E) [REDACTED] The authority to deny entry is provided in 19 U.S.C. 1499.

3) **Issuing CF 4647 for Country of Origin Marking**

Reference: 19 U.S.C. 1595a(c)(2)(E) and (F).

An alternative to seizing merchandise for failure to mark with country of origin is to conditionally release the merchandise for marking under a CF 4647, Notice to Mark and/or Notice to Redeliver. The CF 4647 requires the importer to mark within 30 days or redeliver the violative merchandise to Customs custody. If the importer does not comply with the CF 4647, Customs may seize the merchandise if available, issue a claim for liquidated damages, or issue a penalty under 19 U.S.C. 1595a(b). Whichever of these actions is taken, a copy of the CF 4647 must be part of the supporting documentation forwarded to FP&F.

4) **Admitting to a Warehouse or Foreign Trade Zone (FTZ)**

Restricted merchandise may proceed to a bonded warehouse or an FTZ for correction or rehabilitation. This alternative is not available for prohibited merchandise.

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2.1.3 Pre-seizure Coordination

References: [REDACTED]

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[REDACTED]

and TEOAF Directive #33, 6/7/99, Seizure of Motor Vehicles, Payment of Liens and Official Use Requirements

The deteriorating value of seized property in proportion to its associated storage and disposal costs is a primary concern to Customs, Treasury, and Congress [REDACTED]

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[REDACTED]

The FP&F role in pre-seizure analysis is that of a facilitator or liaison between OI and the national seized property contractors.

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[REDACTED]

- 2) **Operating Businesses**—When an operating business is the contemplated subject of seizure and forfeiture, it is the responsibility of the seizing agent to discuss the seizure with the FP&FO as part of the pre-seizure coordination actions.
- 3) **Criminal Indictment Documentation**—The seizing agent is responsible for notifying FP&F immediately if any item that has been seized has been included

(b)(5),
(b)(7)(E) in a criminal indictment. [REDACTED] If appropriate, the administrative process should be stayed pending judicial disposition. Refer to Part 10 of this chapter for CAFRA processing guidelines and [REDACTED]

(b)(2) [REDACTED]

4) **Pre-Seizure and Lis Pendens**—[REDACTED]

(b)(2),
(b)(7)(E) [REDACTED]

- 5) **Property Valued over \$100,000**—Seizures with a domestic value over \$100,000, including, but not limited to, real property and operating businesses, must be referred to the appropriate Headquarters office for approval through the DFO or SAIC.

a) **Office of Field Operations (OFO) Seizures**

(b)(2),
(b)(7)(E) [REDACTED]

b) **OI Seizures**

[REDACTED]

c) Exceptions to Reporting Requirements

(b)(2),
(b)(7)(E)

2.1.4 Seizing Officer Responsibilities

The discovering officer is responsible for beginning the seizure case initiation process. The officer who discovers a violation is responsible for case development, timely input in SEACATS, documentation, and property verification and handling.

(b)(2),
(b)(7)(E)

Upon deciding to effect a seizure the seizing officer must complete an SAS report in SEACATS and a CF 6051 documenting the seizure and all items seized within of seizure.

(b)(2)

All Customs personnel involved in making and processing seizures are reminded that due process requires timely notification of seizure to all known parties-in-interest. Customs policy is that FP&F must issue timely notices of seizure. To accomplish this, the seizing officer must deliver all necessary supporting documentation to FP&F within of seizure. This documentation includes full and accurate identification (name, address, identification numbers, etc.) of all parties with a financial or legal interest in the property—owner, lienholder, exporter, importer, or other.

(b)(2)

1) Case Development

(b)(2),
(b)(5)

a) Pre-seizure—

b) Organization—

c) Appraisals—

(b)(2),
(b)(5),
(b)(7)(E)

d) Abandonment—

e) Arrest—

- 2) SEACATS Input—The SAS in SEACATS is the official Customs system of record for tracking seized property and processing seizure cases, as well as recording any abandonment.

(b)(2),
(b)(5)

- a) Time Frames—In ALL cases, the case initiator will acquire an incident number within [redacted] of the incident (includes creation of shell record and

(b)(2)

(b)(2) { input of property lines). The case initiator will complete the SAS report in SEACATS within [REDACTED] of the issuance of an incident number. The case initiator's supervisor will approve the SEACATS SAS report within [REDACTED] of the initiator completing the report.

(b)(2),
(b)(7)(E) { Note: [REDACTED]

(b)(2) b) Case Types— [REDACTED]

The following are examples of case types:

(b)(2) {

FP&F Seizure Case Number Structure:	Used for:
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

(b)(2),
(b)(7)(E) { c) [REDACTED]

[REDACTED]

[illegible][illegible]

- [illegible]

However, the FP&FO will make every effort to effect the administrative forfeiture in a manner to ensure due process.

3) Supporting Documentation

a) Time Frames—

(b)(2)

b) **Search, Arrest, Seizure Report (SAS)**—A copy of this report is required for the FP&F seizure case. The SAS must contain the proper statutory authority for seizure and forfeiture.

c) **CF 6051 Chain of Custody**—A CF 6051 (including an accurate count of all property line items seized) will be completed at the time of seizure.

(b)(2),
(b)(5),
(b)(7)(E),
(b)(7)(F)

The seizing officer will attempt to obtain the signature of the person from whom property is seized.

d) **Constructive Seizure Agreement**—If constructive seizure is contemplated, the seizing officer must consult the FP&FO. The FP&FO will decide if constructive seizure is appropriate. Refer to Section 2.2.4 (5), "FP&F Processing—Pre-Decision Disposition of Property—Constructive Seizure" for more information.

(b)(2)

e)

Procedures are in place for the storage of Customs seized property which is the subject of a

(b)(2),
(b)(7)(E),
(b)(7)(F)

* All
(b)(2),
(b)(7)(E)

[illegible]

- (b)(2)

- i) **OI Documentation**—A copy of any applicable [REDACTED] and copies of [REDACTED] should be included as supporting documentation for the FP&F seizure case file unless sealed by the court or prohibited by sensitivity issues.
- j) **Cancelled Cases**—Since FP&F is required to track every SEACATS-generated case number [REDACTED] when a seizure case is cancelled.

4) **Property Verification and Handling**

(b)(2),
(b)(7)(E),
(b)(7)(F)

[REDACTED]

(b)(2),
(b)(7)(E),
(b)(7)(F)

[REDACTED]

(b)(2),
(b)(7)(E)

2.1.5 Seizing Supervisor Responsibilities

The supervisor of the seizing officer is responsible for timely, accurate case initiation and property handling.

- 1) **Case Development**—Ensures that the seizing officer complies with all the requirements of case development detailed in Section 2.1.4 (1), “Seizing Officer Responsibilities—Case Development.” This includes [REDACTED]
- 2) **SEACATS Processing**—Ensures that the seizing officer complies with all the requirements of SEACATS processing detailed in Section 2.1.4 (2), “Seizing Officer Responsibilities—SEACATS Input.” This includes timely and accurate

(b)(2)

SEACATS case initiation and completion by the seizing officer. The supervisor is responsible for ensuring timely review and approval of the SAS [REDACTED] of completion by the seizing officer.

(b)(2)

- 3) **Supporting Documentation**—Ensures that the seizing officer complies with all the requirements of supporting documentation detailed in Section 2.1.4 (3), "Seizing Officer Responsibilities—Supporting Documentation." This includes complete and accurate preparation of support documentation and forwarding this documentation to FP&F within [REDACTED] of seizure.

(b)(2)

- 4) **Property Verification and Handling**—Ensures that the seizing officer complies with all the requirements of property verification and handling [REDACTED]

(b)(2),
(b)(7)(E),
(b)(7)(F)

The supervisor is responsible for ensuring the integrity of seized property by [REDACTED]

(b)(2),
(b)(7)(F)

- 5) **On-site Mitigation**—[REDACTED]

If appropriate, the standard documentation should include a CF 4609 Petition for Remission or Mitigation of Forfeitures and Penalties Incurred; Hold Harmless Agreement; CF 6051; and a copy of a CF 368, Collection Receipt or Informal Entry or other collection document.

(b)(2), (b)(7)(E) 6)

- 6) **On-site Destruction**—[REDACTED]

- 7) **Post-initiation**

- a) **Deficient Case Correction**—If FP&F identifies a deficiency, the case will be returned to the seizing officer supervisor for timely, accurate corrective action.
- b) **Petition Review**—All petitions relative to OI seizures [REDACTED]

(b)(2),
(b)(7)(E)

Petitions for OFO seizures [REDACTED]

Part 2 FP&F Processing

2.2.1 General

This part is designed to provide guidance for FP&F in tracking, analyzing, adjudicating, monitoring compliance, case management, and closure of seizure cases forwarded by case initiators and their supervisors. Port Directors and SAICs are responsible for timely and accurate seizure case initiation, and FP&F is responsible for timely and appropriate case adjudication. FP&F monitors case referrals and provides constructive feedback to initiating offices. FP&F determines case sufficiency and

adequacy of support documentation to allow further processing. [REDACTED]

(b)(2),
(b)(5)

2.2.2 Case Sufficiency Review

Once the seizing officer supervisor approves a seizure case, it is the responsibility of FP&F to review the case for sufficiency. The circumstances of seizure and the statutes and/or regulations cited must be reviewed for applicability. It is also the responsibility of FP&F to ensure that all parties involved in a violation receive due process by way of timely notification as to the options available to them for the recovery of the seized property.

1) Case Review

Upon receipt of the seizure case, a preliminary review will be conducted to ensure that there is sufficient documentation to support the violation.

- a) **Time Frames**—The review will include an analysis of the timeliness requirements of the seizing officer and supervisor as they relate to input, completion, and approval of the SAS, [REDACTED] (b)(2), (b)(7) and delivery of support documentation to FP&F. If FP&F has not received appropriate seizure case file documentation within [REDACTED] (b)(2) of seizure, the FP&FO will contact the seizing officer supervisor.

b) Supporting Documentation

[REDACTED] (b)(2)
Depending on the nature of the seizure, the following documents may apply:

- Original CF 6059B, Passenger Declaration

(b)(2)

- Appraisal, except for [REDACTED] and [REDACTED] — (b)(7)(E)
- [REDACTED]
- Copies of any other documents that may have a bearing on remission of forfeiture (e.g., [REDACTED])
- [REDACTED]
- Conveyance registration documentation that identifies vehicle identification numbers, license plate numbers, or aircraft tail or vessel hull numbers
- [REDACTED]

Additional supporting documentation required for specific violations is contained in Part 4, "Special Classes of Property."

c) Criminal Prosecution

(b)(2),
(b)(7)(E)

Each case should be reviewed to determine if criminal prosecution of the violator has been accepted or declined. If criminal prosecution has been declined, [REDACTED] If criminal prosecution has been accepted and is pending against the violator, [REDACTED] Any forfeiture should be coordinated with the local ACC.

d) Statute of Limitations

Under the provisions of 19 U.S.C. 1621, the statute of limitations in seizure cases is 5 years from the date of discovery of the violation or 2 years from the date that the involvement of the property in the alleged offense was discovered, whichever is later. Any time during which the property subject to forfeiture is absent from the country is not counted in the statutory period of limitation. (Example: A conveyance is used in a controlled substance smuggling operation on January 1, 1996. Customs has knowledge of such use but does not immediately seize the conveyance. The owner removes the conveyance to Mexico for 6 months. The time the conveyance is in Mexico is not counted toward the running of the statute of limitations. The statute, rather than expiring on January 1, 2001, would expire on June 30, 2001.)

Under other government agency laws, the statute of limitations is five years from the date of the violation (see 28 U.S.C. 2462).

2) Defective or Deficient Cases

FP&F analysis of the seizure case includes identification of any defects or deficiencies. [REDACTED]

(b)(2)

[REDACTED]

3) On-site Mitigation

(b)(2),
(b)(7)(E)

[REDACTED]

4) Cancelled Cases

2.2.3 Notice of Seizure

1) Due Process

When the government seizes property, due process requires that the person from whom the property is seized be notified timely of the probable cause for the seizure and the options available to seek the return of the property. An accurate, timely notice of seizure is issued to guarantee due process. The failure to provide due process may jeopardize the government's ability to forfeit the seized property, as well as expose the seizing officer and/or FP&FO to a liability.

2) **Parties-in-Interest**

Federal law requires that "written notice of seizure together with information on the applicable procedures . . . be sent to each party who appears to have an interest in the seized article" (19 U.S.C. 1607(a)). The property may not be forfeited if the government fails to provide such notice, as the forfeiture would deprive a party of property without due process of law. 19 U.S.C. 1607 requires written notice to all interested parties at all known addresses, including the jail/prison address if the party was arrested and incarcerated. Parties-in-interest include, but are not limited to: owner or co-owners; lienholders; bailees; lessors; lessees; rental agencies; driver/master of conveyance; person in possession of items seized; and financial institutions.

3) **Notice Content**

Refer to 19 CFR 162.31(a) and (b). At a minimum, the notice of seizure must contain date and location of seizure, law(s) violated, brief description of acts or omissions forming the basis for the seizure, description of the seized property, domestic value of the seized property, petitioning rights, a statement that petition must be submitted in 30 days, and information on where to send the petition.

(b)(2)

4) **Notice Attachments**

Attachments to the notice of seizure will include a Notice of Information for Claimants and Election of Proceedings form. Listed below are the three forms used in non-CAFRA cases. Samples are provided in the attachments section of this handbook.

a) **Form AF Publish**—This is used when administrative forfeiture proceedings are provided under 19 U.S.C. 1607 and when any of the following property is seized:

- Property valued between \$2,500 and \$500,000
- Prohibited merchandise regardless of value
- Any seized currency/monetary instrument regardless of value
- Conveyances used to import, export, transport, or store controlled substances, regardless of value

b) **Form AF Post**—This is used when administrative forfeiture proceedings are provided under 19 U.S.C. 1607 and property is valued up to \$2,500.

c) **Form JF**—This is used when judicial forfeiture proceedings will be initiated and the property is valued at more than \$500,000 (except for currency/monetary instruments or prohibited merchandise).

5) **Time Allowed for Notice Issuance**

(b)(2)

holds that Treasury agencies must issue a notice of seizure in

(b)(2)

administrative forfeiture cases within 60 days of the date of seizure. [REDACTED]

The exception to this rule involves statutes covered by the Civil Asset Forfeiture Reform Act (CAFRA). Refer to Part 10 of this chapter, "CAFRA."

6) **Notice Delays**

(b)(2),
(b)(5)

7) **Mailing Notice of Seizure**

Due process requires that written notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Neither 19 U.S.C. 1607 nor due process requires proof that the interested party actually received notice, provided the government employed means reasonably calculated to inform the affected person.

(b)(2)

8) **Undeliverable/Amended Notices**

If a notice of seizure is returned as "undeliverable," FP&F should make every effort to identify an accurate address in order to reissue the notice. It is the responsibility of the FP&FO to send an amended notice of seizure when information is received that changes the facts of the violation or affects the interested parties' rights.

9) **Civil Asset Forfeiture Reform Act of 2000**

Enactment of the Civil Asset Forfeiture Reform Act of 2000 affects notice procedures for seizures to be forfeited under Title 18, Title 31, Title 49, and some Title 21. TD 00-88 published interim regulations for CAFRA forfeitures. Refer to Part 10 of this chapter, "CAFRA," for detailed instructions.

10) **Adoption of State and Local Seizures**

Under CAFRA, in adoptive seizures, the federal government must send notice no more than 90 days after the date of seizure by a state or local law enforcement agency. Refer to TEOAF Directive #34, 1/17/00, "Adoptive Seizure Policies and Procedures" and the July 2001 "Department of Treasury—Guidelines for Seized and Forfeited Property."

2.2.4 Pre-decision Disposition of Property

1) Early Release

Refer to

(b)(2)

and TEOAF Directive #33, 6/7/99, Seizure of Motor Vehicles, Payment of Liens and Official Use Requirements.

In cases where FP&F considers remission of the property to be likely, a request for early release may be considered. Early release may be requested at any time during the administrative process. Case processing should not be delayed merely because early release of the property has been effected.

Jurisdiction to authorize early release of seized property is dependent on the value of the seized property. The FP&FO may authorize the release of seized property valued at \$100,000 or less. If the property value exceeds \$100,000, requests for early release must be directed to the Chief, Penalties Branch, OR&R.

Only parties with a petitionable interest may request early release. Early release is not applicable to seized property needed as evidence in a criminal case unless express written authorization is received from AUSA.

The FP&FO will confirm any early release decision (a copy of this form is included in the attachment section of this handbook) to all pertinent parties in writing with an Acknowledgement of Early Release. This form must be executed by the party receiving the property and is an election of remedy form and explains the ramifications of acceptance of early release. It contains the following:

- Advice that the early release decision is not the final disposition of the case.
- All conditions of release
- Advice that if a party-in-interest does not accept the terms of early release, it will not jeopardize their rights to the property in any final administrative decision

For processing of an early release deposit, refer to Chapter 5, Part 9, "Deposit for Early Release of Seized Property and Substitute in Res." Early release deposits must be in the form of cash, cashier's check, or an irrevocable letter of credit. No personal checks are to be accepted. The final decision in any case may impose an amount that is less than the amount deposited for early release, but it may not be more than the early release amount.

2) Substitution of Collateral

Payment of the domestic value of seized property to obtain release of seized property may be allowed. In accordance with 19 U.S.C. 1614 and 19 CFR 162.44, payment of the domestic value may be accepted in lieu of forfeiture of the seized property. The payment is called the "substitute res" and replaces the seized property as the item to be forfeited.

Jurisdiction to accept substitute res is dependent on the value of the seized property. The FP&FO may authorize the release of seized property valued at

\$100,000 or less. If the property value exceeds \$100,000, requests for substitution must be directed to the Chief, Penalties Branch, OR&R.

There are certain conditions associated with a substitute res. The claimant must show to the satisfaction of the FP&FO that he/she has a substantial interest in the seized property. Substitution is not available if the property is prohibited from entry into the United States. If the property is restricted, the problem must be remedied (e.g., marking) as a condition of release. Substitution in res is not applicable to seized property needed as evidence in a criminal case unless express written authorization is received from an AUSA.

For deposit of a substitute res, refer to Chapter 5, Part 9, "Deposit for Early Release of Seized Property and Substitute Res." Substitution of collateral must be in the form of cash, cashier's check, or an irrevocable letter of credit. No personal checks are to be accepted.

3) Letter of Credit

A letter of credit may be accepted as a substitute for seized property or as an early release deposit as described above. It must be drawn/insured by a U.S. financial institution in U.S. funds and must be insured by a federal deposit insurance agency (Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation). It is strongly recommended the assistance and guidance of the local ACC be sought when accepting a letter of credit.

A letter of credit must contain:

- Language stating that it is irrevocable
- Language stating that it may be automatically renewed or that Customs can unilaterally renew
- Customs clearly named as beneficiary
- Language indicating that it is payable on demand
- The account against which the letter is drawn clearly designated (generally by account number)
- The FP&F seizure case number from which liability arises
- A sum certain in which the letter is drawn
- The signature of the drawee

4) Offer in Compromise (OIC)

The statutory authority to accept OICs is provided for in 19 U.S.C. 1617 and 19 CFR 161.5. The OIC must be in writing. It should state that it is being submitted in accordance with 19 U.S.C. 1617 and include the tender of the OIC amount. The OIC must be in the form of cash, cashier's check, or money order.

There has been no delegation of authority to the FP&FO to accept or reject OICs in seizure cases. The FP&FO will refer all offers to the Penalties Branch, OR&R, with a recommendation for acceptance or rejection. The FP&F recommendation should take into consideration the following:

(b)(2),
(b)(5)

[REDACTED]

For instructions on processing the OIC, refer to Chapter 5, Part 4, "Offers in Compromise." If the OIC is rejected, all monies tendered with the OIC must be refunded and processing of the seizure case continued. If the OIC is accepted, the monies are accepted and the seized property is released.

5) **Constructive Seizure**

Constructive seizure is a seizure action with the full force of any other seizure. It is a formal method of placing property under Customs seizure (i.e., "constructive" custody) while allowing the violator to physically store (i.e., "actual" custody) the item. Constructive seizure is appropriate when it is in the best interests of the government to allow storage at a place other than Customs direct custody. The use of constructive seizure as a storage option requires approval by the FP&FO.

If the seizure does not involve prohibited merchandise or any danger to the public welfare, and there is no reason to fear that the violator would breach the constructive seizure agreement, constructive seizure may be offered. Restricted merchandise may be constructively seized provided that it is in the government's best interest to allow the importer to hold the merchandise (e.g., CPSC seizure involving fireworks, FDA seizure involving foodstuffs, etc.).

Customs interests in a constructive seizure are protected by a Constructive Seizure Agreement (copy provided in the attachment section of this handbook) that identifies the property in detail, all the parties, the intended duration, the location where the property will be stored, and the consequences for any breach of the agreement. The violator shall not store or use the seized property contrary to the terms and conditions specified in the agreement. Consult the local ACC for advice in the event there is a breach of the terms of the agreement.

The agreement will be signed by the violator (or party in possession) and the FP&FO or designee seizing officer. A broker may not sign unless he/she has a power of attorney specific to the seizure in question.

a) **Discontinuance in Favor of State or Local Law Enforcement Agency**

Any state or local law enforcement agency may file a request for Customs to discontinue federal administrative forfeiture proceedings in favor of state or local forfeiture. Refer to the July 2001 "Department of Treasury—Guidelines for Seized and Forfeited Property." Also refer to 19 U.S.C. 1616.

b) **Junker Provision, 19 U.S.C. 1612**

(b)(2) 19 U.S.C. 1612 provides for the immediate destruction or sale of seized property that is likely to "perish" or "devalue" while in the government's custody. If the expense of keeping any vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to its value, the FP&FO may order immediate destruction or other disposition. Perishable items may be immediately destroyed or sold at auction as soon as the government determines the disposition is in its best interests. The FP&FO may determine that it is in the government's interest to immediately dispose of seized property [REDACTED] if it is "perishable" or the cost of storage is disproportionate to its value.

When the pre-forfeiture destruction or sale of property occurs, the value of the destroyed property or the proceeds of sale become the subject of the forfeiture action. Petitions filed subsequent to the disposition of property will be considered requests for reimbursement from the Treasury Forfeiture Fund as proceeds of sale or payment of the value of the property at the time of seizure.

2.2.5 Consideration of Petitions for Relief

Any party-in-interest may file a petition for the remission of forfeiture of seized property in accordance with 19 U.S.C. 1618 and 19 CFR 171.1. Refer to 19 CFR 171.1, and 171.2 for further information as to the form and contents required in a petition. Refer to the OR&R Mitigation Handbook.

Petitions must be in writing and addressed to the FP&FO designated in the seizure notice. Electronic signatures are acceptable. Customs may require that petitions and supporting documents be in English.

1) **Initial Petition**

(b)(2) [REDACTED]

The Paralegal Specialist is responsible for:

- Determining if the decision authority rests with the FP&FO or OR&R
- Analyzing the facts presented in the petition against those presented by the seizing officer
- Reviewing the statutory and regulatory requirements specific to the violation
- Determining if FP&F has all the information needed to render a decision and, if not, making the necessary referral to obtain that information

The authority of the FP&FO to act on petitions involving seized property is set forth in 19 CFR 171.21. Consult Table 2.2.

Table 2.2 Seizure Petition Decision Authority

Deciding Official

FP&FO

Authority Level (Value of Property)

Up to \$100,000 (exception: 19 U.S.C. 1436 and 19 U.S.C. 1453 up to \$200,000)

All other cases above the amounts identified above should be forwarded to OR&R for mitigation by Customs Headquarters or the Treasury Department as delegated.

2) Petition Referral

(b)(2)

a) Seizing Officer

- All petitions in 31 U.S.C. 5316/5317-currency/monetary instrument (CMI) cases will be referred to OI. See Section 2.4.3 of this chapter, "Special Classes of Property—Currency/Monetary Instruments."
- If OI has indicated an interest in investigating the petition, refer it to OI.

(b)(2)

b) Other Agencies—

(b)(2)

c) Other Technical and Legal Experts—

(b)(2)

3) Decision

Use the OR&R Mitigation Handbook to arrive at a decision or decision recommendation.

(b)(2)

If the FP&FO has authority to decide the case, the Paralegal Specialist will prepare a decision letter that includes a brief explanation of the decision rationale and any other information detailed below.

If OR&R is the decision authority, the Paralegal Specialist will prepare a referral memorandum for the FP&FO's signature (unless otherwise delegated to the Paralegal Specialist in writing by the FP&FO).

(b)(2),
(b)(5)

(b)(2),
(b)(5)

(b)(2)

- a) **Grant Relief**—Relief may be granted when the violation is not intentional, the seized property is not prohibited, relief is specifically provided for in the mitigation guidelines, and the deciding official determines that granting relief is in the best interests of the government. The decision letter must articulate the basis for granting relief, state the conditions for release, and indicate the time limit for compliance [REDACTED]

Examples of conditions are:

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- b) **Deny Relief**—When no relief is warranted, the decision letter will articulate the basis for denying relief, state that the petition is denied, and notify the petitioner that administrative forfeiture will be initiated [REDACTED]

[REDACTED] Refer Section 2.2.6 of this chapter, "FP&F Processing—Forfeiture."

4) **Failure to Comply with Decision or Petition Not Filed**

Reference: 19 CFR 162.32. Also refer to Section 2.2.6 of this chapter, "FP&F Processing—Forfeiture."

5) **Supplemental Petition**

Reference: 19 CFR 171.61

Supplemental petitions should, but are not required to, contain new information or evidence not previously considered or presented in the initial petition. Supplemental petitions must be filed within 60 days of the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to issues serving as the basis for the seizure (whichever is later).

(b)(2)

The same processing standards apply as noted in this chapter, including case file documentation standards, petition referrals, decision issuance, and [REDACTED]

If the FP&FO decided the initial petition, he/she may grant further relief. If the FP&FO decides further relief is not warranted, the supplement petition must be referred to the NSPO. The referral of the supplemental petition to the NSPO will take the same basic format the petition referral to OR&R.

If the decision authority on the initial petition was with OR&R, then the supplemental petition must be referred there.

[REDACTED]

2.2.6 Forfeiture

1) **CAFRA**

Enactment of the Civil Asset Forfeiture Reform Act 2000 will affect procedures processing seizures subject to civil forfeiture under Title 18, Title 31, Title 49, and some Title 21. Interim regulations for CAFRA seizures were published by TD 00-88. See 19 CFR Part 162, Subpart H. Refer to Part 10, "CAFRA," for more details.

2) **Civil Administrative Forfeiture**

References: 19 U.S.C. 1607; 19 CFR 162.45; [REDACTED]

[REDACTED] and TEOAF Directive #27, 10/1/95, Processing Interlocutory Sales.

- a) **Notice of Intent to Forfeit**—Forfeiture proceedings will be initiated against seized property by publication of a Notice of Intent to Forfeit.

b) **Exception**—Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812) shall be seized and summarily forfeited to the United States pursuant to 21 U.S.C. 881(f); therefore, no Notice of Intent to Forfeit is required. (See 19 CFR 162.45a.) No notice is required for drug paraphernalia with residue of the same substances.

c) **Contents of Notice**

- Describe the property seized (in the case of conveyances, specify the conveyance serial and identification numbers, vessel hull, or aircraft tail numbers).
- State the date, cause, and place of seizure.
- State name of the newspaper and expected date of publication or date and place of posting of the forfeiture.
- State that any person desiring to claim property must appear at the specific Customs port or service port and file with the FP&FO a claim and cost bond in the sum of \$5,000 or 10 percent of the value of the property, whichever is lower, but not less than \$250, in default of which the property will be declared forfeited and disposed of in accordance with law.

d) **Publication vs. Posting of Notice**

If the appraised value of any property in one seizure from one person exceeds \$2,500, the notice shall be published in a newspaper circulated at the Customs port and in the judicial district in which the property was seized for at least three successive weeks.

In all other cases (except for Schedule I and Schedule II controlled substances), the notice shall be posted in a conspicuous place accessible to the public in the customhouse nearest the place of seizure and shall be kept posted for at least three successive weeks.

e) **Claim and Cost Bond**—Notices of Intent to Forfeit must include information regarding the filing of the claim and cost bond to halt administrative forfeiture. Refer to Part 10 of this Chapter for CAFRA claims. Also refer to

(b)(2)

- The notice must be filed within 20 days of the date of first publication or posting of the forfeiture notice.
- The claimant must state its interest in the property (owner, lienholder, etc.).
- A cost bond may be in the form of a CF 301, Customs Bond; cash; cashier's check; or money order in the amount of \$5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than \$250.

(b)(2)

- f) **Waiver of Bond Requirements (requests to proceed in forma pauperis)**—If an interested party files a claim but states that it is financially unable to post the required cost bond, the FP&FO has the authority to waive the bond requirement pursuant to 19 CFR 162.47(e). Upon submission of satisfactory written proof of the financial inability to post the bond, the FP&FO shall waive the bond requirement. Relevant documentation may include, but is not limited to, IRS tax returns for the previous three years, salary/wage check stubs, bank account statements, etc. If the cost bond requirement is not waived, the requesting claimant must be given a reasonable time period within which to post a bond.
- g) **Referral to the U.S. Attorney**—If a claim and cost bond is properly filed, the FP&FO shall proceed to refer the seizure to the U.S. Attorney through the local ACC for the institution of judicial forfeiture proceedings. A copy of the format for judicial forfeiture referrals is attached. (See 19 U.S.C. 1608 and 19 CFR 162.47(d).)
- h) **Declaration of Administrative Forfeiture**—If no claim and cost bond is filed, FP&F will declare the seized property forfeited to the United States. (See 19 U.S.C. 1609.)

(b)(2)

Schedule I and Schedule II controlled substances are deemed summarily forfeited by operation of law at the time of seizure and do not need to be forfeited by notice. TD 00-37 amended 19 CFR 162.45a to eliminate the requirement for declaration of forfeiture of Schedule II controlled substances. See

- i) **Abandoned Property**—Abandoned property must be forfeited prior to disposition under the provisions of 19 U.S.C. 1612.

3) **Judicial Forfeiture—Civil**

References: 19 U.S.C. 1610, 19 U.S.C. 1608, 19 CFR 162.47;

- a) **FP&FO Referral**—Judicial forfeiture proceedings are initiated when a claim and cost bond has been properly filed and the FP&FO transmits the seizure case to the U.S. Attorney through the local ACC.

(b)(2),
(b)(5)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- b) **Court-Ordered Settlement**—In lieu of forfeiture, the assigned AUSA may agree to a settlement. The FP&FO will be provided with a copy of this settlement and is responsible for complying with the terms of the settlement and related disposition instructions. Refer to [REDACTED] nt.
- c) **Order of Forfeiture**—At the conclusion of the civil forfeiture action, the federal district court will issue an order of forfeiture. The FP&FO will be provided with a copy of the order and is responsible for complying with the disposition instructions. [REDACTED]
- d) **Disposition of Cost Bond**—The AUSA will provide instructions to the FP&FO regarding disposition of the cost bond. [REDACTED]

4) **Judicial Forfeiture—Criminal**

In a criminal forfeiture case, the property is seized by Customs pursuant to a warrant and is indicted as part of the criminal prosecution of the violator. At the conclusion of the criminal case, the court will issue an order of forfeiture.

(b)(2)

[REDACTED] in the event the criminal AUSA elects not to pursue criminal forfeiture, the FP&FO will proceed with the administrative forfeiture process.

(b)(2),
(b)(5)

[REDACTED]

The court may direct FP&F to “arrest” the seized property or to publish a legal advertisement of forfeiture. FP&F will comply with the disposition instructions contained in the order of forfeiture.

2.2.7 Decisions on Dispositions of Property

1) Release/Remission

When a decision is made to grant relief and the petitioner has complied with all the terms and conditions of release, the FP&FO will coordinate with the SPS and authorize release by issuing a disposition order that identifies any conditions for release. Refer to section 2.3.5 “Property Disposition.”

2) Forfeited Property Held as Evidence

(b)(2)



3) Destruction/Sale



4) Disposition of Forfeited Property—FP&FO Authority



[REDACTED]

5) Disposition of Forfeited Property—SPD Authority

(b)(2)

[REDACTED]

6) Retention of Forfeited Property for Official Use—[REDACTED]

7) Retention of Forfeited Property as [REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

(b)(2),
(b)(7)(E)

9) **Disposition of Nonforfeitable Purchase of Evidence (POE)**

(b)(2)

2.2.8 FP&F Case Closure

Once all seized forfeitable property has been properly disposed of, the Paralegal Specialist will ensure there are no pending actions (such as moiety) and will review the file for closure

(b)(2),
(b)(7)(E)

Part 3 SPS Processing

2.3.1 General

The purpose of this section is to identify the duties and responsibilities of persons charged with the custody, handling, and management of Customs seized property.

(b)(2)

The FP&FO manages the seized property program at the port or service port level. The SPS receives direction from the FP&FO in fulfilling program responsibilities.

[illegible][illegible]

[illegible]

[REDACTED]

[REDACTED]

2.3.3 Transfer and Acceptance—Contractor-held Property

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.3.4 Cases with No Property Transfer

[REDACTED]

* (b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.3.5 Property Disposition

[REDACTED]

(b)(2),

(b)(7)(E)

[REDACTED]

[REDACTED]

2.3.6 Property File Closure

[REDACTED]

(b) (2),
(b) (7) (E)

Part 4 Special Classes of Property

2.4.1 Controlled Substances—Non-personal Use

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (2),
(b) (7) (E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Al:

(b)(2),

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9) Notice of Seizure

A seizure notice is not required for Schedule I and Schedule II controlled substances. (See 19 CFR 162.45a.)

10) Petitions—Non-Schedule I and Non-Schedule II Controlled Substances

In order to obtain any relief, a petitioner must provide documentation to support legitimate possession of non-Schedule I and non-Schedule II controlled substances.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

(b)(2),
(b)(7)(E)

15) Super Carrier Violations, 19 U.S.C. 1584

Violations involving the seizure of controlled substances from a Super Carrier signatory's conveyance will be processed [REDACTED]

[REDACTED] Seizing officers are responsible for processing the controlled substance seizure as described in Section 2.4.1, "Controlled Substances Non-personal Use."

(b)(2)

[REDACTED] FP&F will process the controlled substance seizure as

(b)(2)

usual. [REDACTED]

Note: [REDACTED]

2.4.2 Controlled Substances—Personal Use

(b)(2),
(b)(7)(E)

[REDACTED]

Marijuana	1 ounce	Heroin	1 gram
Hashish	1 ounce	PCP	1/10 gram
Cocaine	1 gram	LSD	500 micrograms
Methamphetamine	1 gram	Anabolic steroids	300 units (see Table 2.4)
Khat	1 pound	Ecstasy	26 grams

[REDACTED]

[REDACTED]

(b)(2),

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

10) Conveyances

(b)(2),
(b)(5)

[REDACTED]

(b)(2),
(b)(7)(E)

(b)(2),
(b)(7)(E)

- 18) **Notice of Seizure**—Personal-use quantities of Schedule I and Schedule II controlled substances which do not qualify for an exemption for importation under 21 U.S.C. 956 are summarily forfeited, and no notice of seizure or forfeiture is required. However, there may be circumstances under which a conveyance is also seized. When this happens, a Notice of Seizure must be issued for the seized conveyance.

2.4.3 Currency/Monetary Instruments (CMI)

References: 31 U.S.C. 5316, 5317 and 5332; 18 U.S.C. 981 and 1956;

TEOAF
Directive #4, 10/1/93 (revised 6/17/96). Seized Cash Management Policies; and

31 U.S.C. 5316 sets the requirement to report the import or export of monetary instruments over \$10,000. 31 U.S.C. 5317 provides for the seizure and forfeiture of monetary instruments not reported as required.

31 U.S.C. 5332 makes it an offense for a person to "knowingly" conceal more than \$10,000 in currency or other monetary instruments, "with the intent to evade" the currency reporting requirement under 31 U.S.C. 5316. Section 5332 provides for civil and criminal forfeiture.

(b)(2) —

18 U.S.C. 981 provides for forfeiture of proceeds of illegal activity and 18 U.S.C. 1956 for conducting transactions involving proceeds of illegal activity (money laundering).

1) **Initial Processing**

- a) **Referral to OI**—The seizing officer will notify the OI duty agent when there is a failure to report CMI valued over \$10,000. If OI determines that an investigation is not warranted, and the amount initially reported before verification began differs by five percent or less from the amount actually possessed by the violator, the supervisory inspector shall allow the violator to amend a CF 4790, Report of International Transportation of Currency or Monetary Instruments.
- b) **On-site Mitigation**—On-site mitigation may be offered only when all of the following apply:
 - AUSA has declined prosecution
 - FP&FO has delegated and the Port Director has accepted on-site mitigation authority
 - The amount is \$25,000 or less
 - No evidence establishes a nexus to illegal activity
 - The violator establishes legitimate source and intended use and executes a Hold Harmless Agreement

(b)(2),
(b)(7)(E)

(b)(2)

Table 2.5 Major Companies Issuing Travelers Checks, with 24-Hour Phone Numbers (as of 8/01/01)

American Express	800-525-7641
Bank of America	877-412-1940
Citicorp	800-645-6556
MasterCard	800-223-9920
Thomas Cook Bankers LTD	800-223-7373 or 212-921-3677
VISA International	800-227-6811

d)

(b)(2)

(b)(2),
(b)(5)

(b)(2),
(b)(7)(E)

[REDACTED]

(b)(2),
(b)(7)(E)

(b)(2),

(b)(7)(E)

- [REDACTED]
- 8) **Deposit**—TEOAF Directive #4, 10/1/93 (revised 6/17/96), Seized Cash Management Policy, outlines Treasury's policies for handling seized CMIs.
- [REDACTED]

(b)(2),

(b)(7)(E)

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

10) **Notice of Seizure**—All CMI seizures are subject to CAFRA. Refer to Part 10 of this chapter, “CAFRA.”

11) **Petitions**

CMI petitions will be referred to OI when there is criminal prosecution or an express interest to review the petition. OI has [REDACTED] to provide comments on the petition or request an extension through the appropriate FP&FO.

Petitions for mitigation will be considered after OI has commented or declined to comment. Mitigation guidelines are established in the OR&R Penalties Branch Mitigation Handbook.

(b)(2)

2.4.4 Firearms and Ammunition

The procedures listed below must be strictly adhered to when handling seized firearms and/or ammunition, regardless of the quantity seized.

1) Seizing Officer Responsibilities

The seizing officer should take extreme precautions when handling firearms and ammunition at the time of seizure. If in doubt, consult a Certified Firearms Instructor (CFI) before handling the firearm.

Prior to transfer or storage, the seizing officer will render the firearm safe/inoperable by the following procedures:

(b)(2),

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

3) Determination of Forfeiture

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),

(b)(7)(E)

[REDACTED]

(b)(2),
(b)(7)(E)

(b)(2),
(b)(7)(E)

2.4.5 Conveyances

Refer to [REDACTED]

1) Pre-seizure Analysis—Vessels

If the vessel is intercepted at sea and Customs has probable cause to seize it (46 U.S.C. 1904, 19 U.S.C. 1595a(b), 21 U.S.C. 881, 18 U.S.C. 545, 21 U.S.C. 952),

(b)(2),

(b)(7)(E)

(b)(2),

(b)(7)(E)

6) **SPS Acceptance**

- a) **Document Verification**—The SPS will follow the procedures detailed in Sections 2.3.2(1).

7) **Notice of Seizure**

Notice of seizure shall be sent to all parties-in-interest. The notice of seizure will include the VIN, aircraft tail number, or vessel hull and registration number. Conveyance seizures not eligible for administrative forfeiture pursuant to 19 U.S.C. 1607 will be referred to the AUSA through the local ACC for the institution of civil judicial forfeiture proceedings.

8) **Petitions**

9) Liens

9) Liens

The seizure of computer hardware and software can serve two roles in a criminal case. Computer hardware can be a storage device for evidence of a crime and can itself be contraband, evidence, an instrumentality, or a fruit of a crime. Federal Rule of Criminal Procedure 41 authorizes the seizure of computer hardware that is evidence, an instrumentality, contraband, or fruits of a crime.

The following procedures must be strictly adhered to when handling seized computer hardware and/or software.

AILA InfoNet Doc. No. 02010159. (Posted 1/1/02)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

2.4.7 Pornography

Refer to [REDACTED]

1) Detention

[REDACTED]

2) Seizure

Imported child pornography will be seized under 18 U.S.C. 2254. Imported obscenity will be seized under 19 U.S.C. 1305. In passenger or traveler situations, the seizing officer should request that the violator execute a CF 4607 to abandon the property.

4) Notice of Seizure

Seizures under 19 U.S.C. 1305 require a referral to the U.S. Attorney within 14 days of Customs seizure for the institution of judicial forfeiture proceedings.

18 U.S.C. 2254 is used as the basis for seizure and civil forfeiture of child pornography.

5) Petitions

[REDACTED]

6) Disposition

[REDACTED]

(b)(7)(E)

(b)(2),
(b)(7)(E)

[REDACTED]

2.4.8 Artwork and Cultural Property

References: [REDACTED] 19 CFR
12.104 and 12.105; [REDACTED]

(b)(2),
(b)(7)(E)

1) Detention

[REDACTED]

After
expiration of the detention period, the provisions of 19 U.S.C. 1499(c)(5) become
operable. [REDACTED]

2) Documentation Requirements

3) [REDACTED]

4) Storage and Transfer to SPS

(b)(2),
(b)(7)(F)

5) Notice of Seizure

There are four statutory bases for seizure of cultural property:

- 19 U.S.C. 1595a(c)(1)(A) for violation of 18 U.S.C. 2314: (items valued over \$5,000 and known to be stolen, exported from the country of origin after that country has passed legislation vesting ownership of such items in itself) (Cite both statutes);
- 19 U.S.C. 2607, 2609(a) (stolen property documented as part of the inventory of a museum or religious or secular public monument or similar institution of a State Party and was stolen after April 12, 1983, or after the date the country became a State Party, whichever date is later; property must be designated and listed at 19 CFR 104b. (Must also cite 19 CFR 12.104b);
- 19 U.S.C. 2093(a) (pre-Columbian monumental or architectural sculpture or murals as defined by 19 USC 2095);
- 19 U.S.C. 2609(a)/19 CFR 12.104e(a) for violation of 19 U.S.C. 2606 (designated archaeological or ethnological material).

Property which is on loan from any foreign country for exhibition in American not-for-profit cultural institutions is protected by statute from civil and criminal procedures if certain requirements are satisfied prior to importation (See 22 U.S.C. 2459 and 12 CFR 12.104h(a).

Imported items of cultural property that have been in the United States for the minimum number of years prescribed by 19 CFR 12.104h(b) and that also satisfy the other requirements of the regulation or also exempt from import restrictions.

6) Petitions

(b)(2)

Before relief may be granted to an importer of cultural property, the petitioner must provide specific documentation that verifies that the property was lawfully exported from the country of origin.

No relief will be granted if the artwork or cultural property is determined to be stolen, regardless of whether criminal prosecution occurs.

7) Disposition

Forfeited cultural property will be returned to the country of origin in accordance with the advice received from [REDACTED] Forfeited artwork will be remitted to the rightful owner if stolen, or sold at auction if not stolen.

2.4.9 Real Property

Refer to [REDACTED]

(b)(2),

(b)(7)(E)

[REDACTED] TEOAF Directive #9, 10/1/93, Weed and
Seed Initiative, Transfers of Real Property [REDACTED]

[REDACTED] TEOAF Directive #14, 10/1/95,
Expeditious Payment of Liens, Mortgages and Taxes by the Department of the
Treasury; [REDACTED]

(b)(2),
(b)(7)(E)

2.4.10 Hazardous Materials

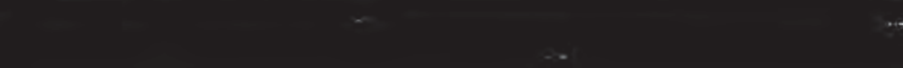
Refer to [REDACTED]

1) General

2) Documentation Requirements

[REDACTED]

[REDACTED]



[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

2.4.12 Live Animals

Refer to [REDACTED]
and [REDACTED]

1) Pre-Seizure

[REDACTED]

[REDACTED]

2) Documentation Requirements

(b)(2),
(b)(7)(E)

3) [REDACTED]

4) [REDACTED]

5) SPS Acceptance

6) Notice of Seizure

Notices of seizure for prohibited wildlife will include the contact name, address, and phone number of the local F&WS office to contact to obtain information regarding possible import permits. The notice shall cite 19 U.S.C. 1595a(c) as the seizure authority and the applicable F&WS statute or regulation as the underlying violation.

Nonborder seizures of live animals will normally occur pursuant to the issuance of a seizure warrant, and the seizure authority and the underlying violations of law cited on the approved warrant shall appear in the notice of seizure.

7) Petitions

(b)(2)

8) Disposition

[REDACTED]

Part 5 Storage and Security

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E),
(b)(7)(F)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E),
(b)(7)(F)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E),
~~(b)(7)(F)~~

Part 6 Destruction

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E),
(b)(7)(F)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),

(b)(7)(E),

(b)(7)(F)

(b)(2),

(b)(7)(E),

(b)(7)(F)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E),
(b)(7)(F)

[REDACTED]

(b)(2),
(b)(7)(E),
(b)(7)(F)

[REDACTED]

2.6.2

[REDACTED]

2.6.3

[REDACTED]

2.6.4

1)

The FP&FO will review seizure files and identify seizures ready for destruction. The FP&FO will issue a CF 4613, which identifies the items to be destroyed by description, FP&F case number, line item number, number and type of packages, weight, and method of destruction. The description shall be sufficient to prevent any doubt as to the items to be destroyed.

2)

[REDACTED]

(b)(2),

(b)(7)(E)

(b)(2),
(b)(7)(E)

Part 7 Violations

2.7.1 Importations Contrary to Law

1) Applicable Statutes and Regulations

- a) Merchandise introduced contrary to law—19 U.S.C. 1595a(c), 19 CFR 162.23

The statute provides for mandatory seizure ("shall be seized") and discretionary seizure ("may be seized"), as well as when to detain merchandise. An underlying section of law or regulation generally must be cited in a seizure report and notices of seizure issued by FP&F when the seizure is discretionary.

b) **Mandatory seizures**

- Stolen merchandise
- Smuggled merchandise
- Clandestinely introduced merchandise
- Controlled substances
- Contraband as defined in 49 U.S.C. 80302, which includes counterfeit money, controlled substances and trademark violative merchandise
- Plastic explosives which does not contain a detection agent

- c) **Discretionary seizures (include but are not limited to):**

- Health, Safety, and Conservation—19 U.S.C. 1595a(c)(2)(A) Suspected violations involving health, safety, and conservation issues relate to Customs enforcement of other federal agency laws and regulations. Agencies involved in enforcement of laws and regulations related to health, safety, and conservation include, but are not limited to:
 - Consumer Products Safety Commission (CPSC)—15 U.S.C. 1261, 1269, 1273 and 19 CFR 12.1 et seq.—The CPSC is responsible for enforcing the Federal Hazardous Substances Act. Examples of merchandise subject to CPSC's jurisdiction include but are not limited to fireworks, children's sleepwear, toys, and electrical appliances.
 - Food & Drug Administration (FDA)—21 U.S.C. 321, 371(b), 381, and 19 CFR 12.1 et seq.—The FDA is responsible for enforcing the Federal Food, Drug and Cosmetic Act and regulating the importation of food, drugs, devices, and cosmetics as defined in section 201 (f), (g), (h), and (i) of the Act.
 - Environmental Protection Agency (EPA)—7 U.S.C. 136o, 42 U.S.C. 7401 et seq., 19 CFR 12.73 et seq. and 12.110 et seq., and 40 CFR Parts 85 and 86—The EPA is responsible for enforcing the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 1360 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.). Generally, any imported pesticides and devices and vehicles that do not conform to Federal emissions requirements fall under EPA's jurisdiction.
 - Department of Transportation (DOT)—49 U.S.C. 30111 and 49 U.S.C. 30101.
 - U.S. Department of Agriculture (USDA)—19 CFR 12.8-12.24, 12.31-.32—The USDA regulates the importation of animals, plants, and animal and plant products.
 - U.S. Fish & Wildlife Service (F&WS)—19 U.S.C. 1595a(c)(2)(B), 16 U.S.C. 1538, 50 CFR Parts 13 and 17, 19 CFR 12.26-29—The F&WS regulates the importation of wild animals, fish, amphibians, reptiles, mollusks and crustaceans, and is responsible for enforcing the Endangered Species Act of 1973 (16 U.S.C. 1531-43).
- Other Importations Requiring Authorization, License, or Permit from Federal Agencies 19 U.S.C. 1595 a(C)(2)(b) including but not limited to:
 - Office of Foreign Assets Control (OFAC)—31 CFR Part 515 (Cuba), Part 535 (Iran), Part 550 (Libya), Part 560 (Iran), Part 575 (Iraq), Part 585 (Yugoslavia), and Part 590 (Unita or Angola)—OFAC is a Department of the Treasury agency responsible for enforcing sanctions that restrict import or export transactions with designated foreign countries. The sanctions are authorized by various sections of the U.S. Code and Executive Orders issued by the President.
 - Bureau of Alcohol, Tobacco, and Firearms (BATF)—The permanent importation of arms, ammunition, and implements of war is controlled by BATF under the authority of the Gun Control Act of 1968 as

amended (18 U.S.C. 921 et seq.), the National Firearms Act (26 U.S.C. 5801, et seq.) and implementing regulations found in 27 CFR Parts 47, 178, and 179. Authorized importations require the issuance of an ATF Form 6 import permit.

- Department of State (DOS)—The in-transit movement, temporary import and export, and permanent export of munitions is controlled by the DOS under the authority of the Arms Export Control Act (22 U.S.C. 2778) and implementing regulations (International Traffic in Arms Regulations, 22 CFR Parts 120-130). Authorized temporary imports require the issuance of a DSP-61 temporary import license by the DOS, Office of Munitions Control.
- Copyright or Trademark or Trade Name Protection Violations (15 U.S.C. 1124, 1125, or 1127) (17 U.S.C. 506 or 509) (18 U.S.C. 2318 or 2320)
- Trade Dress Merchandise Violations (15 U.S.C. 1125)
- Country of Origin Marking—19 U.S.C. 1304 and 19 CFR 134 and 162.23(b)
 - Merchandise marked intentionally in violation of 19 U.S.C. 1304
 - Merchandise for which the importer has received notices that previous importations from the same supplier were found to have been marked in violation of 19 U.S.C. 1304
- Quota/Visa—19 U.S.C. 1595a(c)(3), 7 U.S.C. 1854, 19 CFR 12.130 et seq., Part 132 and 162.23(b)(7)—

[REDACTED]

(b)(2),

(b)(7)(E)

2) Documentation Requirements

In addition to the [REDACTED] and CF 6051, the documents listed below may be required to support the seizure case:

- a) Customs Entry (CF 3461) and Entry Summary (CF 7501)

If the seizure results from a commercial importation pursuant to the filing of a formal entry, a copy of the entry package shall be included as supporting documentation.

- b) Notice of Detention

Any "permissive" seizure made under the authority of 19 U.S.C. 1595a(c)(2) or (3) might be predicated by a notice of detention issued by Customs in accordance with 19 U.S.C. 1499 or by another federal agency with jurisdiction over the importation. A copy of the Customs or other agency notice of detention shall be included as supporting documentation.

- c) Notice to Mark and/or Notice to Redeliver (CF 4647)

- Health, Safety, and Conservation—19 U.S.C. 1595a(c)(2)(A) Suspected violations involving health, safety, and conservation issues relate to Customs enforcement of other federal agency laws and regulations. Agencies involved in enforcement of laws and regulations related to health, safety, and conservation include, but are not limited to:
 - Consumer Products Safety Commission (CPSC)—15 U.S.C. 1261, 1269, 1273 and 19 CFR 12.1 et seq.—The CPSC is responsible for enforcing the Federal Hazardous Substances Act. Examples of merchandise subject to CPSC's jurisdiction include but are not limited to fireworks, children's sleepwear, toys, and electrical appliances.
 - Food & Drug Administration (FDA)—21 U.S.C. 321, 371(b), 381, and 19 CFR 12.1 et seq.—The FDA is responsible for enforcing the Federal Food, Drug and Cosmetic Act and regulating the importation of food, drugs, devices, and cosmetics as defined in section 201 (f), (g), (h), and (i) of the Act.
 - Environmental Protection Agency (EPA)—7 U.S.C. 136o, 42 U.S.C. 7401 et seq., 19 CFR 12.73 et seq. and 12.110 et seq., and 40 CFR Parts 85 and 86—The EPA is responsible for enforcing the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136o et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.). Generally, any imported pesticides and devices and vehicles that do not conform to Federal emissions requirements fall under EPA's jurisdiction.
 - Department of Transportation (DOT)—49 U.S.C. 30111 and 49 U.S.C. 30101.
 - U.S. Department of Agriculture (USDA)—19 CFR 12.8-12.24, 12.31-.32—The USDA regulates the importation of animals, plants, and animal and plant products.
 - U.S. Fish & Wildlife Service (F&WS)—19 U.S.C. 1595a(c)(2)(B), 16 U.S.C. 1538, 50 CFR Parts 13 and 17, 19 CFR 12.26-29—The F&WS regulates the importation of wild animals, fish, amphibians, reptiles, mollusks and crustaceans, and is responsible for enforcing the Endangered Species Act of 1973 (16 U.S.C. 1531-43).
- Other Importations Requiring Authorization, License, or Permit from Federal Agencies 19 U.S.C. 1595 a(C)(2)(b) including but not limited to:
 - Office of Foreign Assets Control (OFAC)—31 CFR Part 515 (Cuba), Part 535 (Iran), Part 550 (Libya), Part 560 (Iran), Part 575 (Iraq), Part 585 (Yugoslavia), and Part 590 (Unita or Angola)—OFAC is a Department of the Treasury agency responsible for enforcing sanctions that restrict import or export transactions with designated foreign countries. The sanctions are authorized by various sections of the U.S. Code and Executive Orders issued by the President.
 - Bureau of Alcohol, Tobacco, and Firearms (BATF)—The permanent importation of arms, ammunition, and implements of war is controlled by BATF under the authority of the Gun Control Act of 1968 as

The CF 4647 shall be included as supporting documentation for any seizure resulting from an importer's failure to comply with the terms of the notice. An example of a violation involving a CF 4647 would be a false country of origin certification of compliance or a false claim of compliance with FDA refusal of admission.

d) Other Agency Permit or License

Copies of any false or fraudulent permit or license. If a valid permit or license is obtained subsequent to seizure a copy of that document should be included.

e) Other Agency Advice or Recommendation

If a seizure is predicated on the advice or recommendation of another federal agency with jurisdiction over the importation, the advice or recommendation shall be in writing and a copy of the document shall be included as supporting documentation.

2.7.2 Intellectual Property Rights (IPR)

References: CIS HB 2300-01, September 2000, "Intellectual Property Rights Border Enforcement Handbook"

1) Applicable Statutes and Regulations

A matrix containing the appropriate citations for each variety of IPR violation is contained in the Intellectual Property Rights Border Enforcement Handbook. Refer to the matrix for additional information.

a) Trademarks—Counterfeit

- 19 U.S.C. 1526(e)—Counterfeit trademark recorded with Customs (Penalties under 19 U.S.C. 1526(f) apply)
- 19 U.S.C. 1595a(c)(2)(C) for violation of 18 U.S.C. 2320—Counterfeit trademark registered with the Patent and Trademark Office but not registered with U.S. Customs, intent to traffic (or attempt), use of mark and no consent of trademark owner can be shown. (Penalties under 19 U.S.C. 1526(f) do not apply)
- 19 U.S.C. 1526(e), 19 U.S.C. 1595a(c)(2)(C)—Counterfeit trademark registered with Customs, U.S. trademark owner consents to import or export

b) Trademarks—Confusingly Similar

- 19 U.S.C. 1595a(c)(2)(C) for violation of 15 U.S.C. 1124 & 19 CFR 133.22(f) (must cite all)—Confusingly similar trademark registered with the Patent and Trademark Office and recorded with Customs—Detain first and seize only if no authorization to import is obtained from the trademark owner within 30 days of the date of detention.

c) Trademarks—Gray Market

- 19 U.S.C. 1526(b) and 19 CFR 133.23(f)—Trademark registered with the Patent and Trademark Office and recorded with Customs. Gray market merchandise is legitimate and manufactured by an authorized manufacturer, but is not authorized for distribution in the United States. Gray market merchandise should initially be detained prior to seizure (19 CFR 133.25).

d) Copyrights—Clearly Piratical

- 19 U.S.C. 1595a(c)(2)(C) for violation of 17 U.S.C. 602, 603(c) and 19 CFR 133.42—Clearly piratical copy of a copyright registered with the U.S. Copyright Office and recorded with Customs.
- 19 U.S.C. 1595a(c)(2)(C) for violation of 17 U.S.C. 501, 506 (requires intent), and 509 (requires 506(a))—Clearly piratical copy of a registered copyright that is not recorded with Customs.
- 19 U.S.C. 1595a(c)(2)(C) for violation of 17 U.S.C. 602, 603(c) and 19 CFR 133.42—Clearly piratical copy of a registered copyright that is recorded with Customs and the consent of the copyright owner is not given prior to seizure.
- 19 U.S.C. 1595a(c)(2)(C) for violation of 17 U.S.C. 501, 506, & 509 (intentional)—Clearly piratical copy of a registered copyright that is not recorded with Customs and the consent of the copyright owner is not given prior to seizure.

e) Copyrights—Possibly Piratical

- 19 U.S.C. 1595a(c)(2)(C) for violation of 17 U.S.C. 602 and 19 CFR 133.42—Possibly piratical copy of a registered and recorded copyright. Seize only after an exchange of briefs and an IPR Branch decision pursuant to 19 CFR 133.43.
- Possibly piratical copy of a registered copyright that is not recorded with Customs. Do not seize as a matter of policy.

f) Patents

Merchandise that infringes on a patent may only be seized when there is an exclusion order issued by the International Trade Commission (ITC). A copy of the exclusion order must be included in the supporting documentation forwarded to FP&F for case processing.

2) Notice of Seizure

a) Trademark—19 CFR 133, Subpart C

The Paralegal Specialist will thoroughly review the supporting documentation to verify the specific violation before issuing a notice of seizure to the importer. The notice of seizure for any trademark seizure shall include the trademark recordation number of the infringed trademark.

Counterfeit Trademark—Customs must send a notice of the seizure of counterfeit merchandise to the trademark owner within 30 days of the date notice is issued to the violator (19 CFR 133.21(c)).

b) Copyright—19 CFR 133, Subpart E

The Paralegal Specialist will thoroughly review the supporting documentation to verify the specific violation before issuing a notice of seizure to the importer. The notice of seizure shall include the copyright recordation number of the infringed copyright.

Piratical Copy—Customs shall disclose to the owner of the copyright the information identified in 19 CFR 133.42(d) within 30 days of the date of the notice of seizure.

c) Patent

The notice of seizure sent to the importer must include the ITC exclusion order number.

3) Documentation Requirements

- a) Copies of Trademark recordation notices
- b) Copies of Copyright recordation notices
- c) Copies of Patent Seizure Order notices
- d) Copies of any applicable detention notices
- e) Documentation supporting counterfeit trademark determination

2.7.3 Conveyances

1) Applicable Statutes and Regulations

- a) 19 U.S.C. 1595a(a)—Aiding in importation contrary to law

This statute authorizes Customs to seize “every vessel, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, 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... .” Other articles, in addition to the actual transporting conveyance, may be seized under this provision. When a commercial importation includes prohibited merchandise “commingled” with non-prohibited merchandise, and the non-prohibited merchandise is packed so as to conceal the existence of the prohibited merchandise in the shipment, or it is impossible to separate the prohibited from the non-prohibited merchandise, the non-prohibited merchandise may be seized under 19 U.S.C. 1595a(a).

- b) 19 U.S.C. 1627a—Import or Export of Stolen Used Self-Propelled Vehicles and Parts

This statute provides for seizure when the violator knowingly imports, exports, or attempts to import or export a stolen self-propelled vehicle, vessel or aircraft, or parts thereof, or a self-propelled vehicle with the identification number removed, obliterated, tampered with, or altered.

c) 49 U.S.C. 80303—Transportation of Contraband

This statute provides for the seizure and forfeiture of an aircraft, vehicle or vessel used to transport contraband as defined and prohibited in 49 U.S.C. 80302. "Contraband" can include controlled substances, counterfeit currency, material or equipment used for making counterfeit currency, and IPR-violative merchandise.

Under MOU between Customs and U.S. Secret Service, Customs accepts custody and processes conveyance seizures made by USSS under this statute.

NOTE: A conveyance seized under this statute shall not be forfeited if the owner establishes that a person other than the owner committed the violation after obtaining possession by violating a criminal law of the United States or a State (ex., by theft). Also a conveyance belonging to a common carrier may be forfeited only when (1) the owner, conductor, driver, pilot, or other individual in charge of the aircraft or vehicle (except a rail car or engine) consents to, or knows of, the alleged violation when the violation occurs; (2) the owner of the rail car or engine consents to, or knows of, the alleged violation when the violation occurs; or (3) the master or owner of the vessel consents to, or knows of, the alleged violation when the violation occurs.

d) 19 U.S.C. 1590—Aviation Smuggling

It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law. It is further unlawful of any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the US if such person has not received authorization from the Secretary and either 1) the aircraft is owned by a US citizen or is registered in the US; or 2) the vessel is a US vessel (per 19 USC 1703(b)); or 3) (regardless of the nationality of the vessel or aircraft) such transfer is made to facilitate the unlawful introduction of such merchandise into the United States. Any vessel or aircraft used in connection with such activity is subject to seizure and forfeiture under this statute. The term "merchandise" for this section means only merchandise the importation of which into the United States is prohibited or restricted.

e) 19 U.S.C. 1703—Outfitting a Vessel or Aircraft for Smuggling

Whenever any vessel which shall have been built, purchased, fitted out in whole or in part, or held, in the U.S. or elsewhere, for the purpose of being employed to defraud the revenue or to smuggle any merchandise into the US, or whenever any vessel shall be found, or discovered to have been employed or attempted to be employed within the US for any such purpose, or in anywise in assistance thereof, the vessel and its cargo shall be seized and

forfeited. [Note: This section also provides for seizure and forfeiture for smuggling into a foreign country in violation of that country's laws, provided certain conditions are satisfied (see 19 USC 1703 for further explanation)]. The laws relating to the entry of vessels are applicable to aircraft, so aircraft so outfitted can be seized and forfeited under this statute. You can also use 19 U.S.C. 1590 in such cases. Vehicles outfitted for smuggling cannot be seized under this statute.

f) 49 U.S.C. 46306—Registration Violations Involving Aircraft (Non-Commercial Carriers)

Customs may seize and forfeit any aircraft (Non-Commercial Carriers) which has a certificate of registration that has been forged or altered, displays false or misleading registration numbers, is registered to a false or fictitious person, or if it has fuel tanks or a fuel system that was installed or altered in violation of a regulation or requirement of the FAA.

g) 19 U.S.C. 1586(a)—Unlawful Unlading or Transshipment

Customs may seize and forfeit any vessel from a foreign port or place or a hovering vessel that has received or delivered merchandise while outside the territorial sea or any vessel that unlades merchandise after its arrival in the customs waters but before it has come to a proper place for discharge of that merchandise.

2) Documentation Requirements

(b)(2)

2.7.4 Cultural Property

(b)(2)

Reference:

1) Applicable Statutes and Regulations

There are four statutory bases for seizure of cultural property:

- a) 19 U.S.C. 1595a(c)(1)(A) for violation of 18 U.S.C. 2314 (items valued over \$5,000 and known to be stolen, exported from the country of origin after that country has passed legislation vesting ownership of such items in itself) (Cite both statutes);
- b) 19 U.S.C. 2607, 2609(a) (stolen property documented as part of the inventory of a museum or religious or secular public monument or similar institution of a State Party and was stolen after April 12, 1983, or after the date the country

became a State Party, whichever date is later; property must be designated and listed at 19 CFR 104b.) (Must also cite 19 CFR 12.104b);

- c) 19 U.S.C. 2093(a) (pre-Columbian monumental or architectural sculpture or murals as defined by 19 USC 2095);
- d) 19 U.S.C. 2609(a)/19 CFR 12.104e(a) for violation of 19 U.S.C. 2606 (designated archaeological or ethnological material).

Property which is on loan from any foreign country for exhibition in American not-for-profit cultural institutions are protected by statute from civil and criminal procedures if certain requirements are satisfied prior to importation (See 22 U.S.C. 2459 and 12 CFR 12.104h(a).

Imported items of cultural property that have been in the United States for the minimum number of years prescribed by 19 CFR 12.104h(b) and that also satisfy the other requirements of the regulation or also exempt from import restrictions.

2) Detention

If a Customs officer has a basis for suspecting that an imported item qualifies for import protection as "cultural property" (categories broadly defined above), the item shall be detained [REDACTED]

Detention periods vary with the category of cultural property at issue. After expiration of the applicable detention period, the provisions of 19 U.S.C. 1499(c)(5) become operable. [REDACTED]

(b)(2)

3) Notice of Seizure

Notices of seizure for cultural property shall be sent to the violator and any other interested parties [REDACTED]

4) Disposition

Forfeited cultural property shall be returned to a representative of the country of origin. [REDACTED]

[REDACTED] The property shall not be returned to the country of origin until the country of origin executes a Hold Harmless Agreement.

2.7.5 Export

1) Applicable Statutes and Regulations

- a) 22 U.S.C. 401

This statute provides for the seizure and forfeiture of any arms or munitions of war or other articles exported or attempted to be exported in violation of law.

b) 22 U.S.C. 2778—Arms Export Control Act

This statute sets out the requirements for the registration and licensing of manufacturers, importers, and exporters of designated defense articles and defense services by the Department of State (Office of Defense Trade Control).

c) 15 CFR Part 758

These regulations identify the requirements for the filing of SEDs.

d) 15 CFR Part 30

These regulations set out the information required on the SEDs.

e) 22 CFR 123.1

This section sets forth the requirements for temporary import and export licenses.

2) **Constructive Seizure**

Constructive seizure of export merchandise is permissible if the merchandise is within the control of the exporting carrier or is to be held at a location that is mutually agreeable to the exporter and Customs.

[REDACTED]

3) **Documentation Requirements**

[REDACTED]

4) **Notice of Seizure**

Export violations involving licensable merchandise are the responsibility of the licensee. Therefore, the licensee should be cited as the violator in the seizure report and notices of seizure should be sent to the licensee and any other identified interested party.

2.7.6 Currency/Monetary Instruments (CMI)

1) **Applicable Statutes and Regulations**

a) 31 U.S.C. 5316

(b)(2)

This statute sets forth the reporting requirements for the international transportation (imports and exports) of negotiable monetary instruments. The statute specifically requires that any person who is transporting more than \$10,000 in negotiable monetary instruments into or out of the U.S. must file a report of the transportation. The report is filed on a CF 4790 and must be presented to a Customs officer at the time of arrival or departure. For monetary instruments arriving by mail, Fed Ex, UPS, see 31 CFR 103.27.

b) 31 U.S.C. 5317

This statute authorizes the seizure and forfeiture of negotiable monetary instruments traceable to a violation of 31 U.S.C. 5316.

c) 31 U.S.C. 5332

Makes it an offense for a person to "knowingly" conceal more than \$10,000 in currency or other monetary instruments, "with the intent to evade" the currency reporting requirement under 31 U.S.C. 5316. Section 5332 provides for civil and criminal forfeiture. [Note: Section 5332 was signed into law on October 26, 2001]

(b)(2) —

d) 18 U.S.C. 981

This is a civil forfeiture statute that authorizes the seizure and forfeiture of any property including cash that is the proceeds of or traceable to a specified unlawful activity (SUA).

(b)(2),

(b)(7)(E) —

e) 18 U.S.C. 1956

This statute describes the unlawful activities that constitute money laundering offenses and prescribes the punishment available to prosecute persons who commit money laundering offenses. It is often cited in conjunction with 18 U.S.C. 981 as the basis for the forfeiture of proceeds of unlawful activity. A seizure under 18 U.S.C. 1956 will usually be pursuant to a seizure warrant.

NOTE: 18 U.S.C. 981 and 1956 may be used as authority to seize property other than monetary instruments if that other property can be shown as traceable to a specified unlawful activity.

2) **Notice of Seizure**

Notices of seizure alleging a violation of 31 U.S.C. 5316 must include 31 U.S.C. 5317 as the basis of the seizure and forfeiture. Notices of seizure alleging a violation of 18 U.S.C. 1956 must have a separate seizure and forfeiture authority cited, which is usually 18 U.S.C. 981 for civil seizures. Notices of seizure alleging violation of 31 U.S.C. 5332 should also cite 31 U.S.C. 5316 and 5317 as additional authority for seizure and forfeiture.

2.7.7 Passenger/Traveler Declarations

1) 19 U.S.C. 1497—Passenger Failure to Declare

This statute applies to passengers and travelers (both residents and non-residents) entering the United States who fail to declare merchandise acquired during travel outside the United States on the CF 6059B, "Customs Declaration." The statute provides for the seizure and forfeiture of undeclared merchandise and a personal penalty equal to the value of the undeclared merchandise. See 3.5.5, "Penalties—Failure to Declare."

2) 19 U.S.C. 1592—Passenger False Declarations

[REDACTED]

3) On-Site Mitigation

[REDACTED] Any on-site mitigation requires the execution of a CF 4609, Petition for Remission or Mitigation of Forfeitures and Penalties Incurred by the violator before mitigation can occur.

(b)(2)

Part 8 OI Seizure-related Activities

[REDACTED]

(b)(2),

(b)(7)(E)

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

2.8.7 Moiety

Refer to Chapter 41 (41.12.00/Moiety Claims) of the OI Special Agent Handbook;

[REDACTED]

Moiety claims are submitted on a CF 4623, Claim for and Award of Compensation for Original Information, to the FP&FO where the forfeiture will take place or where recoveries were made. [REDACTED]

(b)(2),

(b)(7)(E),

(b)(7)(D)

When information is provided to Customs, receiving officers will advise individuals of their right to submit a claim for an award. It is Customs policy to pay informants either POI or moiety, but not both.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part 9 Evidence

(b)(2),

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

Part 10 CAFRA

Refer to TD 00-88; 19 CFR 162.

(b)(2),
(b)(7)(E)

2.10.1 Applicability

The provisions of the Civil Asset Forfeiture Reform Act (CAFRA) went into effect on August 23, 2000. These provisions apply to certain forfeiture proceedings commenced on or after August 23, 2000.

Forfeitures under any provision of Title 19, United States Code, and all export forfeitures under 22 U.S.C. 401, are not covered by CAFRA procedural requirements (those codified at 18 U.S.C. 983). These Title 19 and Title 22 forfeitures will continue to be processed without change.

CAFRA provisions are applicable to all currency/monetary instrument seizures and forfeitures under 31 U.S.C. 5317 and 31 U.S.C. 5332. They are also applicable to all forfeitures made under Titles 18 or 49 and most provisions of Title 21 (all except those under the Food, Drug and Cosmetics Act). CAFRA does not apply to forfeitures made under Title 26, 21 U.S.C. 301, et seq. (The Food Drug and Cosmetics Act) and 50 U.S.C. 1, et seq. (The Trading with the Enemy Act).

(b)(2),
(b)(5)

[REDACTED]

2.10.2 Notice of Seizure

The language in a CAFRA notice of seizure is different as it combines the information provided in the current attachment entitled "Notice of Seizure and Information for Claimants" with the usual notice of seizure.

[REDACTED]

[REDACTED]

(b)(2),
(b)(7)(E)

The Election of Proceedings CAFRA Form AF should be provided with the seizure notice to known interested parties in **any** administrative forfeiture case covered by CAFRA. The CAFRA Form AF can be distributed with both posting and publication administrative forfeiture seizure notices. Copies are provided in the attachment section of this handbook.

A claimant to seized property being processed under CAFRA can file a petition for relief under the Customs regulations. A violator can elect to file a petition rather than file a claim and makes the appropriate choice on the election of proceeding form. Just because a seizure and forfeiture are being processed under CAFRA does not mean that a petition cannot be filed. Rules with regard to petitions for relief still apply. Every seizure, CAFRA or not, can still be the subject of a petition (and a supplemental petition) for relief. The jurisdictional amounts for deciding a CAFRA petition are the same as for a non-CAFRA petition. Petitions filed in seizure cases must be forwarded to OR&R, Penalties Branch, for decision when the value of the property exceeds \$100,000, whether a CAFRA case or not.

The administrative forfeiture provisions set forth in 19 U.S.C. 1607 apply to CAFRA cases. Property that must be judicially forfeited (because of its value) will still have to be judicially forfeited, whether a CAFRA case or not. Property that is administratively forfeited will continue to be administratively forfeited (either by posting or publication in the newspaper) provided a claim is not filed.

[REDACTED]

(b)(2),
(b)(7)(E)

If the notice of seizure is not timely issued, Customs will return the property to the claimant unless the property is contraband (e.g., marijuana, cocaine, etc.) or the claimant is not legally entitled to possess the property (e.g., a convicted felon who may not legally possess a firearm). If property is returned because of delay in issuance of a notice of seizure, costs of storage and seizure will be waived. CAFRA prevents the government from filing another civil forfeiture against the property based upon the same underlying offense.

2.10.3 Judicial Referrals

The notice of claim in a CAFRA case is unlike the claim and cost bond in a regular Tariff Act or export seizure. A claim in a CAFRA seizure does not require the posting of any money or bond. The statute requires that the claimant be given at least 35 days after the date the notice of seizure is mailed to file a claim, except that if the notice is not received, then the claim may be filed not later than 30 days after the final publication of the **notice of forfeiture** of the property. Customs may give more than the minimum 35 days, but we may not give less.

A claim must be in writing, but need not be in any particular form. A sample Claim Form should be issued to any potential CAFRA claimant. Copies are provided in the attachment section of this handbook. A claim shall identify the property being claimed and state the claimant's interest in the property. If a claimant fails to meet these conditions, the submission will be treated as a petition for relief under 19 CFR Part 171.

If a claim in proper form is received, the claim and the case file will be promptly forwarded to local ACC for processing.

If there are multiple claimants to seized property being processed under CAFRA and one of those claimants files a CAFRA claim, then the case must be forwarded to local ACC for processing. If other claimants file petitions for relief, then those petitions should be forwarded to local ACC along with the filed CAFRA claim.

2.10.4 Hardship Petitions

If Customs has seized property and the continued seizure will result in a substantial hardship to the claimant, the claimant may seek immediate release of that seized property pending the conclusion of the forfeiture process.

This provision does not apply to contraband, CMI, or electronic funds unless they constitute the assets of a legitimate business that has been seized. Nor does it apply to property to be used as evidence of a violation, or to property that by reason of design or other characteristic is particularly suited for use in illegal activities (e.g., a vessel with false compartments), or that is likely to be used to commit criminal acts.

Note: Even if a request for immediate release of property due to a substantial hardship has not been made, early release of the property pending final administrative decision (per 19 CFR Part 171) may still be accomplished.

If a claim (as opposed to a petition) has been filed by a claimant to seized property and the property is of the kind and character that could be the subject of a hardship petition (i.e., it is not contraband, currency, or any of the types of property described above), a notice must be issued to the claimant advising of his or her right to file a hardship petition. A Request for Immediate Release of Seized Property notification form is provided.

The decision to grant or deny the request for immediate release lies with the FP&FO. A request for release that is not decided within 15 days of the date of the request will be deemed denied. The party requesting release can then go to court.

The FP&FO does not have authority to grant a hardship petition **and** require the posting of any deposit or other security as a condition of release. If a hardship petition is granted, the property will simply be returned to the petitioner for his or her use while the forfeiture is pending. If there are any concerns that any of the conditions will not be met, the hardship petition should be denied. In response to a denial, the petitioner can go to court. At that point, the court may release the property upon the posting of security.

2.10.5 Remission of Forfeiture

Remission of CAFRA forfeitures is no different from remission of any other sort of forfeiture. The claimant must pay costs of seizure and storage (absent extraordinary circumstances), as well as any remission amount, execute a Hold Harmless Agreement, and comply with any other terms and conditions that are deemed appropriate.

The statute allows for the granting of attorney's fees, interest, and costs in any case where a claimant "substantially prevails."

Only a court will do the granting of these fees, interest, and costs.

(b)(2),
(b)(5)

(b)(2)

[REDACTED]

"By accepting this remission decision, petitioner understands that he/she is waiving any claim to attorney's fees, interest or any other relief not specifically provided for in this decision."

Penalty Cases

(b)(2),
(b)(5)

This chapter is designed to provide guidance to Customs officers in penalty case initiation, analysis, monitoring, and management to maximize enforcement and compliance actions. Customs approaches case initiation and processing from a [REDACTED] [REDACTED] Penalties occupy the [REDACTED] of FP&F cases. They can involve highly complex facts and issues. Also, statute of limitations constraints can make penalty case development and adjudication difficult.

Additional information on penalty case processing can be found in the OR&R Mitigation Handbook.

Part 1 Case Initiation

3.1.1 General

(b)(2)

Port Directors and SAICs are responsible for establishing the facts in support of a violation and for timely and accurate penalty case initiation. Timely case initiation requires SEACATS input within [REDACTED] of discovery of the violation, and the printing of the CF 5955A within [REDACTED] of completion of the SEACATS input. FP&F is responsible for verifying case sufficiency and processing the penalty to completion. The goal is for all involved to fulfill their complementary statutory and regulatory obligations in the most cooperative manner possible.

FP&F will act as a conduit for initiating officers to transmit information received from counsel, OR&R, and other agencies when regulatory or policy changes occur. FP&F will provide training and constructive feedback to initiating officers' supervisors when cases require additional support or documentation.

3.1.2 Penalty Definition

Customs authority to assess penalties is established by statute. The language of each statute dictates the amount to be assessed and the party or parties against whom the penalty is assessed. Where the statute does not specify a certain penalty amount, it describes how penalties are to be calculated.

3.1.3 Bonds

A bond, with the exception of the international carrier bond, does not generally secure penalties. The international carrier bond secures the payment of penalties assessed against an arriving or departing international carrier (19 CFR 113.64). In these cases,

the principal and surety are jointly and severally liable under the terms of the bond. The amount of the penalty claim in these cases is not limited to the amount of the bond, but rather determined by the statute. The surety's liability, however, is limited to the amount of the bond. For more information on bonds, refer to Section 4.1.3, "Case Initiation—Customs Bonds," and Section 4.1.4, "Case Initiation—Responsible Parties."

3.1.4 Bankruptcy

Bankruptcy of a principal should be processed in accordance with the procedures set forth in Chapter 5, Part 13, "Bankruptcy."

3.1.5 Statute of Limitations

The statute of limitations for all penalties administered by Customs is five years from the date of the discovery (except 1592 and 1593a), provided the violator is within the jurisdiction of the United States. Refer to 19 U.S.C. 1621.

There are three penalties for which the statute of limitations varies based on levels of culpability. In penalties assessed under 19 U.S.C. 1592 or 19 U.S.C. 1593a, the statute is five years from the date of the violation when the level of culpability is negligence or gross negligence and five years from the date of discovery when the level of culpability is fraud. In penalties assessed under 19 U.S.C. 1641(d)(4), the statute is five years from the date of the violation when the level of culpability is not fraud and five years from the date of discovery when the level of culpability is fraud. For case processing purposes, Customs offices should treat all 1592 and 1592a cases as if the statute of limitations is running 5 years from the date of the violation as opposed to discovery of the violation.

All Customs officers involved with the initiation and processing of a penalty case are responsible for monitoring the statute of limitations and soliciting waivers when less than two years remain on the statute. If the case has not been referred to FP&F and less than two years remain on the statute, the case initiator is responsible for obtaining a waiver from all parties-in-interest who can claim the statute as a defense. Waivers should also be requested from the surety, if applicable. Counsel or the FP&FO are available to assist.

The FP&FO has the authority to acknowledge waivers of the statute of limitations. When the FP&FO has referred a case to the Chief, Penalties Branch, OR&R, that office has authority to acknowledge the waiver.

3.1.6 Pre-penalty Coordination

(b)(2) [REDACTED] There are five statutes and one policy that require the issuance of a pre-penalty notice prior to penalty issuance. [REDACTED]

[REDACTED] FP&F will prepare and issue the required pre-penalty notice. The five statutes requiring a pre-penalty are 19 U.S.C. 1466 (vessel

repair penalty), 19 U.S.C. 1584 (non-narcotic manifest penalty over \$1,000), 19 U.S.C. 1592 (commercial fraud penalty), 19 U.S.C. 1593a (false drawback penalty), and 19 U.S.C. 1641 (broker penalty). One pre-penalty 19 U.S.C. 1509 (record-keeping penalty), requires issuance of a pre-penalty notice by policy.

(b)(2),

(b)(7)(E)

3.1.7 Discovering Officer Responsibilities

The discovering officer, with approval of his or her supervisor, is responsible for the timely, accurate issuance of penalties on a CF 5955A generated through SEACATS except for the six statutes that require pre-penalty notices.

3.1.8 SEACATS Input

SEACATS is the official Customs system of record used to capture and track penalty cases.

For cases not requiring a pre-penalty notice, the case initiator must ensure that the CF 5955A contains the appropriate violation information and/or citations and any necessary narratives describing the violation.

(b)(2)

3.1.9 Supporting Documentation

entries, invoices, or manifests; narrative from case initiator setting forth the facts surrounding the violation; Reports of Investigation (ROI); Regulatory Audit reports; Memorandums of Information Received (MOIR); warning letters; Compliance

(b)(2)

Initiating officer supervisors are responsible for issuing quality penalty cases. Their review for quality should ensure that the CF 5955A includes the correct law or laws applicable to the violation, the correct demand amount, and that the narrative accurately describes the violation. It should also ensure that the file is timely forwarded to FP&F with complete documentation to establish the violation. The initiating office should maintain a copy of the CF 5955A and supporting documentation in the event FP&F needs an issue clarified, a correction made, or technical advice in adjudicating the case.

3.2.1 General

FP&F processing of penalty cases involves a sufficiency review. Each penalty has its own unique statutory and regulatory language, along with corresponding directives, policy, and interpretive documents (e.g., legal decisions). See Part 4 “Violations Requiring Pre-Penalty Notices” and Part 5 “Violations Not Requiring Pre-Penalty Notices” of this chapter for violation specific information.

When the case and supporting documentation are received from the initiator, FP&F will ensure that the case is sufficient and complete. The case initiator must forward the documentation to FP&F within [REDACTED] of the printing of the CF 5955A in SEACATS.

3.2.3 Statute of Limitations

FP&F will monitor the statute of limitations in each case through use of the SEACATS Statute of Limitations Report. [REDACTED]

[REDACTED] If less than **one year** remains and no waiver has been received, the FP&FO should [REDACTED] proceed with the expedited processing of the case. If less than **180 days** remain, the FP&FO may specify in the penalty notice a reasonable period of time, but not less than seven working days, for filing a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to local ACC for referral to the Department of Justice. (See 19 CFR 171.2(e).)

3.2.4 Defective or Deficient Cases

FP&F analysis of the penalty case includes identification of any defects or deficiencies. [REDACTED]

(b)(2)

[REDACTED] The initiating supervisor may be required to issue any amended CF 5955A.

3.2.5 Cancellation

[REDACTED]

Part 3 Case Processing

3.3.1 General

There are six penalties that by statute or policy require the issuance of a pre-penalty notice prior to the issuance of a penalty. FP&F is responsible for issuing pre-penalty

notices and deciding whether to proceed with the penalty based on the violator's response. For all other penalties, the initiating supervisor is responsible for ensuring timely, accurate SEACATS input and processing of the CF 5955A, [REDACTED]

3.3.2 Pre-penalty

The six statutes requiring the issuance of a pre-penalty are listed below with the accompanying regulation(s):

- 19 U.S.C. 1466 Vessel Repair (19 CFR 162.72, 162.76)
- 19 U.S.C. 1509(g) Recordkeeping (19 CFR Part 163)
- 19 U.S.C. 1584 Manifest (19 CFR 162.76)
- 19 U.S.C. 1592 Commercial Fraud (19 CFR Part 171, Appendix B; 19 CFR 162.73, 162.77)
- 19 U.S.C. 1593a Drawback (19 CFR 191.62)
- 19 U.S.C. 1641 Broker (19 CFR Part 171, Appendix C)

Upon receipt of the proposed penalty case from the case initiator, the Paralegal Specialist will complete a sufficiency review and, if warranted, prepare a pre-penalty notice for the FP&FO's signature. FP&F will issue a pre-penalty notice within [REDACTED] of receipt of the proposed penalty case. The pre-penalty notice is in letter format and includes violation specific data elements established either by statute or regulation, [REDACTED]

(b)(2),

(b)(7)(E)

The pre-penalty notice should contain the following:

- Description of the circumstances of the alleged violation
- Statute and regulations violated
- Disclosure of all material facts establishing the alleged violation
- Statement of the estimated loss of duties (if applicable)
- Amount of the proposed penalty
- Level of culpability (if applicable)
- Indication that the alleged violator shall have reasonable opportunity to make representation as to why such penalty claim should not be issued

In 19 U.S.C. 1466, 1592, and 1593a cases, the violator may request an oral presentation [REDACTED]

[REDACTED] Oral presentations **must** be granted in these cases. In all other penalty cases, the FP&FO may grant a request for an oral presentation.

FP&F is responsible for the review of pre-penalty responses. [REDACTED]

[REDACTED] This review includes analyzing the facts presented in the pre-penalty response and obtaining any

additional information or technical advice from the case initiator. FP&F will determine whether there is sufficient reason to:

- Discontinue the penalty process. If so, advise the violator in writing that the penalty will not be pursued and close the FP&F case [REDACTED]
- Issue the penalty as described in the pre-penalty notice.
- Issue the penalty in a lower amount.
- Re-issue the pre-penalty notice at a higher proposed penalty amount.

3.3.3 Penalty

The case initiator's supervisor is responsible for printing and mailing the CF 5955A (except when a pre-penalty notice is required) and [REDACTED]

[REDACTED] The supervisor will also ensure that the penalty case with all supporting documentation is timely provided to FP&F.

For cases involving a pre-penalty, FP&F will issue the CF 5955A after consideration of any pre-penalty response.

A 60-day period is provided for response to a penalty. During this period, the violator may petition, pay the penalty, or request an extension. An attorney or Customs broker may petition on behalf of the violator. Follow the procedures below depending on the response received:

- Full payment within 60 days of the date of the penalty notice—[REDACTED]
[REDACTED]
- Request for extension within 60 days of the date of the penalty notice—The extension request must be in writing and may be approved at the discretion of the FP&FO (19 CFR 171.2(c)). [REDACTED]
- Petition received within 60 days of the date of the penalty notice—Refer to Section 3.3.4, "Case Processing—Consideration of Petitions for Relief."
- OIC received—Refer to Chapter 5, Part 4, "Offers in Compromise," for processing information.
- No response—If the violator fails to respond in a penalty case, the Paralegal Specialist is responsible for continuing the collection process by one of the following options:

- [REDACTED]
[REDACTED]

- If the penalty was assessed for violation of 19 U.S.C. 1592, 1593a, 1509, or 1641, refer the case to local ACC for initiation of collection action in the Court of International Trade (CIT).
- For all other penalties, refer to Chapter 5, Part 6, "Billing," for instructions on billing procedures.

3.3.4 Consideration of Petitions for Relief

19 U.S.C. 1618 is the statutory authority to mitigate or cancel a penalty. 19 CFR Part 171 contains detailed procedures for processing petitions in penalty cases. Refer also to the OR&R Mitigation Handbook.

To be considered timely, petitions must be filed within 60 days of the date of the mailing of the penalty notice, although extensions for cause may be granted at the discretion of the FP&FO.

The FP&FO may mitigate certain claims upon payment of a lesser amount if deemed appropriate. The FP&FO has authority to mitigate any penalties incurred under 19 U.S.C. 1592 and 19 U.S.C. 1593a when the amount of the penalty does not exceed \$50,000. The FP&FO has authority to mitigate any penalties incurred under 19 U.S.C. 1436, 19 U.S.C. 1641, 19 U.S.C. 1453 or 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1448 or 1499 when the amount of the penalty does not exceed \$200,000. The FP&FO has authority in all other penalty cases when the amount of the penalty does not exceed \$100,000. See T.D. 00-58, dated September 5, 2000.

In penalties assessed for violation of 19 U.S.C. 1466, 1592, and 1593a, petitioners have the right to make oral presentations, in addition to filing a petition (see 19 CFR 171.3). Oral presentations for other violations may be allowed at the discretion of the FP&FO.

Petitions must be in writing and addressed to the FP&FO designated in the penalty notice. Electronic signatures are acceptable. Customs may require that petitions and supporting documents be in English.

1) Initial Petition



The Paralegal Specialist is responsible for:

- Identifying the statute of limitations date
- Determining if the decision authority rests with the FP&FO or OR&R
- Analyzing the facts presented in the petition against those presented by the case initiator

- Reviewing the statutory and regulatory requirements specific to the violation
- Determining whether FP&F has all the information needed to render a decision, and if not, making the necessary referral to obtain that information

2) Petition Referral

(b)(2),
(b)(5)

[REDACTED]

[REDACTED]

If legal advice is required, refer petition to local ACC. Per 19 CFR 171.14, without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action or potential action relating to penalties or mitigating a claim, the advice of the Director, International Trade Compliance Division, OR&R, may be sought by the alleged violator or any Customs officer.

19 CFR 171.14 does not apply to actual duty loss tenders pursuant to 19 CFR 162.74(e) relating to prior disclosure or to actual duty loss demands made under 19 CFR 162.79b.

Any request for Headquarters review made pursuant to 19 CFR 171.14 must be submitted to the FP&FO, who retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate ACC. A qualifying issue would have to be something new and unprecedented or something complicated, confusing, or complex.

3) Decision

Use the OR&R Mitigation Handbook to arrive at a decision or decision recommendation. The decision is

(b)(2)

[REDACTED]

If the FP&FO has authority to decide the case, the Paralegal Specialist will prepare a decision letter that includes a brief explanation of the decision rationale, information on how and where to make payment, and the FP&FO's signature (unless otherwise delegated to the Paralegal Specialist in writing by the FP&FO).

If OR&R is the decision authority, the Paralegal Specialist will prepare a referral memorandum for the FP&FO's signature (unless otherwise delegated to the Paralegal Specialist in writing by the FP&FO). The referral memorandum must include the following:

- Statute of limitations
- Synopsis of the case
- Analysis of the claims in the petition
- FP&F recommendation citing applicable OR&R Mitigation Guidelines
- Exhibits, including a copy of the petition, CF 5955A, and any supporting documentation

(b)(2) [REDACTED] OR&R Penalties Branch will forward the decision letter to the FP&FO. A copy of this letter will be forwarded to the petitioner under an FP&F cover letter [REDACTED]
[REDACTED]

4) Supplemental Petitions

Supplemental petitions should, but are not required to, contain new information or evidence not previously considered or presented in the initial petition.

Supplemental petitions must be filed within 60 days of the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to issues serving as the basis for the penalty (whichever is later).

The same processing standards as above apply, including case file documentation standards, petition referrals, decision issuance, and SEACATS updates.

If the FP&FO decided the initial petition, he/she may grant further relief. If the FP&FO decides further relief is not warranted, the supplemental petition must be referred to the NSPO. The referral of the supplemental petition to the NSPO will take the same basic format as the petition referral to OR&R.

If the decision authority on the initial petition was with OR&R, then the supplemental petition must be referred there.

Exception: In 19 U.S.C. 1641 supplemental petitions for penalties over \$10,000 are referred to OR&R.

3.3.5 Offers in Compromise (OIC)

(b)(2) [REDACTED]

The statutory authority to accept OICs is provided for in 19 U.S.C. 1617 and 19 CFR 161.5. The OIC must be in writing. It should state that it is being submitted in

accordance with 19 U.S.C. 1617 and include the tender of the OIC amount. The OIC must be in the form of cash, cashier's check, or money order.

Cases can be resolved at any point during the petition and collection process if a violator offers a payment amount that the designated authorities consider acceptable to "compromise" (settle) the claim. A penalty may be compromised [REDACTED] or the violator can substantiate an inability to pay. [REDACTED]

(b)(2),
(b)(5)

1) **Authority**

OR&R has the authority to accept offers in compromise in penalty cases not secured by an International Carrier Bond. The FP&FO has the authority to accept OICs, subject to the recommendation of the ACC, in penalty cases secured by a bond consistent with his/her petition mitigation authority. See 19 CFR 172.32.

The FP&FO will refer offers in penalty cases not secured by a bond to OR&R through the local ACC. The referral memorandum will include an analysis of the case along with all pertinent supporting documentation. Refer to Chapter 5, Part 4, "Offers in Compromise," for more information.

2) **Acceptance**

No offer may be accepted without the recommendation of Counsel. If the decision to accept an offer is made in OR&R, OR&R will advise the FP&FO. When the OIC is accepted by OR&R or FP&FO, the FP&FO will notify the offeror of acceptance by letter. [REDACTED]

(b)(2)

3) **Rejection**

If an offer is rejected, the FP&FO will notify the offeror in writing the OIC is rejected, will state the basis for this decision, and any additional amount required for acceptance. All monies tendered with the OIC that are subsequently rejected will be refunded. Refer to section 5.5.7 "Rejection of OIC" and Chapter 5, Part 5 "Refund."

3.3.6 Bankruptcy

FP&F will compare the date of the penalty claim with the date of bankruptcy to determine how the case will be processed.

If the violation took place prior to the date of bankruptcy filing, FP&F should suspend all collection action against the violator. If the violation took place after the date of bankruptcy filing, process the case as normal against the violator.

Refer any information received on bankruptcy to the NFC, Collections Section immediately, but not later than [REDACTED] See Chapter 5, Part 13, "Bankruptcy."

3.3.7 Case Closure

(b)(2)

Part 4 Violations Requiring Pre-penalty Notices

3.4.1 General

This part describes the six statutes that require the issuance of a pre-penalty notice with violation-specific information.

3.4.2 Vessel Repair (19 U.S.C. 1466)

19 U.S.C. 1466 provides for penalties against the owner or master of a vessel for failure to report certain foreign vessel repairs. The failure to timely declare vessel repairs, the filing of a false vessel repair entry, or the failure to pay vessel repair duty constitutes a violation of this statute. The liability for declaration, entry, and payment of duties accrues at the time of first arrival in the United States. In lieu of payment of duty at time of entry, a bond may be provided to secure payment of duty.

Items such as repair expenses (including labor), cost of repair parts, vessel materials, or equipment (including boats) purchased or provided in a foreign country to a vessel documented under the laws of the United States to engage in foreign or coastwise trade must be declared, entered, and duties paid thereon at the port of first arrival in the United States.

The case initiator (boarding inspector, vessel entrance and clearance officer, Entry Control, or Vessel Repair Liquidation Unit) will refer the facts and documentation through the Vessel Repair Liquidation Unit to FP&F.

1) Violator

The culpable party is the owner or master of the vessel.

2) Culpability

The culpable party must:

- Willfully and knowingly neglect or fail to report (declare), make entry, pay duties, or
- Make any false statement without reasonable cause to believe the truth of such statement, or
- 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.

3) **Penalty Amount**

See TD 01-24 for newest regulations regarding vessel repair entries. All pre-penalty notices shall be issued for an amount equal to four times the loss of revenue or the value of the vessel, whichever is lower, except in instances where the violation is for the late filing of the entry or documents only. In the latter instances, the notice shall be issued for an amount equal to two times the loss of revenue.

4) **Petition Referrals**

Penalty petitions shall be forwarded to the Vessel Repair Liquidation Unit for review and comment.

(b)(2)

All mitigation presupposes that the loss of revenue calculated from the 1466 violation shall be deposited with Customs, in addition to the above penalties.

3.4.3 Recordkeeping (19 U.S.C. 1509)

19 U.S.C. 1509(a)(1)(A) requires the production, upon demand by Customs, of records required by law or regulation for the entry of merchandise. The list of records and entry information required to be maintained and produced is known as the "(a)(1)(A) list." Refer to 19 CFR Part 163 Appendix.

The demand for the required record or information shall be documented in writing and state that the record or information must be produced within 30 calendar days (or shorter period if admissibility of merchandise is involved) from the date of receipt of the demand. A party may request an extension in writing within that 30-day period. Approval or denial of that request shall be in writing. The penalty referral to FP&F must include a copy of the demand and any approval/denial of requests for extension.

Note: Certified recordkeepers may be eligible for alternatives to penalties if they participate in the recordkeeping compliance program. See 19 CFR 163.12.

(b)(2)

Issuance of the recordkeeping penalty does not necessarily preclude additional actions or penalties.

1) **Violator**

The violator is any person required by law to maintain records who fails to produce same.

2) **Culpability**

There are two levels of culpability. Therefore, the referral to FP&F must contain sufficient information and/or documentation to support that failure to comply was

the result of willful failure or negligence. A willful violation is committed (or omitted) knowingly, done voluntarily and intentionally. Negligent acts (commission or omission) are done through failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts, etc.

3) Pre-Penalty Notice

(b)(2)

[REDACTED] When referred, FP&F will draft a pre-penalty notice, provided all information necessary to establish the violation is present. [REDACTED] OR&R may require additional information or documentation to support the alleged violation prior to issuance of the pre-penalty notice.

4) Penalty Amount

The willful failure to maintain, store, or retrieve the demanded records or information carries a penalty not to exceed \$100,000 or 75 percent of the appraised value, whichever is less. Negligence carries a penalty not to exceed \$10,000 or 40 percent of the appraised value, whichever is less.

3.4.4 Failure to Manifest (Non-narcotic) (19 U.S.C. 1584)

19 U.S.C. 1584 provides for penalties associated with failing to have a manifest or having a false manifest (shortage, overage, etc.) on arrival. Different penalty procedures apply for controlled substances found on a commercial conveyance. Refer to Section 2.4.1(15), "Seizure Cases—Special Classes of Property—Controlled Substances Non-personal Use—Super Carrier Violations, 19 U.S.C. 1584."

(b)(2)

[REDACTED]

1584 penalties over \$1,000 require the issuance of a pre-penalty notice. In these cases, the initiating officer's supervisor will ensure that FP&F is provided with complete and accurate documentation necessary for the pre-penalty notice.

If no pre-penalty notice is required, the case initiator's supervisor will ensure the timely, accurate issuance of a CF 5955A. The CF 5955A should clearly and accurately describe the manifest violation, identify when and where the violation occurred, and describe the conveyance (e.g., vessel name and voyage number, aircraft flight number).

1) Violator

Penalties are assessed against the master of the vessel or person in charge of the vehicle or aircraft, or any other party directly or indirectly responsible for the violation. Penalties may be issued against multiple parties (arriving carrier, Non-Vessel Operating Common Carrier (NVOCC), etc.) but may be collected only once.

2) Penalty Amount

For failure to present the manifest, the penalty is \$1,000. For merchandise that is manifested but not found (shortage), the penalty is \$1,000. For unmanifested merchandise (overage), the penalty is the value of the merchandise (not to exceed \$10,000). Pre-penalty notices will only be required for penalties resulting from overages.

3.4.5 Commercial Fraud (19 U.S.C. 1592)

19 U.S.C. 1592 provides for penalties against anyone who enters, attempts to enter, introduces, or attempts to introduce merchandise into the United States by means of a material, false statement, act, practice, or omission (includes aiding or abetting in such acts). Clerical errors or mistakes of fact are not violations unless they form a pattern of negligent conduct.

(b)(2) Possible 19 U.S.C. 1592 violations should be referred to the [REDACTED] and [REDACTED] prior to forwarding to FP&F. Cases declined by the [REDACTED] or [REDACTED] should be referred to FP&F for possible 1592d demand, if loss of revenue exceeds \$500.00. The discovering officer prepares the necessary referral to the [REDACTED] and subsequent forwarding to FP&F for issuance of the pre-penalty notice.

[REDACTED]

1) Definitions

Definitions associated with 1592 cases are:

- a) **Fraud**—The act is committed or omitted knowingly, done voluntarily and intentionally, as established by clear and convincing evidence.
- b) **Gross Negligence**—The act is committed or omitted with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.
- c) **Negligence**—The act is committed or omitted through the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances to ensure that it is correct.
- d) **Material**—The document, statement, act, or omission either has the potential to alter the classification, appraisal, or admissibility of merchandise or the liability for duty (including marking, antidumping, and/or countervailing duty) or tends to conceal an unfair trade practice under antidumping, countervailing duty, or similar statute, or is an unfair act involving a patent or copyright infringement.
- e) **Reasonable Care**—Such degree of care, precaution, or diligence as may fairly and properly be expected having regard to the nature of the action or of the subject matter and circumstances.
- f) **Clerical Error**—An error in preparation, assembly, or submission of documents/information such as typing/keystroking or transposition of

numbers, provided such error is not part of a pattern that would be considered at a minimum to be negligence.

- g) **Mistake of Fact**—An act or omission based on an erroneous belief as to the facts, as long as the belief did not result from negligence.
- h) **Actual Loss of Revenue (ALOR)**—Duties (including marking, antidumping, or countervailing), fees, and taxes due on liquidated entries.
- i) **Potential Loss of Revenue (PLOR)**—Duties, fees, and taxes due on unliquidated entries.
- j) **Total Loss of Revenue**—The sum of ALOR and PLOR, used to arrive at the appropriate assessment and disposition amounts of cases.

2) Statute of Limitations

The statute of limitations is based on the level of culpability. For violations determined to be the result of fraud, the statute is calculated five years from the date of discovery of the violation. For violations determined to be the result of gross negligence and negligence, the statute is calculated five years from the date of the violation (date of the first entry).

[REDACTED] the procedures outlined in Section 3.2.3 "Statute of Limitations" of this Chapter should be followed. If the statute of limitations has run, do not open the case, [REDACTED]

3) Consolidation

The FP&FO will coordinate any consolidation of multi-port penalties or prior disclosures. [REDACTED]

[REDACTED] If the concerned FP&FOs cannot agree on consolidation, OR&R will be consulted.

4) Culpability and Penalty Amount

Three levels of culpability are provided—fraud, gross negligence, and negligence. See the definitions above. The FP&FO determines the level of culpability based on documentation provided by the discovering officer. The amount of penalty is dependent upon the determined level of culpability.

The following penalty amounts apply (presuming no prior disclosure has been made):

- Fraud: value or eight times the loss of revenue
- Gross negligence: 40 percent of the value or eight times the loss of revenue
- Negligence: 20 percent of the value or two times the loss of revenue

For penalties with the benefit of prior disclosure, see the next section.

5) Prior Disclosure

(b)(2)

19 U.S.C. 1592(c)(4) allows a party to voluntarily disclose the particulars of any violation to Customs before Customs has discovered the violation or initiated an investigation and to tender any loss of revenue. This is called a prior disclosure. The FP&FO determines whether or not the disclosure is valid and entitles the party to reduced penalties. The FP&FO will also coordinate any consolidation of multi-port disclosures. Refer to 19 CFR 162.74 for details on processing prior disclosures.

Prior disclosures involving unliquidated entries are not subject to a 1592 penalty.

If prior disclosure is allowed, the penalty for negligence and gross negligence is limited to the interest on the calculated actual loss of revenue from the date of liquidation to the date of payment. The penalty for fraud with the benefit of prior disclosure is then one times the actual loss of revenue.

6) **Foreign 19 U.S.C. 1592**

(b)(2) [REDACTED] This program was created in conjunction with the passage of 19 U.S.C. 1592a. Foreign entities involved in the transshipment of textile products to the United States (that is, shipments accompanied by false statements or counterfeit documents as to country of origin) are penalized under 19 U.S.C. 1592. At the conclusion of the administrative process (presuming there is a violation), the foreign entity's name is published in the *Federal Register* twice a year for a period of three years.

7) **Pre-Penalty Notice**

[REDACTED] The statute requires the issuance of a pre-penalty notice for penalties in excess of \$1,000. FP&F will issue a pre-penalty notice containing the following:

- Description of the merchandise
- The details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction
- Statute and regulations violated
- Disclosure of all material facts establishing the alleged violation
- Tentative determination of culpability.

- [REDACTED]
- The estimated loss of duties—actual, potential, and total
 - Demand for payment of any actual loss of revenue under 19 U.S.C. 1592d