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INTRODUCTION

American Bearing Manufacturers Association (ABMA)
ABMA began in 1917 as an informal committee to aid production of bearings during World War I. The committee consisted of Andrew Company, New Departure, Nice, Federal, Fafnir, SKF, Norma, BCA, Martin Rockwell, and Atlas Ball. In 1933, articles of association were established for Anti-Friction Bearing Manufacturers Association (AFBMA). Today, the association is managed by the Board of Directors. Members also serve on five standing committees. A full time staff of professionals is headquartered in Washington, DC to support the Association's activities. ABMA's vision is to be the premier national association and voice of the American bearing Industry. Our mission is to provide leadership, advocacy, and education with focus on membership value, industry outreach and issues impacting the global bearing industry.

ABMA Anti-Counterfeiting Committee
The Anti-Counterfeiting committee focuses domestically on attacking the issue of counterfeit bearings and protecting the U.S. borders. The committee has built an effective partnership with U.S. Customs and Border Protection and the Intellectual Property Rights (IPR) Center. ABMA has also partnered with the Bearing Specialists Association (BSA) through the committee to engage distributors and OEMs in the fight against this important issue.
THE TRADEMARK PROCESS

Step 1 - Application Filed, approximately three months
The filed application is assigned a serial number. This number should always be referenced when communicating with the United States Patent and Trademark Office (USPTO). The applicant can check the status of any application throughout the entire process by entering the application serial number at http://tsdr.uspto.gov/ or by calling the trademark status line at 571-272-5400.

Step 2 - USPTO Reviews Application, approximately one month
USPTO reviews application: If the minimum filing requirements are met, the application is assigned to an examining attorney. The examining attorney conducts a review of the application to determine whether federal law permits registration. Filing fee(s) will not be refunded, even if the application is later refused registration on legal grounds. Approximately 1 month go to step 3a or step 3b.

Step 3A - USPTO Publishes Mark, approximately three months
If no refusals or additional requirements are identified, the examining attorney approves the mark for publication in the Official Gazette (OG). The OG, a weekly online publication, gives notice to the public that the USPTO plans to issue a registration. Approximately 1 month after approval, the mark will publish in the OG for a 30-day opposition period. Any party who believes it would be harmed by the registration may file an objection (opposition) within that 30-day period with the Trademark Trial and Appeal Board. No further action is taken until the opposition is resolved. Approximately 3 months go to step 8.

Step 3B - USPTO Issues Letter (Office Action), within six months
If refusals or requirements must still be satisfied, the examining attorney assigned to the application issues a letter (Office action) stating the refusals/requirements. Within 6 months of the issuance date of the Office action, the applicant must submit a response that addresses each refusal and requirement. Within 6 months go to step 4a or step 4b.

Step 4A - Applicant Timely Responds, approximately one to two months
In order to avoid abandonment of the application, the applicant must submit a timely response addressing each refusal and/or requirement stated in the Office action. The examining attorney will review the submitted response to determine if all refusals and/or requirements have been satisfied. Approximately 1 to 2 months go to step 5a or step 5b.
Step 4B - Applicant Timely Responds, approximately one to two months
If the applicant does not respond within 6 months from the date the Office action was issued, the application is abandoned. The term “abandoned” means that the application process has ended and the trademark will not register. Filing fees are NOT refunded when applications abandon. Abandoned applications are “dead,” since they are no longer pending or under consideration for approval. To continue the application process, the applicant must file a petition to revive the application within 2 months of the abandonment date. If more than 2 months after the abandonment date, the petition will be denied as untimely and the applicant must file a new application with the appropriate fee(s).

Step 5A - USPTO Publishes Mark, approximately three months
If the applicant's response overcomes the refusals and/or satisfies all requirements, the examining attorney approves the mark for publication in the Official Gazette (OG). The OG, a weekly online publication, gives notice to the public that the USPTO plans to issue a registration. Approximately 1 month after approval, the mark will publish in the OG for a 30-day opposition period. Any party who believes it would be harmed by the registration may file an objection (opposition) within that 30-day period with the Trademark Trial and Appeal Board. No further action is taken until the opposition is resolved. Approximately 3 months go to step 8.

Step 5B - USPTO Issues Final Letter (Office Action), within six months
If the applicant's response fails to overcome the refusals and/or satisfy the outstanding requirements, the examining attorney will issue a “Final” refusal letter (Office action). The Office action makes “final” any remaining refusals or requirements. An applicant may respond to a final office action by a) overcoming the refusals and complying with the requirements or b) appealing to the Trademark Trial and Appeal Board. Within 6 months go to step 6a or step 6b

Step 6A - Applicant Timely Responds and/or Files Appeal, approximately one to two months
To avoid abandonment of the application, the applicant must submit a timely response addressing each refusal and/or requirement stated in the “Final” refusal letter (Office action). Alternatively, or in addition to the response, the applicant may also submit a Notice of Appeal to the Trademark Trial and Appeal Board (TTAB). The examining attorney will review the submitted response to determine if all refusals and/or requirements have been satisfied. If the applicant's response fails to overcome the refusals and/or satisfy the outstanding requirements, the application will be abandoned unless the applicant has filed a Notice of Appeal, in which case the application is forwarded to the TTAB. The term “abandoned” means that the
application process has ended and the trademark will not register. Filing fees are not refunded when applications abandon. Abandoned applications are “dead,” since they are no longer pending or under consideration for approval. Approximately 1 to 2 months go to step 7a or step 7b.

**Step 6B - Applicant Does Not Respond and Application Abandons**
If the applicant does not respond within 6 months from the date the Office action was issued and the applicant has not filed a Notice of Appeal to the Trademark Trial and Appeal Board, the application is abandoned. The term “abandoned” means that the application process has ended and trademark will not register. Filing fees are not refunded when applications abandon. Abandoned applications are “dead,” since they are no longer pending or under consideration for approval. To continue the application process, the applicant must file a petition to revive the application within 2 months of the abandonment date, with the appropriate fee. If more than 2 months after the abandonment date, the petition will be denied as untimely and the applicant must file a new application with the appropriate fee(s).

**Step 7A - USPTO Publishes Mark approximately three months**
If the applicant's response overcomes the refusals and/or satisfies all requirements of the “Final” refusal letter (Office action), the examining attorney approves the mark for publication in the Official Gazette (OG). The OG, a weekly online publication, gives notice to public that USPTO plans to issue a registration. Approximately 1 month after approval, the mark will publish in the OG for a 30-day opposition period. Any party who believes it would be harmed by the registration may file an objection (opposition) within that 30-day period with the Trademark Trial and Appeal Board. No further action is taken until the opposition is resolved. Approximately 3 months go to step 8.

**Step 7B - Applicant's Appeal Sent to The Trademark Trial and Appeal Board (TTAB)**
If the applicant's response does not overcome the refusals and/or satisfy all of the requirements and the applicant has filed a Notice of Appeal with the Trademark Trial and Appeal Board (TTAB), the appeal will be forwarded to the TTAB. Information about the TTAB can be found at www.uspto.gov.

**Step 8 - Mark Registers Between 5-6 years**
Within approximately 3 months after the mark published in the Official Gazette, if no opposition was filed, then the USPTO issues a registration. If an opposition was filed but it was unsuccessful, the registration issues when the Trademark Trial and Appeal Board dismisses the opposition. After a registration issues, to keep the registration “alive” the registrant must file specific maintenance documents. Between 6 to 7 years go to step 9 and every 10 years go to step 10.

**Step 9 - Registration Owner Files Section 8 Declaration**
Before the end of the 6-year period after the registration date, or within the six-month grace period after the
expiration of the sixth year, the registration owner must file a Declaration of Use or Excusable Nonuse under Section 8. Failure to file this declaration will result in the cancellation of the registration.

**Step 10 - Registration Owner Files Section 8 Declaration/Section 9 Renewal, every ten years**

Within one year before the end of every 10-year period after the registration date, or within the six-month grace period thereafter, the registration owner must file a Combined Declaration of Use or Excusable Nonuse/Application for Renewal under Sections 8 & 9. Failure to make these required filings will result in cancellation and/or expiration of the registration.
INTERACTING WITH U.S. CUSTOMS AND BORDER PROTECTION (CBP)

Contact and Structure

U.S. Customs and Border Protection (CBP) is a multi-level governmental organization. As such, contacting them and maintaining a consistent relationship involves more than a single contact person or department. Please note that the terms “CBP” and “Customs” are used interchangeably within this guide. A broad categorization of roles is described below:

Training Coordinators

Location:
- National training coordination – Washington, D.C.
- Local, port training – each port
- Training coordinators will often have multiple roles within CBP in addition to organizing in-person or web training sessions.
- ABMA has conducted training nationally and in many ports. Over time, it appears that a combination of the two training strategies works the best, as often different individuals are involved at each port. However, with the transition to the CEE structure, discussed below, training may focus more on CEE personnel.
- ABMA has several anti-counterfeit training presentations in place that can be provided to member companies upon request.

Import Specialists

Location:
- An import specialist’s role is to be familiar with regulations and risks related to their product area. In terms of bearings, making them aware of the risks of counterfeit products and giving guidance on how to detect such shipments has proven the single most effective avenue to increase detention and seizure activity.
- Historically, each port had import specialists assigned to different product areas (for example, bearings). This system still exists, but, there is a transition occurring at least for 2015-2017 of centralized targeting by national import specialists. These national targeting groups are designated the Centers of Excellence and Expertise (CEE, often referred to as the “industry - C”). Bearings fall under two CEEs:
Machinery CEE, based in Laredo, Texas
Automotive CEE, based in Detroit, MI

Customs Officers
Location:
- Each port has officers that will perform visual inspection of received shipments. Officers will also implement the targeting instructions received from import specialists. Although CBP is transitioning to the CEE structure for targeting of imports, Officers in individual ports will still have the best insight into the kinds of goods and activities happening in that port. Providing clear guidelines, including photo specifications and “red flags” that can be used to raise suspicion, to these field officers is highly beneficial. An example is provided in Appendix i.

CBP receives thousands of shipments daily, which means that a small percentage, perhaps 2-5% of containers and individual shipments can and will be inspected. This means that targeting and training the “targeters” (i.e. the import specialists and Customs officers) is crucial.

Historically, CBP was segmented by assigned ports (for example, Long Beach, Miami, Chicago etc.). To a great extent each port set its own operating parameters, including priority products and types of information sent to brand owners to evaluate products. For example, one port may send full and detailed images of the bearings with and without packaging, and perhaps provide country of export and import destination. Another port may only provide the part number and trademark on the bearing. Repeated requests for additional information may be needed.

In addition, member companies should be aware of Immigration and Customs Enforcement (ICE) and an important part of ICE, Homeland Security Investigations (HSI). Although CBP and ICE / HSI are not the same organization, they often work hand-in-hand to combat importation of illegal products. ICE’s mission is to “promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration.” Whereas CBP’s role will end at the seizure of goods at a port, HSI may use that importation information to pursue further investigation and criminal charges against a particular importer. In short, criminal charges and warehouse search warrants will result from HSI investigations, not directly from CBP seizures. Referral to HSI by brand owners may be needed and can be requested. An updated list of contacts is provided in Appendix XX.

Training
U.S. CBP does not have bearings experts, nor do many of them know what a bearing is. An exception to
this statement may be designated import specialists. As a result, training has focused on providing presentations educating CBP personnel on what a bearing is, what it does and what the risks associated with counterfeit bearings are.

ABMA has been very successful in providing training representing all affected bearing brands. This is generally preferred by CBP, however, if individual sessions are desired ABMA has several presentations available that can serve as a model.

In addition to this group training, individual contact is recommended. This typically takes the form of contacting the import specialist or Customs officer detaining a shipment and explaining any discrepancies in the products, what photos or information is required to adequately assess the detained bearings, etc.

**Detentions and Seizures**

CBP distinguishes a “detention” from a “seizure.”

A detention is a shipment that is held for a period of time (up to 30 days) to determine whether the merchandise is admissible or should be seized (see 19 CFR 151.16 - Detention of merchandise). Customs has 5 days from the receipt of goods in the port to determine whether to release or detain the products. After these 5 days, they may issue a notice of detention to the importer providing Customs 30 days from receipt of goods to make a final determination on the release of goods. It is at this stage that an import specialist or Customs officer will contact a brand owner to determine whether the merchandise received is counterfeit. An example detention communication can be found at Appendix ii.

The brand owner should review the photos provided and provide a written report as to their authenticity. CBP typically asks for details on that determination, but, it is up to the individual brand owner how much information they wish to provide. With that said, CBP is required to keep guides and information provided by brand owners confidential. They take this obligation seriously and enforce it. Typically, a retail price (MSRP) is also requested. This price may be used to determine fines against the importer.

Once the brand owner has confirmed the products are counterfeit the products are seized. Within 90 days of the seizure, a seizure letter is required to be sent to the brand owner with full details of the shipment. Seizure letters are sent from a different branch of CBP called Fines, Penalties and Forfeitures (FPF). An example seizure letter can be found at Appendix iii. The bearings are also destroyed at this point. A brand owner may never receive a letter. Although this should not be typical, it has proven difficult to request a seizure letter from CBP unless sent at their own initiative. This means that a known detention of counterfeit product may never be associated with a quantity of goods or with an importer or exporter. When a seizure
letter is received, it remains difficult to correlate the detention with the seizure as there is no common designation or cross-reference. This may be viewed by comparing the example detention notice at Appendix ii and the example seizure letter at Appendix iii. These are for the same shipment.

Additional information is available at Appendix iv (“Customs Administrative Enforcement Process”) and Appendix v (“CBP Enforcement of Intellectual Property Rights”).

Finally, it should be noted that CBP has on-going pilot programs and initiatives to address concerns expressed in the field. For example, there has been a noticeable shift of shipments of counterfeit goods to express consignment. Express consignment is by definition under tremendous time constraints to review, process and release a very large volume of shipments. In October, 2014, the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) issued a change in procedure (see Appendix vi) wherein the importer of a suspected shipment of counterfeit goods is provided the option to abandon the shipment. In this streamlined procedure the brand owner is not contacted nor made aware of the importation of counterfeit products. A noticeable decrease in reported detentions has resulted. It is recommended and advantageous for industry to monitor these changes and maintain communication with CBP on these initiatives by communicating concerns or requests for additional information to the ABMA.
Intellectual Property Rights

U.S. Customs and Border Protections (CBP) is the primary federal agency responsible for securing America's borders. This includes the protection of intellectual property rights, which guards against the infringement of U.S. patents, copyrights, and trademarks. CBP intercepts counterfeit and pirated goods that harm the U.S. economy and threaten the security, health, and safety of Americans.

At the border, CBP is authorized to exclude, detain and/or seize imported merchandise that infringes federally registered and recorded trademark and copyrights and/or is covered by an exclusion order issued by the U.S. International Trade Commission.

Therefore, it is important to take the next step of recording both your trademark and copyright registrations with the U.S. Customs and Border Protection Agency (CBP). To aid in the process, the CBP has issued a publication that walks you through necessary steps for successful registration. This publication can be found at APPENDIX VII.
APPENDIX i

Product ID Guides
DISCLAIMER (REQUIRED)

The opinions expressed herein are those of the right owner and do not necessarily reflect the position of U.S. Customs and Border Protection (CBP). Decisions as to whether or not merchandise should be detained or seized for infringing protected intellectual property rights are to be made in accordance with established procedures by CBP personnel at the appropriate management level of the concerned field office. CBP personnel who have questions arising from this product identification training material or manual should call the IPR Helpdesk at 562-980-3119, ext. 252, or the IPR and Restricted Merchandise Branch, Regulations and Rulings at (202) 325-0020.
PRODUCT DESCRIPTIONS, PRODUCT IMAGES, PLACES OF MANUFACTURING, AND IMPORTATION INFORMATION FOR GENUINE GOODS

Product Description
1-2 bullets describing the genuine trademarked and/or copyrighted products

Product Images
Images of the genuine products

Places of Manufacturing
1 bullet describing where the genuine products are manufactured

Importation into the United States
1-2 bullets describing the names of the ports where the genuine product(s) is(are) imported. If the genuine products are not imported into the U.S., please state this fact.
LIST OF KNOWN AND ALLEGED VIOLATORS, PRODUCT DESCRIPTIONS AND IMAGES OF SUSPECT GOODS, AND IMPORTATIONS OF SUSPECT GOODS

List of Known and Alleged Violators
Include names, names of companies, addresses, phone numbers, and websites for each

Product Descriptions and Images of Suspect Goods
List of genuine products that are allegedly infringed upon, and compare using descriptions and images of their suspect counterparts

Importations of Suspect Goods
List the names of U.S. ports of entry where suspect products are imported
LIST OF RECORDED AND REGISTERED TRADEMARKS AND COPYRIGHTS

List of Recordation Numbers that are active with U.S. Customs and Border Protection (CBP), and a list of corresponding Trademark and/or Copyright Numbers as Registered with the U.S. Patent Trademark Office (USPTO) and/or the U.S. Copyright Office.
LIST OF GENUINE LICENSEES

List of Licensees, Licensee Addresses, Licensee Phone Numbers, and Licensee Homepage Websites
GENUINE AND SUSPECT PRODUCT EXAMPLES

Genuine

Description(s) of physical characteristics of the Genuine product.
For example, a Genuine product of Company V incorporates blue labeling.

Suspect

Description(s) of physical characteristics of the Suspect product.
For example, the Suspect version is incorrectly labeled with improper placement, font, and font size.
GENUINE AND SUSPECT PACKAGING EXAMPLES

Genuine

The packaging of Company X’s product will always include the logo of the company. Instructions are always printed on the side, above the bar code.

Suspect

Suspect packaging does not include Company X’s logo print work, nor does it have instructions of the product, printed on the box, and a bar code.
OTHER GENUINE AND SUSPECT INDICATORS: CATEGORY EXAMPLES

• Bar Codes
• Serial Numbers
• Logos
• Labels
• Product Lines
• Product Names
• Discontinued Products
• Manufacturer’s Suggested Retail Price (MSRP) for each item
• Other
CONTACT INFORMATION

For further information or assistance with Company X products, please contact:

Name
Title
Office Phone Number
Email Address
APPENDIX ii

Detention Communication
From: Friday, March 06, 2015 10:12 AM
Sent: Friday, March 06, 2015 10:12 AM
To: Detention 1476577 Ball Bearings
Subject: SAM_7164.jpg; SAM_7143.jpg; SAM_7144.jpg; SAM_7145.jpg; SAM_7146.jpg; SAM_7148.jpg; SAM_7149.jpg; SAM_7150.jpg; SAM_7156.jpg; SAM_7157.jpg; SAM_7158.jpg; SAM_7160.jpg; SAM_7161.jpg; SAM_7162.jpg; SAM_7163.jpg

U.S. Customs and Border Protection is providing information appearing on, and, subject to bonding requirements, unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels that bear or consist of a mark suspected of being counterfeit of a mark you have recorded with CBP. The information that you are receiving may be protected by the Trade Secrets Act and may only be used to assist CBP with its infringement determination.

We are in need of your assistance and guidance with respect to the following products:

- Bearings

This merchandise was detained by our officers under the suspicion that they believe these items to be counterfeit. I have attached digital images of the products for your review. Would, you please articulate as to the genuine characteristics of the product such as packaging, shipping routes, whether marks and shipment was authorized and any other information that would assist us in our determination. **Would you also be able to furnish us with an MSRP value?** Date of Importation into the United States was February 20, 2015, Port of Entry Miami Airport UPS, Quantity 24 pieces comimgled. Country of origin is China and final destination is Due to time restraints a response is needed by C.O.B. March 13, 2015.

Import Specialist/Haz-Mat Coordinator
Miami Cargo Clearance Center
U.S. Customs and Border Protection
305-869-2851
APPENDIX iii

Sample Seizure Letter
Re: 2015520600073901/cdm

Dear Sir or Madame:

In accordance with 19 CFR 133.21 articles bearing counterfeit trademarks are subject to seizure and forfeiture.

Customs and Border Protection has seized goods which bear marks which constitute counterfeit copies of the following trademark and is notifying you, the trademark holder, of the action:

Description of Trademark:
Customs and Border Protection Recordation Number:
U. S. Patent & Trademark Office Registration Number:

In accordance with 19 CFR 133.21, the following seizure information is provided.

Date of Seizure: 03252015
Description of Merchandise: bearings
Quantity: 24
Name/address of Sender:

Name/Address of Consignee:

Country of Origin: China

In accordance with 19 CFR 133.21, you may obtain a sample of the seized goods upon request provided you meet certain conditions.

Should further information be required, contact the Fines, Penalties and Forfeitures Office at 305-869-2882. Inquiries should reference the case number.

Sincerely,

Robert M. Del Toro
Director, Fines, Penalties and Forfeitures
APPENDIX iv

CBP Informed Compliance Publication
Administrative Enforcement Process
NOTICE:
This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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This publication was designed for electronic distribution via the CBP website (http://www.cbp.gov) and is being distributed in a variety of formats. It was originally set up in Microsoft Word97®. Pagination and margins in downloaded versions may vary depending upon which word processor or printer you use. If you wish to maintain the original settings, you may wish to download the .pdf version, which can then be printed using the freely available Adobe Acrobat Reader®.
PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the International Trade Compliance Division, ORR, is a guideline on the Customs Administrative Enforcement Process. “Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures and Liquidated Damages” is part of a series of informed compliance publications regarding Customs procedures. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Michael T. Schmitz,
Assistant Commissioner
Office of Regulations and Rulings
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I. INTRODUCTION

Enforcement of the Customs, navigation and related laws has been an important function of the U. S. Customs Service, since the foundation of the Federal government under the U.S. Constitution in 1789. The second act of the new Federal government was the Act of July 4, 1789, “laying duties on goods, wares and merchandises (sic) imported into the United States.” The third act was the Act of July 20, 1789 “imposing duties on tonnage” of vessels. These and subsequent tariff acts were to be the major sources of Federal revenue until the income tax arrived in the early twentieth century. In order to administer and enforce these important revenue laws, the fifth act of Congress, the Act of July 31, 1789, established a Customs Service, consisting of collectors, naval officers and surveyors in 59 districts in the eleven states which had ratified the new Constitution (North Carolina and Rhode Island had not yet ratified the Constitution and were treated as foreign countries under the tariff laws).

The Act of July 31, 1789 also established fines and penalties and subjected merchandise to forfeiture for breaches of the various provisions. The authority to make seizures and enforce any fines, penalties or bond provisions was vested in the Customs field personnel, and the collectors were authorized to institute judicial proceedings to perfect any forfeitures and collect any fines or penalties which had accrued. In the early years, all fines, penalties, and forfeitures required judicial enforcement, and there was no provision allowing the granting of equitable relief. However, these problems were partially remedied in the Act of March 3, 1797, when the authority to grant equitable relief from a penalty or forfeiture, by way of remission or mitigation, was vested in the Secretary of the Treasury, after a petition seeking such relief had been filed in court and a judge had reported the facts to the Secretary.

The original procedures were very cumbersome. The collector transmitted all enforcement actions to the United States district attorney (now renamed the U. S. Attorney) who instituted the judicial collection or forfeiture action. A person seeking relief had to admit the violation, or await a court judgment finding a violation, and submit a petition for relief explaining the facts and circumstances that led to the violation. The judge then examined the circumstances and reported the facts to the Secretary of the Treasury, who could mitigate or remit the fine, penalty or forfeiture and order discontinuance of the litigation.

Subsequent legislation, simplified the procedures by allowing petitions for relief to be filed directly with the Secretary, prior to commencement of litigation and by establishing administrative procedures for forfeiture and penalty assessment. Initially, these procedures only applied to cases involving low value forfeitures or small monetary fines or penalties (under $50) but, eventually, these procedures were extended to all cases.
In the early years, the Secretary of the Treasury, personally, exercised the authority to remit or mitigate fines, penalties or forfeitures. Over the years, as the country grew and the Secretary’s responsibilities increased the Secretary’s authority to remit or mitigate penalties and forfeitures was delegated to subordinate officials in the Department and the Customs Service. The present remission and mitigation authority is contained in 19 U.S.C. 1618 and 19 U.S.C. 1623(c) which provide:

19 U.S.C. 1618:

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, before the sale of such vessel, vehicle, aircraft, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition:

Provided, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

19 U.S.C. 1623(c):

The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.
The Secretary has also been granted the authority to compromise claims. This authority is presently contained in 19 U.S.C. 1617, which provides:

Upon a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury.

II. DELEGATION OF AUTHORITY FROM TREASURY OVER FUNCTIONS RELATING TO FINES, PENALTIES, FORFEITURES AND LIQUIDATED DAMAGES

Customs has full authority to assess penalties and liquidated damages claims and to seize merchandise for violations of Customs or other laws enforced by the Customs Service. Except for certain specific instances where the Treasury Department has retained administrative authority to decide petitions and supplemental petitions for relief, Customs has been delegated broad authority to remit, mitigate, cancel, or compromise claims for forfeitures, penalties, and liquidated damages.

Treasury Decisions 00-57 and 00-58, and other orders or directives, set forth the latest delegation of authority to decide petitions and supplemental petitions submitted. Such provisions have been incorporated in Parts 171 and 172 of the Customs Regulations, as follows:

A. ORIGINAL PETITIONS FOR RELIEF

Fines, Penalties, and Forfeitures Officers (FPFO): Generally, assessments of forfeitures, penalties and liquidated damages claims are made by the local FPFOs throughout Customs. There are currently forty-three (43) FPFOs and four (4) National Seizure and Penalties Officers (NSPOs), located at the various Customs field offices.

1. Liquidated damages. The FPFO can decide petitions for relief from all claims for liquidated damages arising from breach of the basic importation bond, for failing to file or late filing of entry summaries, or failing to pay or late payment of estimated duties. The FPFO can decide petitions for relief with regard to any other claim for liquidated damages, for breach of any Customs bond, or for any other reason, when the amount of the claim does not exceed $200,000.

2. 19 U.S.C. 1592, 19 U.S.C. 1593a. The FPFO can decide petitions for relief from all claims for any penalties incurred under the provisions of these sections, when the total assessed amount of those fines, penalties, or forfeitures, does not exceed $50,000.
3. 19 U.S.C. 1436, 1453, 1595a(b) and 1641. The FPFO can decide petitions for relief from all fines, penalties, or forfeitures incurred under the provisions of sections 1436, 1453 and 1641, and any penalties incurred under section 1595a(b), for delivering merchandise from the place of unlading without Customs authorization, or without appropriate examination in violation of the provisions of section 19 U.S.C. 1448 or 19 U.S.C. 1499, respectively, when the amount of the claim does not exceed $200,000.

4. Except as noted above or where the Secretary of the Treasury has retained jurisdiction, the FPFO can decide petitions for relief from any fines, penalties, or forfeitures incurred under any other law administered by Customs, when the total amount of the fines, penalties, and forfeitures does not exceed $100,000.

   Chief, Penalties Branch, International Trade Compliance Division, Office of Regulations and Rulings. The Chief of the Penalties Branch at Customs Headquarters, is delegated authority to decide all initial petitions for relief submitted with regard to cases, which are neither enumerated as remaining under the original jurisdiction of the Secretary of the Treasury, nor have been delegated to the Fines, Penalties, and Forfeitures Officers.

   Assistant Commissioner, Office of Regulations and Rulings. Notwithstanding any other delegation of authority, the Assistant Commissioner, Office of Regulations and Rulings at Customs Headquarters, or his delegate, has authority to remit or mitigate any penalties assessed against super carriers for failure to manifest narcotic drugs pursuant to 19 U.S.C. 1584(a)(2).

   Secretary of the Treasury. The Secretary of the Treasury, or his delegate, retains jurisdiction over original petitions for relief filed with regard to the following cases:

   1. Certain civil monetary penalties. Full jurisdiction over the remission or mitigation of monetary penalties imposed for violation of the provisions of title 31, United States Code, 5321;

   2. Certain monetary instrument seizures. Seizures, subject to forfeiture under the provisions of title 31, United States Code, section 5317, of monetary instruments for violation of the provisions of title 31, United States Code, section 5316, when the value of the monetary instruments exceeds $500,000;

   3. Export control. Seizures of merchandise subject to forfeiture under the provisions of title 22, United States Code, section 401, when the value of the merchandise exceeds $500,000;

   4. Failure to declare merchandise. All fines, penalties, and forfeitures arising from failure to declare merchandise in violation of the provisions of title 19, United States Code, section 1497, when total liability exceeds $250,000; and
5. Conveyance seizures. Seizures of conveyances for violations other than those involving importation or transportation of controlled substances when the value of the conveyance exceeds $500,000.

B. SUPPLEMENTAL PETITIONS FOR RELIEF

Decisions of Fines, Penalties, and Forfeitures Officers. Supplemental petitions filed on cases, where the original decision was made by the Fines, Penalties, and Forfeitures Officer will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating additional relief to the petitioner.

If the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to an NSPO assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641, by Customs brokers, where the amount of the penalty assessed exceeds $10,000, will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, for review and decision.

Decisions of the Chief of the Penalties Branch, International Trade Compliance Division, Office of Regulations and Rulings. Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, where the Chief, Penalties Branch, believes that no further relief is warranted, will be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision. For purposes of this document, references to the International Trade Compliance Division, hereinafter referred to as “ITC Division”, includes the Chief of the Penalties Branch and the Director of the International Trade Compliance Division.

Decisions of the Assistant Commissioner, Office of Regulations and Rulings. Supplemental petitions filed on cases where the original decision was made by the Assistant Commissioner, Office of Regulations and Rulings, Customs Headquarters, or his delegate, will be retained by the Assistant Commissioner, Office of Regulations and Rulings, for review and decision, and will not be delegated. Furthermore, any authority granted to any Headquarters official is also vested in the Assistant Commissioner, or his designee.

Decisions of Treasury Department. Supplemental petitions filed on cases where the original decision was made in the Treasury Department will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who will forward the supplemental petition to the Department along with a recommendation for disposition by the Department.
C. CONCEPT OF ACCORD AND SATISFACTION

By regulation, the payment of a mitigated amount in compliance with an administrative decision on a petition for relief acts as an accord and satisfaction of the Government claim. See 19 CFR 171.23(b), for unsecured penalties and seizures and 19 CFR 172.22(b), for secured penalties and claims for liquidated damages. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

III. ADMINISTRATIVE PROCESS FOR FORFEITURE CLAIMS IN CASES OF SEIZURE OF PROPERTY FOR VIOLATIONS OF CUSTOMS OR OTHER LAWS

A. What Is A Seizure And When May It Occur?

Property may be “seized” for certain violations of the Customs and related laws. In a seizure, a government official takes physical possession of the merchandise or other article, such as a vehicle, vessel, or aircraft.

Under the Customs laws, there are two types of seizures. The first is where a law provides for “forfeiture” of the property. In these situations, if the forfeiture is perfected through appropriate judicial or administrative means, the seized property will become the property of the Federal government and the owner and any other claimants will lose their interest in the property. In most of these cases, the forfeiture “relates back” to the time of the offense and the United States obtains good title from that date. In the second type of seizure, the property is seized to secure payment of a monetary penalty. If the penalty is not paid, the property will be sold to pay the penalty, with the balance being subject to claims of the owners, lien holders or other lawful claimants.

To initiate a seizure, Customs must have probable cause to believe that there was a violation of a customs law or other law enforced by Customs with respect to specific property (e.g., undeclared or smuggled property; counterfeit trademark goods). If, pursuant to statutory authority and Customs seizure policy, property is seized, the seizure represents enforcement action against the property (i.e., a claim for forfeiture). Except in the case of seizures to secure payment of a penalty, the property, not the importer, is considered the violator.

Types of seized merchandise and infractions include:

- prohibited merchandise (e.g., controlled substances, pornography, counterfeit goods, etc.);
- restricted merchandise (e.g., restrictions imposed by textile quota agreements, Consumer Product Safety Commission, Foreign Assets Control, Environmental Protection Agency, Food and Drug Administration/USDA, etc.);
- undeclared, unreported or smuggled merchandise (e.g., goods undeclared by passengers entering the U.S., unreported currency over $10,000, etc.); and
• goods which aid or facilitate the illegal importation of merchandise (e.g., conveyances or merchandise used to hide or conceal illegal goods).

Customs may consider various alternatives in lieu of, or prior to, seizure. First, Customs can reject or deny entry. Second, Customs may detain goods. Detention represents a formal Customs procedure, which requires notice to the importer within five (5) days from the decision that a restriction applies. Third, if the goods are not prohibited, they may be entered into a bonded warehouse or a foreign trade zone (FTZ) with subsequent withdrawal once the defect or restriction is corrected. Fourth, Customs may issue a monetary penalty (e.g., 19 U.S.C. 1592 or 1595a(b)) in lieu of seizure if the defect or restriction pertaining to the good is corrected. By policy, prospective seizures of certain property having a domestic value of $100,000, or greater, require advance referral to, and approval by Headquarters.

**B. When May Customs Proceed With A Forfeiture?**

Generally, administrative forfeiture pursuant to 19 U.S.C. 1607 is appropriate if the seized goods are:

• of a forfeiture value of $500,000 or less;
• a conveyance used to smuggle drugs;
• prohibited merchandise; or
• monetary instruments in any amount.

However, the claimant also may obtain judicial forfeiture by filing a cost bond in the penal sum of the lesser of $5,000 or 10% of the forfeiture value of the claimed property, but not less than $250. (See 19 U.S.C. 1608 and 19 CFR 162.47.)

In almost all other cases, judicial forfeiture pursuant to 19 U.S.C. 1610 is appropriate.

In the case of goods or other property subject to administrative forfeiture, a Notice of Seizure is sent to known parties having an interest in the seized property, which advises them of their options. Generally, these parties may:

• choose to do nothing, in which case the government will begin forfeiture proceedings by publishing a notice in a newspaper on the date specified in the notice;
• request that Customs begin forfeiture proceedings sooner than the date specified in the notice;
• file a petition for relief (with a waiver of immediate institution of forfeiture proceedings);
• make an offer in compromise, under 19 U.S.C. 1617, to settle the case; or
• file a claim and cost bond to initiate immediate referral to the U.S. Attorney for the institution of judicial forfeiture.
In the case of goods subject to judicial forfeiture, parties known to have an interest are sent a Notice of Seizure and a Notice of Election of Proceedings (option to petition for administrative relief under 19 U.S.C. 1618, or to request the institution of immediate forfeiture).

In connection with any seizure of property that may be related to a possible criminal prosecution, Customs must report the matter to the appropriate U.S. Attorney. If requested by the U.S. Attorney, the administrative processing of seizures may be delayed to avoid interference with any criminal prosecution. Assuming criminal prosecution is declined, or, if accepted, Customs has received consent of the U.S. Attorney to proceed administratively, the notices discussed above will be issued.

Generally, most claimants of seized property waive their rights to immediate forfeiture and elect to file a petition for administrative relief from the forfeiture. With the exception of certain instances where the Secretary of Treasury specifically has retained jurisdiction, Customs has been delegated broad authority, pursuant to 19 U.S.C. 1618, to remit or mitigate claims for forfeitures (i.e., provide administrative relief) through its petition decisions.

In cases subject to administrative forfeiture, if no petition for relief is filed, or claim and bond given pursuant to 19 U.S.C. 1608, Customs will proceed to forfeit the conveyance or merchandise by publishing a notice for at least three successive weeks in a newspaper circulated at the Customs port and in the judicial district where the property was seized. Alternatively, such notice will be posted in the Customhouse nearest the place of seizure in a conspicuous place that is accessible to the public, with the date of posting noted thereon, and will be kept posted for at least three successive weeks, after which the property is deemed forfeited (unless during that time a claim and cost bond is filed). (See 19 U.S.C. 1609.)

**C. When Will Customs Permit Early Release Of Seized Property?**

Pending a final decision on the section 1618 petition (see discussion below), Customs also entertains requests for early release of the seized property, provided:

- a decision is made that forfeiture is not appropriate;
- the importation is not prohibited (NOTE: early release may be allowed if merchandise is merely restricted and the restriction is remedied);
- the petitioner deposits a sum that approximates the final amount for remission of the forfeiture;
- petitioner agrees to hold the Government harmless and pay administrative (e.g., storage) charges and other costs (e.g., liens) in connection with the seizure; and
- there is no pending criminal investigation or parallel criminal proceeding.

The local FPFO responsible for the seizure makes the early release decision in cases where the forfeiture value of the seized property is less than or equal to
$100,000. OR&R, ITC Division, must approve the decision where the forfeiture value is greater than $100,000.

D. The Civil Assets Forfeiture Reform Act of 2000

On April 25, 2000, the President signed into Law the Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, (hereinafter referred to as “CAFRA”). The new rules relating to civil forfeiture created by CAFRA, constitute an effort to reform civil asset forfeiture laws and are meant to make the procedure more equitable and fair. As enacted, CAFRA prospectively amends a myriad of statutes and implements new seizure and forfeiture statutory provisions, which streamline, both substantively and procedurally, federal seizures and forfeitures occurring on or after August 23, 2000.

Most CAFRA provisions and requirements are not applicable to forfeitures under The Tariff Act of 1930, or any other provision of law contained in title 19, United States Code, or other traditional Customs forfeitures, such as 19 U.S.C. 1497, (failure to declare), §1595a(a) (conveyances facilitating unlawful importations), §1595a(c) (importations contrary to law); the Internal Revenue Code of 1986; the Federal Food, Drug and Cosmetic Act (F.F.D.C.A.), 21 U.S.C. 301, et seq.; the Trading with the Enemy Act, 50 U.S.C. App. 1, et seq.; and the Neutrality Act, 22 U.S.C. 401; (primary forfeiture provision for exports contrary to law). However, seizures under any other statutory provisions including, but not limited to, civil forfeitures for currency/monetary instrument seizures under the Bank Secrecy Act, 31 U.S. C. 5317(c), money laundering violations under the Money Laundering Control Act, 18 U.S.C. 981, and the Contraband Act, 49 U.S.C. 80302, et seq., are subject to CAFRA’s new requirements.

Hence, the bulk of the seizures and forfeitures handled by Customs will continue to be governed by the standard and more traditional rules described in preceding sections A, B, and C of this publication. The CAFRA provisions are meant to work in unison with other existing forfeiture provisions to insure fairness to individuals whose property may be seized and forfeited, while protecting the needs of law enforcement. The sweeping changes galvanized by CAFRA have, in some degree, impacted every agency, which seizes and forfeits property.

1. CAFRA seizure and forfeiture procedure

As a general rule, if the forfeitures are not specifically excluded from the CAFRA provisions, Customs must issue a CAFRA notice of seizure within 60 days of the seizure to any person with an interest in the property, unless:

- The seizure was first made by state or local authorities and is adopted by Customs to complete federal forfeiture. In such instances, the CAFRA notice of seizure must be issued within 90 calendar days after the date of the seizure by the state or law enforcement agency (not within 90 days from referral or adoption).
- The identity or interest of a claimant is not determined until after the seizure, but is determined before forfeiture is complete. In that instance, Customs will have **60 calendar days** from the date that the identity or interest is determined to issue a timely notice.

- The circumstances are such that the Assistant Commissioner of the Office of Investigations extends the time to issue the notice of seizure by 30 calendar days (i.e., from 60 to 90 days from the date of the seizure, based on investigative interests). **Only one 30-day extension** may be obtained administratively. Hence, any subsequent additional extensions of time must be granted by the court.

- A court order is obtained which allows for issuance of the notice of seizure beyond the 60 days (or 90 days with the added administrative extension).

  Generally, if the CAFRA seizure notice is not issued in a timely manner, Customs will return the property to the claimant, unless the property is contraband (i.e., marijuana, cocaine, etc.) or if the claimant is not legally entitled to possess the property (i.e., a convicted felon who may not legally possess a firearm), without prejudice to the right of the Government to commence a forfeiture proceeding at a later time.

  For example, if the same property is subsequently used in a different offense, the government is not precluded from seizing and forfeiting the property based on the new offense. Also, the government may re-seize the property (after release) for purposes of initiating criminal forfeiture for the same underlying offense.

**2. Claim Under CAFRA**

Claims for seized property may be filed no later than the deadline set in any notice of seizure (**and in no case will that be earlier than 35 days after the date of mailing of the notice of seizure**). If such notice of seizure is not received, then the claim may be filed **no later than 30 days after the final publication of the notice of forfeiture of the property**.

CAFRA further abolishes the requirement of posting a cost bond for a claim in a CAFRA seizure, unlike the claim and cost bond in a regular title 19 or export seizure. The claim must include the following requirements:

1. Must be in writing;
2. Must be under oath, subject to penalty of perjury;
3. Must identify the specific property being claimed; and
4. Must state the claimant’s interest in the property.

As previously discussed, if a claimant fails to meet the above criteria in filing the claim, the submission will be treated as a petition for relief under 19 CFR Part 171.
3. Release of Property Pending Resolution of the Case

Pursuant to CAFRA provisions, if Customs has seized property and the continued seizure will result in a substantial hardship to the claimant, he or she may seek immediate release of that seized property pending the conclusion of the forfeiture process. Even if a request for immediate release of the property, due to a substantial hardship has not been made, early release of the property pending final administrative decision (as described in Section III C of this publication and per 19 CFR Part 171) may still be accomplished.

However, this does not apply to contraband, currency, and other monetary instruments or electronic funds, unless they constitute the assets of a legitimate business that has been seized. It also does not 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 (i.e., a vessel with secret compartments) or is property that is likely to be used in the commission of criminal acts.

If a claim (as opposed to a petition) has been filed by a claimant to a seized property and such property is of the kind and character that could be subject of a hardship petition, a notice must be issued to the claimant advising him or her of the right to file a hardship petition. The distinctions between a petition and a claim will be further discussed in this document.

The decision to grant or deny the request for immediate release lies within the sole discretion of the FP&F Officer. In this regard, a request for release that is not decided within 15 calendar days of the date of the request will be deemed denied. The party seeking the release can then go to court and seek judicial redress.

E. What Are The Steps To The Petition Process For Remission Of A Forfeiture?

After receiving the Notice of Seizure, a person having an interest in the seized property may file a petition for relief with the local FPFO. There is no requirement for any specific format for the petition for relief. In this regard, a letter detailing the underlying facts and circumstances is sufficient. However, Customs may require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. Pursuant to 19 CFR § 171.1, the petition must set forth the following:

1. A description of the property involved (if a seizure);
2. The date and place of the violation or seizure;
3. The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and
4. If a seizure case, proof of a petitionable interest in the seized property.
The petition for remission or mitigation must be signed by the petitioner, his/her attorney, or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a responsible employee representative of such corporation.

In non-commercial violations, a non-English speaking petitioner (or a petitioner who has a disability, which may impede the filing of a petition) may assign a representative (i.e., a family member) to file a petition on his or her behalf. Proof of such representation may be required by the deciding Customs officer, prior to entertaining such petition. Additionally, it is noteworthy to indicate that under the new regulations, electronic signatures are also acceptable.

Generally, dispositions of petitions adhere to very specific guidelines for granting or denying relief based upon mitigating factors (e.g., cooperation by the petitioner with the Customs investigation above and beyond that normally expected) or aggravating factors (e.g., prior record of a similar violation by the petitioner). If relief is granted, in lieu of forfeiture the property, Customs collects from the petitioner a monetary amount, generally, based upon specified percentages of the dutiable value of the seized property (e.g., remission upon payment of 30-50 percent of the dutiable value for first time, intentional importation contrary to law). Normally, dutiable value (the value upon which Customs assesses duties) is less than the forfeiture (domestic) value of the seized goods.

The petition period normally is limited to thirty (30) days, unless the FPFO extends the period. As previously discussed, subsequent to the issuance of an administrative decision on the petition for relief, petitioner may file a supplemental petition seeking further review of the petition. In cases where the violator does not file a petition, the case may be referred to the U.S. Attorney for judicial forfeiture, or processed administratively, for summary forfeiture disposition.

A claimant to seized property being processed under CAFRA may file a petition for relief under the Customs regulations, if he or she elects to file a petition (rather than file a claim) and so indicates on the election of proceedings form.

Additionally, with regard to jurisdictional amounts and for purposes of deciding a petition for relief under CAFRA, the same structure of delegation of authority discussed in section II of this document applies. Likewise, all property, which shall be judicially forfeited because of its value, would still have to be judicially forfeited, whether a CAFRA case or not.
F. What Are Customs Dispositions For Remission Of A Forfeiture And What Action May Customs Take If A Petitioner Does Not Comply With Such Relief?

Customs remits may forfeitures (i.e., returns the property) upon payment of a monetary amount and costs associated with the seizure (e.g., storage) as well as upon execution of a Hold Harmless Agreement by the petitioner. In many cases, including the introduction (or facilitation of the introduction) of merchandise contrary to law under 19 U.S.C. 1595a(c), Customs will release the seized property upon payment of an amount within the following ranges:

- First offense with mitigating, but no aggravating factors: payment of 10-30% of the dutiable value of the seized goods.
- First offense with aggravating factors or second offense with no aggravating factors: payment of 30-50% of the dutiable value of the seized goods.
- Second offense with aggravating factors or third/subsequent offense: payment of 50-80% of the dutiable value of the seized goods.

For the remission of goods subject to forfeiture in cases of export control under 22 U.S.C. 401, if the exporter corrects the violation Customs, generally, will release the seized property, upon payment of an amount within the following ranges for violations occurring within a three (3) year period:

- **Substantive Violations** (i.e., failure to obtain a State or Commerce Department license)
  - First offense: $2,500 or the invoiced value of the violative goods, whichever is lower.
  - Second offense: $3,500 or the invoiced value of the violative goods, whichever is lower.
  - Third offense: $5,000 or the invoiced value of the violative goods, whichever is lower.
  - Fourth offense: $7,000 - $10,000 (depending on mitigating or aggravating factors), or the invoiced value of the goods, whichever is lower.
- **Technical Violations** (i.e., failure to validate, present, or reference a State or Commerce Department license)
  - First offense: $500 or invoiced value of violative goods, whichever is lower.
Second offense: $750 or invoiced value of violative goods, whichever is lower.

Third offense: $1,500 or invoiced value of violative goods, whichever is lower.

Fourth and subsequent offenses: $2,000-$4,000 (depending on mitigating or aggravating factors), or the invoiced value of the violative goods, whichever is lower.

For the remission of liability in cases of the failure to declare merchandise under 19 U.S.C. 1497, Customs utilizes the guidelines set forth in 19 CFR Part 171, App A. Although these guidelines should be consulted for a full explanation of the mitigating and aggravating factors, as well as the class of violation, Customs, generally, will remit the liability upon payment of an amount within the following ranges:

- **Violations Involving Dutiable Articles:**

  If first offense, where there is knowledge of the declaration requirements, the undeclared articles are discovered by the Customs officers, and there are no mitigating or aggravating factors: Three times duty (but not less than $50), or the domestic value, whichever is lower.

  If mitigating factors are present: From one and one-half to three times the duty, or the domestic value, whichever is lower.

  If extraordinary mitigating factors are present: Customs may reduce the mitigated amount to one times the duty.

  If aggravating factors are present: From three to six times the duty (but not less than $100), or the domestic value, whichever is lower.

  If extraordinary aggravating factors are present: From six to eight times the duty, (but not less than $250), or the domestic value, whichever is lower, in cases where the offense is a second or subsequent violation. Denial of relief or mitigation to no less than eight times the duty, or the domestic value, whichever is lower, in cases where the offense is a second or subsequent violation and there are aggravating factors.

- **Violations Involving Absolutely Free (duty free HTSUS provisions) or Conditionally Free (Generalized System of Preferences [GSP], Chapter 98, HTSUS, etc.) Articles:**

  If first offense, involving conditionally free articles: One time the duty that would have been due if the articles had not been entitled to the benefit.
If first offense, involving absolutely duty-free articles: From one to five percent of the domestic value, but not less than $50 (or the domestic value, whichever, is less) nor more than $1,000.

If mitigating factors are present: Customs may reduce the mitigated amount to a lower figure.

If aggravating factors are present: For conditionally free articles, from one to two times the duty (but not less than $100), or the domestic value, whichever is lower, and for absolutely free articles, from five to ten percent of the domestic value (but not less than $100).

For the remission of goods subject to forfeiture in cases of monetary instrument or currency reporting violations under 31 U.S.C. 5316 and 5317, Customs, generally, will release the monetary instrument or currency transported (where the reporting violation has no connection to illegal activity) upon payment of the following standard amounts. These standard amounts are based on the amount being transported:

- Transport of $15,000 or less: $500 standard amount;
- Transport of $15,001 - $25,000: $1,000 standard amount;
- Transport of $25,001 - $40,000: $2,500 standard amount;
- Transport of $40,001 - $70,000: $5,000 standard amount;
- Transport of $70,001 - $120,000: $10,000 standard amount;
- Transport of $120,001 - $200,000: $20,000 standard amount;
- Transport of $200,001 - $500,000: $30,000 standard amount;
- Transport of $500,001 - $1,000,000: $50,000 standard amount;
- Transport of more than $1,000,000: decided in accordance with Customs Treasury delegations and policy.

[Note that Treasury approval is required in cases where the forfeiture value is greater than $500,000.]

With regard to the disposition of any forfeiture case, mitigating factors, when applicable, may decrease the penalty amount the petitioner must pay for remission of the forfeiture by up to ten (10) percent of the standard amount for each factor present, but by no more than thirty (30) percent of the standard amount. Extraordinary mitigating
factors may warrant remission of all, or a significant portion of the standard amount. Generally, mitigating factors include:

- inexperience;
- cooperation with, or voluntary disclosure of a violation to, Customs officers;
- contributory Customs negligence; and
- impaired communication with violator (because of language barrier, mental condition, or physical ailment).

In any cases where either Customs denies the petitioner any relief or the petitioner fails to comply with the relief granted by Customs, the case either will be referred to the U.S. Attorney for judicial forfeiture or will be processed administratively by Customs for administrative forfeiture disposition.

Claims for forfeiture of monetary instruments under 31 U.S.C. §§ 5316 and 5317 are subject to the provisions of CAFRA. As is the condition for all remissions, the claimant for remission of such forfeiture must pay costs of seizure and storage (absent extraordinary circumstances), as well as paying any remission amount, execute a hold harmless agreement, and comply with any terms and conditions that are deemed appropriate.

CAFRA provisions further allow for the granting of attorneys fees, interest and costs in any case where a claimant “substantially prevails” in any civil proceeding relating to forfeited property. In no case will a remission of the forfeiture be considered “substantially prevailing” for purposes of paying attorneys fees, interests or costs. Hence, these fees, interests, and costs, will only be granted by a court to a claimant who has substantially prevailed in a civil judicial proceeding.

With regard to excessive fines and proportionality review, CAFRA’s amendments of 18 U.S.C. § 983(g) provide that a claimant may petition the court to determine whether the forfeiture was constitutionally excessive. In this regard, CAFRA has codified the standard set forth in U.S. v. Bajakajian, 524 U.S. 324 (1998).

**G. Statute of Limitations For Civil Forfeiture Actions**

CAFRA modifies 19 U.S.C. § 1621 and provides the time limit in which the Government can bring an action for forfeiture. This amendment applies to all Customs seizures for forfeiture and provides the same five (5) year limitation, from the discovery of the violation, but adds a provision requiring the commencement of the proceeding within the above-cited five (5) year period, or within two (2) years of discovery of the property’s involvement in the crime, whichever is later.

[See next page for a chart of the seizure process]
Administrative Process:
Seizures

Introduction of Merchandise

Possible Violation of Law Warranting Seizure

If Domestic Value >100,000 and Seizure Covered by Directive 4410-15, Refer to HQ

Decision: Seizure Inappropriate
Release Goods

Consider Early Release Upon Payment of Deposit

Send Seizure Notice & Election of Proceedings Form

If Domestic Value <100,000 or not Covered by Directive 4410-15, Refer to Appropriate Local Management

Decision: Seizure Appropriate

Inform U.S. Atty
Decline Prosecution
Prosecute

Seize
Consider Seizure Alternatives

No Petition
Summary Forfeiture Disposition (Administrative)
Refer to U.S. Atty for Judicial Forfeiture

Petition to Customs
Refer to EET, If Appropriate
Possible OI Report of Investigation
FPF Review

Liability >100,000
Send to ORR, ITC Division
Decision Issued to FPF
Notify Petitioner

Liability <100,000
Local Field Management Decision

Relief Granted
Petitioner Complies
Supplemental Petition

Relief Denied
Petitioner fails to Comply-No Supplemental
Refer to U.S. Atty for Judicial Forfeiture
Summary Forfeiture Disposition (Administrative)
IV. ADMINISTRATIVE PROCESS FOR MONETARY PENALTIES ASSESSED AGAINST INDIVIDUALS INVOLVED IN A VIOLATION

A. When Is A Penalty Assessed Against An Individual?

When a violation of Customs laws or laws enforced by Customs is discovered, in addition to, or in lieu of, seizure and/or referral for criminal prosecution, Customs usually has the option of assessing a personal penalty against the alleged violator(s). In some cases, commercial violations are first reviewed by a multidiscipline Enforce Evaluation Team (EET) to determine whether a penalty should be issued or whether another action would be more appropriate under the circumstances. The EET may recommend actions ranging from compliance improvement plans to referral for criminal prosecution.

B. What Are The Steps To The Penalty Process?

1. Customs Issues Prepenalty And/Or Penalty Notices

While the penalty process generally begins with the FPFO’s issuance of the Penalty Notice (CF 5955A) to the alleged violator, some statutes require the issuance of a prepenalty notice and opportunity for response before Customs makes its penalty claim (i.e., issues a penalty notice).

A prepenalty notice is a written notice that Customs is “contemplating” issuance of a penalty against a named person and/or entity. At this preliminary stage, the named person and/or entity is given information regarding the alleged violation and provided an opportunity to present reasons why Customs either should not issue the penalty claim at all, or should not issue the penalty claim in the contemplated amount.

Penalties requiring the issuance of a prepenalty notice before issuance of a penalty notice include:

- commercial fraud and negligence (19 U.S.C. 1592);
- drawback penalties (19 U.S.C. 1593a);
- customs broker penalties (19 U.S.C. 1641);
- recordkeeping penalties (19 U.S.C. 1509);
- falsity or lack of manifest (19 U.S.C. 1584(a)(1)); and

Generally, the alleged violator has thirty (30) days from the date of mailing of the prepenalty notice for response.

Penalties not requiring the issuance of a prepenalty notice include, but are not limited to:
Customs Administrative Enforcement Process
February 2004

- penalties for aiding unlawful importation (19 U.S.C. 1595a(b));
- drug related manifest penalties (19 U.S.C. 1584(a)(2));
- counterfeit trademark penalties (19 U.S.C. 1526(f));
- conveyance arrival, reporting, entry, and clearance violations (19 U.S.C. 1436); and

2. Alleged Violator Responds And/Or Petitions

Upon receipt of the alleged violator's prepenalty response, the FPFO either will proceed to issue a penalty claim if the violation is substantiated or issue a written statement that Customs has chosen not to assess a penalty.

If the FPFO assesses a penalty, generally, the alleged violator has sixty (60) days from the date of mailing the penalty notice to file a petition for relief. If the alleged violator provides no response (petition), Customs may refer the case for collection action.

Most penalties are assessed at the statutory maximums applicable to the alleged violation (e.g., most section 1592 fraud penalties are assessed at the maximum domestic value amount). However, in most cases, petitions for mitigation are filed under 19 U.S.C. 1618. Petitioners may be permitted to make oral presentations to Customs officials, depending on the law and regulations involved.

For instance, when the penalty incurred is for a violation of 19 U.S.C. 1592 or 1593a, petitioner has a legal right to make an oral presentation. In all other violations, the granting of an opportunity for oral presentation lies within the discretion of the official of the Customs Service or Treasury Department, authorized to act on the petition or supplemental petition.

Customs decides to grant or deny mitigation of penalties in accordance with established guidelines for the particular penalty statute involved. For instance, guidelines for section 1592 and section 1641 penalties are set forth as Appendices B and C, respectively, to Part 171 of the Customs Regulations.

The alleged violator may file a supplemental petition for further relief from the penalty. Generally, the office unit that decided the initial petition may grant further relief. However, if the request for further relief is recommended to be denied, a higher-level office unit must decide the matter.

3. Customs May Refer Claims For Collection Action And/Or Judicial Enforcement

If the assessed or mitigated penalty is not paid within:

- the time stated in the penalty notice (e.g., cases where a petition for relief is not filed in response to Customs penalty claim); or
• the time stated in the decision on the petition (or supplemental petition),

the penalty claim will be referred for collection action.

4. Customs Also May Compromise Or “Settle” Claims

In addition to the authority to remit and mitigate penalties and forfeitures pursuant to 19 U.S.C. 1618, the authority delegated by the Secretary of the Treasury to the Commissioner of Customs includes the authority to compromise (settle) penalty claims pursuant to 19 U.S.C. 1617, upon the recommendation of the General Counsel of the Treasury Department or his designee (usually the Office of Chief Counsel of Customs). The only relevant factors in deciding whether to compromise a claim are:

• the risks in litigation for the government’s recovery of the assessed penalty amount; and
• the financial inability of the alleged violator to pay the assessed or mitigated penalty.

The alleged violator may make an offer in compromise at any time during the course of the penalty proceeding.

Claims under section 1592(d) for the loss of duties lawfully owed Customs (i.e., duty demands) as a result of a commercial fraud, gross negligence or negligence violations, may be compromised only by the Secretary of the Treasury, or his designee, upon approval by the Office of General Counsel, or his designee. The Secretary of the Treasury has not delegated his authority to compromise duty claims to Customs.

C. What Are The Specific Elements Comprising the Various Monetary Penalties?


19 U.S.C. 1592 provides for penalties against any person who:

• by fraud (i.e., voluntarily and intentionally), gross negligence (i.e., with actual knowledge or wanton disregard), or negligence (i.e., fails to exercise reasonable care),
• enters or introduces (or attempts to enter or introduce) any merchandise into the commerce of the U.S.,
• by means of any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material (i.e., the falsity has the potential to alter the classification, appraisement, or admissibility of merchandise, or the liability for duty or if it tends to conceal an unfair trade practice under the antidumping, countervailing duty or similar statute, or an unfair act involving patent or copyright infringement).
Section 1592 provides for the assessment of penalties against the alleged violator at a maximum of:

- the domestic value of the merchandise in the case of fraud violations;
- four times the loss of lawful duties, taxes, and fees deprived the government, or the domestic value or, if the violation did not affect the assessment of duties 40% of the dutiable value if the violation did not affect the assessment of duties (but in no case to exceed the domestic value of the merchandise), in the case of gross negligence violations; and
- two times the loss of lawful duties, taxes, and fees deprived the government or 20% of the dutiable value if the violation did not affect the assessment of duties (but in no case to exceed the domestic value of the merchandise), in the case of negligence violations.

Pursuant to 19 U.S.C. 1592(d), Customs also may issue duty demand claims, in addition to penalties, for violations of section 19 U.S.C. 1592(a), which have resulted in the loss of lawful duties. The FPFO issues notice to any person liable for payment of the actual duties (e.g., the violator, the importer or, if unable to pay, the surety).

Petitions for relief from section 1592 penalties may be filed pursuant to 19 U.S.C. 1618. All petitions are filed with the FPFO of the port at which the penalty is assessed. The FPFO and NSPO decide petitions and supplemental petitions in cases where the penalty claim is less than or equal to $50,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty claim is greater than $50,000.

Customs considers various mitigating and aggravating factors throughout the petition stage.

- **Mitigating factors** justifying further relief include: contributory Customs error, cooperation with the investigation, immediate remedial action, inexperience in importing, and prior good record.
- **Extraordinary mitigating factors** justifying further relief include: inability to obtain jurisdiction or to enforce a judgment against the violator, inability to pay the mitigated penalty, extraordinary expenses for the alleged violator, and Customs knowledge of the violation.
- **Aggravating factors** include: obstructing the investigation, withholding evidence, providing misleading information concerning the violation, textile transshipment, and prior substantive 1592 violations with a final administrative finding of culpability.

Generally, Customs may mitigate section 1592 penalties to amounts within the following ranges:
• Fraud – from a minimum of 5 times to a maximum of 8 times the total duty loss, or 50% to 80% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise;
• Gross negligence – from a minimum of 2.5 times to a maximum of 4 times the total duty loss, or 25% to 40% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise; or
• Negligence – from a minimum of 0.5 times to a maximum of 2 times the total duty loss or 5% to 20% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise.

A person who discloses the circumstances of the section 1592 violation, before or without knowledge of the commencement of a formal investigation (i.e., makes a prior disclosure) can receive substantially reduced penalties.

• In the case of negligence or gross negligence violations, if there is an actual revenue loss (i.e., loss of duties, taxes or fees after Customs already has liquidated the entries as final), the reduced penalty is an amount equal to interest from the date of liquidation until the duties are paid.
• In the case of negligence or gross negligence violations, if there is a potential revenue loss (i.e., loss of duties, taxes or fees prior to Customs liquidation of the entries as final), the penalty is remitted in full.
• In the case of fraud violations, the reduced penalty always equals one times the actual and potential revenue loss (or 10% of the dutiable value, if the violation did not affect the assessment of duties).


By delegation, the OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a section 1592 penalty action, submitted pursuant to section 1617. The alleged violator may make an offer in compromise at any time, regardless as to whether Customs already has issued a prepenalty or penalty notice.

Generally, Customs will not seize merchandise subject to a section 1592 penalty action. However, Customs will seize such merchandise in cases where it possesses a reasonable belief that:

• the alleged violator is insolvent;
• the alleged violator is beyond the jurisdiction of the U.S.;
• the seizure is essential to protect the revenue; or
• the seizure is essential to prevent the introduction of prohibited or restricted merchandise.
2. Drawback Penalties (19 U.S.C. 1593a)

Section 1593a provides for penalties against any person who:

- by fraud or negligence,
- seeks, induces, affects, or attempts to seek, induce, or affect the payment or credit to that person or others of any drawback claim
- by means of any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material.

Drawback, in pertinent part, is the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax (in connection with the importation of merchandise) imposed under Federal law. A drawback claim represents the drawback entry and related documents required by regulation in order to request drawback payment. (For further information concerning drawback, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Drawback*, dated March, 1998.)

Customs also may issue claims for duties, in addition to penalties, pursuant to 19 U.S.C. 1593a(d), for violations of section 1593a(a), which have resulted in a loss of revenue to the government. The notice of the duty claim may be issued to any person liable for payment of actual duties (e.g., the importer or, if unable to pay, the surety).

Generally, Customs may mitigate section 1593a penalties to amounts within the following ranges:

- Fraud - three (3) times to one and one-half (1 1/2) times the actual or potential loss of revenue;
- Repeat negligence violation - fifty percent (50%) to twenty five percent (25%) the actual or potential loss of revenue; and
- First negligence violation - twenty percent (20%) to ten percent (10%) the loss of revenue.

The FPFO decides petitions in cases where the assessed penalty is less than or equal to $50,000 and OR&R, ITC Division, decides those petitions in cases where the assessed penalty is greater than $50,000. The NSPO decides those supplemental petitions in cases where the assessed penalty is less than or equal to $50,000, and OR&R, ITC Division, decides those supplemental petitions in cases where the assessed penalty is greater than $50,000.

Similar to the recordkeeping compliance program provided under section 1509 (discussed below), in the absence of fraud or repetitive negligent violations, participants of the drawback compliance program may receive a written notice of the violation in lieu of their first monetary penalty.
Customs considers the same mitigating and aggravating factors previously set forth for section 1592 penalties. Additionally, prior voluntary disclosures of the circumstances of the section 1593a violation also may result in substantially reduced penalties.

As stated earlier with regard to 19 U.S.C. 1592 penalties, the OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a drawback penalty action, pursuant to section 1617.

Customs promulgated its final drawback penalty regulations in 65 Fed. Reg., 3803, Jan. 25, 2000. Consistent with these regulations, Customs can assess drawback penalties against anyone who filed a false drawback claim on or after November 25, 1998 (i.e., the date of implementation of the automated drawback selectivity program).


Generally, Customs will assess penalties against customs brokers (i.e., those licensed to transact customs business on behalf of others, pursuant to 19 CFR Part 111) up to a maximum of $30,000 for the violations included in any one penalty notice. Customs may issue penalties or may revoke or suspend a broker’s license or permit for violations of the broker’s statutory or regulatory responsibility. (See our publication, What Every Member of the Trade Community Should Know About: Customs Brokers (March, 2000) for more detail. These include:

- failure of a broker to exercise responsible supervision and control over customs business. See 19 U.S.C. 1641(b)(4);
- cases in which a customs broker:
  - made a material false or misleading statement or omitted a material fact in connection with any license or permit application or report filed with Customs;
  - at any time after the filing of a license or permit application, was convicted of certain enumerated felonies or misdemeanors;
  - has violated any provision of any laws enforced by Customs, or the rules or regulations issued under any such provision;
  - has counseled, induced, knowingly aided or abetted another person’s violations of any law enforced by Customs, or the rules or regulations issued under any such provision;
  - without written approval of the Secretary of the Treasury, has knowingly employed, or continues to employ, any person convicted of a felony; and
  - has, in the course of Customs business, with intent to defraud, willfully and knowingly deceived, misled, or threatened any client or prospective client. (See 19 U.S.C. 1641(d)(1) and (d)(2)(A)).

In addition, pursuant to 19 U.S.C. 1641(b)(6), Customs may issue penalties (not to exceed $10,000 for each transaction) against any person who intentionally transacts
customs business, other than solely on its own behalf, without holding a valid customs broker’s license.

In cases where the broker allegedly has violated any of the laws, rules or regulations enforced by Customs (i.e., 19 U.S.C. 1641(d)(1)(C)), in a fraudulent manner, it is appropriate for Customs to impose additional penalties under 19 U.S.C. 1592. It is Customs policy, in cases of negligence or gross negligence, to impose additional penalties under 19 U.S.C. 1592, only where the broker shared in the financial benefits to an extent over and above the prevailing brokerage fees.

The FPFO decides all initial petitions in broker penalty cases. The NSPO decides supplemental petitions in cases where the penalty claim is less than or equal to $10,000. OR&R, ITC Division, decides supplemental petitions in cases where the penalty claim is greater than $10,000.

OR&R, ITC Division, and the Office of Chief Counsel both must approve all offers in compromise of a broker penalty action, submitted pursuant to section 1617.


Certain persons who fail to produce, upon demand, an entry record enumerated in the Customs Regulations pursuant to 19 U.S.C. 1509(a)(1)(A), commonly known as the “(a)(1)(A) list,” may be subject to recordkeeping penalties. The (a)(1)(A) list refers to records required by law or regulation for the entry of merchandise (whether or not Customs required their presentation at the time of entry). See 19 CFR Part 163 App.

The parties potentially liable for recordkeeping penalties include, but are not limited to,

- owners,
- importers,
- consignees,
- importers of record or entry filers.

Customs may assess a recordkeeping penalty against those parties, or their agents (including customs brokers), when they: import merchandise into the U.S., file drawback claims, transport or store merchandise carried or held under bond, or knowingly cause the importation or transportation or storage of merchandise carried or held under bond into or from the U.S. Customs also may assess recordkeeping penalties against those parties who engage in activities which require the filing of a declaration and/or entry, as well as against those parties who complete and sign a NAFTA Certificate of Origin.

Customs imposes recordkeeping penalties based on one of two possible levels of culpability. These two levels of culpability are willful failure and negligence. If a party’s failure to comply with Customs demand for an entry record resulted from a willful
failure to produce that record, Customs may penalize that party for each release (i.e., per C.F. 3461) of merchandise in an amount not to exceed $100,000, or an amount equal to seventy five percent (75%) of the appraised value of the merchandise, whichever is less. If a party’s failure to comply with Customs demand for an entry record is due to negligence, Customs may penalize that party for each release of merchandise in an amount not to exceed $10,000 or an amount equal to forty percent (40%) of the appraised value of the merchandise, whichever is less.

A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements. The recordkeeping requirements are established either under the recordkeeping compliance program or an alternative program negotiated to suit the needs of the recordkeeper and Customs. Participants of the recordkeeping compliance program, in the absence of willful or repetitive negligent violations, may receive from Customs a written notice of a violation in lieu of a monetary penalty. However, repetitive negligent violations by the recordkeeper may result in Customs issuance of penalties and removal of certification under the program until corrective action is taken to Customs satisfaction.

Customs commenced the imposition of section 1509 recordkeeping penalties, for the failure to provide entry records lawfully demanded from July 15, 1996, the date the “(a)(1)(A) list” was published in the Federal Register. Prior to the FPFO’s issuance of a recordkeeping prepenalty notice, it is necessary for the local Customs office contemplating the issuance of the prepenalty first to obtain review and approval from OR&R, ITC Division. This review procedure has been in effect from the time Customs could begin to issue recordkeeping penalties (i.e., July 15, 1996) and will remain in effect until one year from the implementation date of the final recordkeeping guidelines (until November 8, 2001). After this time, OR&R, ITC Division, may review any recordkeeping prepenalty notice, in its own discretion, if warranted by the circumstances.

In deciding petitions for relief from a recordkeeping penalty, Customs considers mitigating and aggravating factors similar to those set forth above for section 1592 penalties. (For further information concerning recordkeeping, consult Customs Informed Compliance Publication, What Every Member of the Trade Community Should Know About: Records and Recordkeeping Requirements, dated June, 1998.)

5. Falsity or Lack of Manifest (19 U.S.C. 1584(a)(1))

Any vessel master or person in charge of any vehicle bound to the U.S. who fails to produce a manifest to the demanding Customs officer is liable for a penalty of $1,000. Additionally, in cases where Customs finds that the vessel master or responsible party has failed to manifest any merchandise on board the vessel, aircraft, or vehicle (an overage), the vessel master or responsible party is liable for a penalty equal to the lesser of $10,000 or the domestic value of the merchandise. Where merchandise is manifested, but not found, a penalty of $1,000, may be assessed for the shortage.
An importing carrier, bonded carrier, container freight station operator, bonded cartman, bonded warehouse or foreign trade zone proprietor, importer or broker that detects any manifest discrepancy must report the discrepancy. Such parties should file a manifest discrepancy report, or MDR, to report and correct discrepancies in manifested quantities or data elements.

Only section 1584(a)(1) penalties over $1,000 require the FPFO's issuance of a prepenalty notice. Section 1584 penalties may be secured by the international carrier's bond (i.e., a contract between a carrier or his agent, and a surety, with Customs as the beneficiary, under which Customs can collect a penalty or liquidated damages). Because section 1584(a)(1) penalties may only be assessed up to $10,000, the FPFO has been delegated the authority to decide all petitions and the NSPO has the delegated authority to decide all supplemental petitions.


If any unmanifested merchandise (as provided for in 19 U.S.C. 1584(a)(1)), consists of certain controlled substances (illegal drugs such as marijuana, cocaine or smoking opium), Customs assesses penalties against the vessel master, person in charge of the vehicle, owner of the vessel or vehicle, or any other responsible party based on the quantity. For example, $500 per ounce of marijuana or $1,000 per ounce of heroin or cocaine. Section 1584 penalties are secured by the international carrier's bond.

The FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the penalty liability is less than or equal to $100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than $100,000. However, in all such cases involving Super Carrier Initiative Program signatories, regardless of the penalty liability, the Assistant Commissioner for OR&R decides the petitions.

The two main elements of a section 1584(a)(2) Carrier Initiative claim are: a) knowledge and b) highest degree of care and diligence. If Customs finds the carrier knew drugs were placed on the shipment or conveyance (i.e., knowledge), there will be no mitigation of penalty assessed. If there is no such knowledge and the carrier exercised the highest degree of care and diligence, Customs will provide full mitigation of the penalty. In all other cases, the amount of relief depends upon the level of culpability.

Generally, OR&R will mitigate penalties for unmanifested drugs as follows:

- In cases of negligence, penalties will be mitigated from ten (10) to twenty-five (25) percent of the original penalty assessment; and
- In cases of gross negligence, penalties will be mitigated from twenty-five (25) to fifty (50) percent of the original penalty assessment.

The owners or masters of vessels documented under U.S. laws to engage in foreign or coasting trade are liable for entry and payment of a 50 percent ad valorem duty on the costs incurred in any foreign country for:

- equipment purchased for the vessel;
- repair parts or materials to be used in connection with the vessel; and
- repair expenses.

If the vessel owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties, or makes any false statement regarding such purchases or repairs without having reasonable cause to believe the truth of such statements or aids or procures the making of any false statement as to any material matter without reasonable cause to believe the truth of such statement, Customs may assess a penalty up to the value of the vessel or seize and forfeit the vessel.

Under current guidelines, the FPFO issues all pre-penalty notices concerning equipment and vessel repair violations at the lower of four (4) times the loss of revenue (duty) or the value of the vessel. If the violation only consists of the late filing of documents, the FPFO will issue the pre-penalty notice at two (2) times the loss of revenue. Section 1466 penalties are secured by international carrier's bond.

The FPFO and NSPO decide petitions and supplemental petitions, in cases where the penalty amount is less than or equal to $100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty amount is greater than $100,000.

8. Penalties for Aiding Unlawful Importation (19 U.S.C. 1595a(b))

Under 19 U.S.C. 1595a(b), Customs may assess penalties equal to the domestic value of any articles introduced or attempted to be introduced into the U.S. contrary to law. Any person who directs, assists financially or otherwise, or is any way concerned in any unlawful activity provided for in 19 U.S.C. 1595a(a), is liable to a penalty equal to the domestic value of the article or articles introduced or attempted to have been introduced. Section 1595a(a) concerns the importation, bringing in, unloading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the U.S. contrary to law. Introduction of prohibited merchandise and restricted merchandise, are common examples of the cases where Customs may issue a section 1595a(b) penalty. Some specific violations for which Customs issues section 1595a(b) penalties include: 19 U.S.C. 1304 (improper country of origin marking), 19 U.S.C. 1448 (removal from Customs custody without authorization), 19 U.S.C. 1499 (delivery of merchandise without Customs examination) and 21 U.S.C. 331 (introduction of adulterated or misbranded food).
Generally, the FPFO decides petitions, and the NSPO decides supplemental petitions, in cases where the domestic value of the merchandise is less than or equal to $100,000. OR&R, ITC Division, decides petitions and supplemental petitions in those cases where the domestic value is greater than $100,000. The mitigation guidelines for remission of section 1595a(c) seizures apply to mitigation of 1595a(b) penalties. Except that for 1595a(b) penalties, assessed for delivery of merchandise from the place of unloading without Customs authorization in violation of the provisions of 19 U.S.C. 1448, or delivered without Customs examination in violation of 19 U.S.C. 1499, the mitigation guidelines appear in T.D. 99-29.


Section 1526(f) provides for fines against anyone who directs or assists (financially or otherwise) the importation of merchandise, for sale or public distribution, that is seized pursuant to 19 U.S.C. 1526(e). Section 1526(e) provides for the seizure of merchandise bearing a counterfeit mark, imported in violation of 15 U.S.C. 1124 and the forfeiture of such merchandise in the absence of written consent of the trademark owner. [A counterfeit trademark is a spurious trademark that is identical to, or substantially indistinguishable from, a registered trademark. 19 CFR 133.21(a).] (For further information concerning counterfeit goods, consult Customs Informed Compliance Publication, What Every Member of the Trade Community Should Know About: Customs Enforcement of Intellectual Property Rights, dated June, 1999.)

Customs will assess section 1526(f) penalties as follows:

- First seizure – penalties up to the value of the genuine merchandise based on the manufacturer's suggested retail price (MSRP).
- Subsequent seizures – penalties up to twice the value of the genuine merchandise based on the MSRP.

The FPFO and the NSPO decide petitions and supplemental petitions, in cases where the fine is less than or equal to $100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the fine is greater than $100,000.

Customs may mitigate the section 1526(f) penalties to amounts within the following ranges:

- First offense with mitigating, but no aggravating factors: 10-30% of the MSRP of the seized goods.
- First offense with aggravating factors or second offense with no aggravating factors: 30-50% of the MSRP of the seized goods.
- Second offense with aggravating factors or third/subsequent offense: 50-80% of the MSRP of the seized goods.

Customs applies the same mitigating and aggravating factors previously set forth concerning the mitigation of forfeitures, under section 1526(e).
10. Arrival, Reporting, Entry, and Clearance Violations (19 U.S.C. 1436)

Any master of a vessel, person in charge of a vehicle, or aircraft pilot who commits any of the following violations is liable for a $5,000 penalty for the first violation and a $10,000 penalty for each subsequent violation for:

- failure to comply with 19 U.S.C. 1431 (i.e., presenting manifests), 19 U.S.C. 1433 (i.e., reporting vessel, vehicle and aircraft arrival), 19 U.S.C. 1434 (i.e., filing vessel entry), or 46 U.S.C. App. 91 (i.e., obtaining vessel clearance);
- presenting or transmitting any forged, altered or false document, information or manifest to Customs, without revealing the facts, under 19 U.S.C. 1431, 19 U.S.C. 1433(d), 19 U.S.C. 1434, or 46 U.S.C. App. 91; or
- failure to make entry or to obtain clearance as required by 19 U.S.C. 1434, 19 U.S.C. 1644 (i.e., civil air navigation laws and vessel entry and clearance regulations), or 46 U.S.C. App. 91.

Additionally, any conveyance used in connection with such violation is subject to seizure and forfeiture. Generally, Customs does not seize a conveyance unless aggravating factors are present or another violation of law is in evidence.

Section 1436 penalties may be secured by international carrier's bond.

The FPFO and NSPO decide petitions and supplemental petitions, in cases where the penalty liability is less than or equal to $200,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than $200,000.


Section 46 U.S.C. App. 883 prohibits foreign flag vessels from transporting merchandise laden at a coastwise port to any other coastwise port (whether directly or via a foreign port). Section 883 provides for seizure and forfeiture of improperly transported merchandise or assessment of a monetary penalty equal to the domestic value of such merchandise. Customs may assess a penalty against the master, owner, or any party responsible for the improper transportation.

Section 883 penalties may be assessed in amounts up to the value of the merchandise moved coastwise in a nonqualified vessel or the cost of the transportation, whichever is greater. If the violation arose because of an emergency to the vessel that required, for reasons of safety or other humanitarian cause, that coastwise transportation occur, the penalty should not exceed $100,000. If the violation occurred for commercial expediency, Customs does not limit the penalty amount. Section 883 penalties generally are secured by international carrier’s bond.
The FPFO and NSPO decide petitions and supplemental petitions, in cases where the penalty liability is less than or equal to $100,000. OR&R, ITC Division, decides those petitions and supplemental petitions in cases where the penalty liability is greater than $100,000.

If the petition for relief establishes that the violation occurred as a direct result of an arrival of the transporting vessel in distress, such that the vessel was in peril or due to an act of God (e.g., hurricane) full mitigation is appropriate. If the vessel was not in distress, but the transportation occurred because of some other humanitarian reason (e.g., disembarkation of crewman with life threatening injuries), the claim may be mitigated in full. If the violation resulted because of commercial expediency, Customs may mitigate the penalty to an amount between 35 and 50 percent of that assessed.

[See next page for a chart of the penalties process]
Administrative Process:

Penalties

Entry or Introduction of Merchandise

Possible Violation Warranting Penalty

Refer to EET, if Appropriate

Refer to OI; Possible Report of Investigation

FPF Review

Inform U.S. Atty.

Decline Prosecution

Prosecute

If Required, Pre-Penalty Notice & Opportunity for Meeting

Penalty Notice

Customs Decision: Proceed with penalty

Response to Pre-Penalty

No Response

Customs Decision: No Further Action

Petition Received

Mitigation Decision Issued

No Response

Supp. Petition Received

Mitigation Paid

Case Closed

Decision Issued

No Response

Billing

No Response

To CIT or Other Appropriate Court

Payment - Case Closed

Offers in compromise may be submitted at any point in the process. All are subject to approval by ORR, ITC Division and Chief Counsel.
V. ADMINISTRATIVE PROCESS FOR LIQUIDATED DAMAGES ASSESSED AGAINST PARTIES LIABLE FOR VIOLATION OF BOND CONDITIONS

A. What Is A Bond And When May Breach Of A Bond Obligation Give Rise To Liquidated Damages Claims?

Customs laws and regulations require bonds to be filed by the importer of record, warehouseman, and other custodians of merchandise, and in bond and international carriers of merchandise, to ensure compliance with a variety of obligations, relating to the entry, transportation, and storage of imported goods, into and through, the United States. The bond is a contract between the principal (e.g., importer, carrier, warehouseman, etc.) and the surety with Customs as the beneficiary on the bond.

If there is a breach of an obligation under a bond (e.g., failure of the importer to comply with a proper request to redeliver merchandise to Customs custody), Customs may issue a claim for liquidated damages at an amount prescribed under the regulation for the type of breach involved. (As an example, for failure to redeliver FDA rejected foods, Customs currently assesses liquidated damages against the importer at an amount equal to three times the appraised value of the goods involved in the breach.) As the guaranteeing party, the surety is legally liable, or “stands in the shoes” of the bond principal, if the principal fails to pay a liquidated damages claim.

Normally, penalties are not secured by bonds. There is one exception, the International Carrier Bond. Although Customs may assess and collect a penalty amount against the party responsible for the breach (the principal) up to the amount provided for by law, Customs is limited to the amount provided for by the bond in a collection action against the surety.

B. What Are The Primary Types Of Bonds And What Types Of Infractions Do They Cover?

The three primary types of bonds are importation bonds, custodial bonds, and international carrier bonds.

First, parties such as importers and customs brokers, file importation bonds with Customs. Some examples of the types of infractions that may constitute a breach of an importation (or entry) bond include:

- late filing or non-filing of entry summaries;
- late payment or non-payment of estimated duties;
- temporary importation violations; and
- failure to redeliver merchandise into customs custody
See 19 CFR 113.62 for basic importation and entry bond conditions. Second, parties such as in-bond carriers, as well as operators of warehouses, container freight stations (CFS), centralized examination stations (CES), and duty free stores, file custodial bonds with Customs. Some examples of the types of infractions that may constitute a breach of a custodial bond include cases where:

- merchandise cannot be located or accounted for in a duty-free store, or bonded warehouse; or
- merchandise has been removed without permit or inconsistent with regulation; or
- merchandise has been deposited, manipulated, manufactured, or destroyed without permit or inconsistent with the activity described in the permit; or
- merchandise that is misdelivered or irregularly delivered by an in-bond carrier.

See 19 CFR 113.63, for basic custodial bond conditions and 19 CFR 113.73, for foreign trade zone operator bond conditions.

Third, parties such as carriers responsible for manifests and cargo delivery, file international carrier bonds with Customs. Some examples of the types of infractions that may constitute a breach of an international carrier bond are:

- conveyance arrival or reporting violations (e.g., failure to immediately report a vessel arrival to Customs);
- manifest penalties (e.g., failure to have a manifest, deliver a manifest upon arrival, possess an adequate manifest, or file a manifest discrepancy report to Customs); and
- cargo delivery or unlading violations (e.g., failure to deliver merchandise to a CES, delivery of merchandise without Customs authorization, unlading without a permit, failure to timely notify Customs of unentered or unclaimed general order merchandise, or coastwise trade violations.)

C. What Are The Steps To The Liquidated Damages Process?

1. Customs May Consider “Option 1” Resolution

When a bond breach or infraction occurs, depending on the kind and character of the violation, Customs first will consider whether “Option 1” resolution may be possible. Option 1 resolution can be described as a “parking ticket” approach insofar as it involves the payment of a pre-set amount to eliminate petitioning and, therefore, settle cases quickly. Of note, Customs still assesses the liquidated damages claim at the normal amount (i.e., an amount provided by regulation not to exceed that for which the bond is written) even when the Option 1 procedure is available.

Option 1 settlement only applies to those cases where all facts are known to Customs at the time of initial review and the harm to the government is readily quantifiable and understood. The most common examples of liquidated damages
claims which may be resolved through the Option 1 procedure are claims relating to the late filing of an entry summary, invoice or other entry document.

Option 1 settlement would not be available for those cases where the merchandise was not held for Customs examination and the facts surrounding the release of the merchandise are unknown. Similarly problematic, are cases involving temporary import bonds (TIBs) where Customs only has an open entry. In this case, Customs does not know whether the merchandise either continues to remain in the U.S., has been exported outside the bond period, or has been exported timely but without the required Customs supervision. Insofar as Customs would learn the facts only after presentation of a petition for relief, Option 1 would not be feasible and it would be necessary to resolve the matter through the petition process.

If Option 1 resolution is unavailable, or when offered to the violator the Option 1 amount is not paid, Customs will notify the principal of its liability for liquidated damages along with a demand for payment. The sureties on the bond, simultaneously, will be advised of the liability incurred by the principal, and will be given the opportunity to pay the Option 1 amount in cases where the principal does not pay.

2. Parties May File Petitions For Relief

The FPFO and NSPO decide petitions and supplemental petitions in cases where the liquidated damages claim is less than or equal to $200,000. In addition, the FPFO maintains jurisdiction regardless of the amount of the liquidated damages claim, in all non-filing and late filing of entry summary cases and non-payment or late payment of estimated duty cases. With the exception of the foregoing cases, OR&R, ITC Division, decides petitions and supplemental petitions in cases where the liquidated damages claim is greater than $200,000. The Department of the Treasury does not review any liquidated damages cases.

3. Customs May Refer Claims For Collection Action And/Or Judicial Enforcement

If Customs issues a petition decision and any party liable for liquidated damages fails to file a supplemental petition for relief or to pay the liquidated damages within sixty (60) days (or such additional time as the FPFO may grant) from the date of mailing the notice of the decision, the FPFO will refer the claim to the appropriate office of the Chief Counsel for preparation for referrals of the claim to the Department of Justice for collection.

4. Customs Also May Compromise Or “Settle” Claims

By delegation, the FPFO may approve all offers in compromise upon the recommendation of the Associate Chief Counsel, Indianapolis/Account Services Division, for settlement of liquidated damages claims or any penalty secured by bond, pursuant to section 1617, in any case where he or she has original petition jurisdiction.
The Chief, Penalties Branch, OR&R, ITC Division, with the recommendation of the Office of Chief Counsel (or his delegate) approves all offers in compromise in which he has jurisdiction to decide a petition for relief.

**D. What Are Customs Standards For Mitigation Or Cancellation Of Claims For Liquidated DAMAGES?**

Pursuant to 19 U.S.C. 1623, Customs may cancel any bond or any claims for liquidated damages made against such a bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as Customs deems sufficient. All guidelines for bond cancellation are published. Current guidelines appear in:

- *Treasury Decision (T.D.) 99-29*, which covers claims relating to General Order notification, misdelivery of inbond cargo and delivery of merchandise from Container Freight Stations or Centralized Examination Stations without Customs authorization;
- *T.D. 98-53*, which covers claims relating to the presentation of permits for softwood lumber;
- *T.D. 94-38*, which covers claims relating to late filing of entry summaries, TIBs, failure to redeliver merchandise to Customs custody, bonded warehouses, foreign trade zones, Shipper’s Export Declaration (SED) and outbound (export) violations, and airport security;
- *T.D. 94-38*, which covers claims relating to late filing of entry summaries, TIBs, failure to redeliver merchandise to Customs custody, bonded warehouses, foreign trade zones, Shipper’s Export Declaration (SED) and outbound (export) violations, and airport security; and
- *T.D. 01-41*, which covers claims arising from violation of foreign trade zone regulations.

Customs made recent changes under T.D. 99-29 to the cargo misdelivery guidelines, raising mitigation amounts significantly. Particularly, when Customs examination was required for the shipment involved in the breach.

Under the 1994 revisions (T.D. 94-38) to bonded warehouse and foreign trade zone guidelines (T.D. 01-41) Customs adjusted amounts to correlate more accurately to the harm suffered. For example, for breaches involving loss of merchandise, Customs now bases its disposition amount upon a multiple of the revenue loss involved. On the other hand, Customs disposition amounts for breaches not involving merchandise (e.g., document filing, file folder updating) involve flat sums. Customs also revised the TIB guidelines to account for the severity of the breach (e.g., document-filing breaches involve less harsh guidelines than breaches involving exportation without supervision).

While these cited Treasury Decisions should be consulted for a full explanation, some mitigation ranges for liquidated damages claims include the following:
• **Non-filing or late filing of entry summary**: $100 or $200 plus payment of all estimated duties due plus interest.

• **Temporary Importation Bond breaches**: From one to five percent (1 to 5%) of the claim but no lower than $100 (late filing of export documents), to no relief (double the duties, taxes and fees if the merchandise is not exported or destroyed).

• **Failure to redeliver to Customs custody**: From one to five percent (1 to 5%) of the claim but no lower than $100 (merchandise redelivered beyond the permissible time period), to no relief (up to three (3) times the value of the goods) for restricted or prohibited merchandise.

• **In-bond misdelivery**: From $100-$500 for late delivery of documents or merchandise to Customs, to no relief (up to three (3) times the value of the goods) for misdelivery of restricted merchandise.

• **Warehouse/Foreign Trade Zone bond breaches**:
  - Violations involving merchandise – From one to six (1 to 6) times the loss of revenue in lost merchandise cases; no relief (three (3) times value) for restricted merchandise.
  - Violations not involving merchandise (generally document related) – $100 per breach.

• **Airport security bond breaches**: From $100 for document violations, to no relief ($1,000 per violation) for failing to relinquish badges, unauthorized presence in a secured area or failing to follow the orders of a Customs officer.

• **Late filing of export documents (SEDs/bills of lading)**: From $50 for one day late (per regulation), to no relief ($1,000) for non-filing.

• **General Order eligibility notifications** (per bill of lading): From $100 (late notification), to no relief ($1,000) for failure to notify.

Note that Customs maintains the authority to deviate from these guidelines based on the particular facts and circumstances surrounding any case.

[See next page for chart of the liquidated damages process]
Administrative Process:
Liquidated Damages*

* This process also applies to collections from sureties of penalties secured by bonds.

Offers in compromise may be submitted at any point in the process. They are subject to approval by ORR, ITC Division and Chief Counsel if >100,000.
ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet’s World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the “Know Before You Go” publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is http://www.cbp.gov

Customs Regulations

The current edition of Customs Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, Code of Federal Regulations, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions (“Customs Bulletin”) is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.
Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of Importing Into the United States contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. Importing Into the United States is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the “What Every Member of the Trade Community Should Know About:…” series. Check the Internet web site http://www.cbp.gov for current publications.
Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.
“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA

Visit our Internet web site: http://www.cbp.gov
What Every Member of the Trade Community Should Know About:

CBP Enforcement of Intellectual Property Rights

AN INFORMED COMPLIANCE PUBLICATION

AUGUST 2012
NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled “*Insert Title Here*”. It provides guidance regarding the classification of these items. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to U.S. Customs and Border Protection, Office of International Trade, Executive Director, Regulations and Rulings, 799 9th Street N.W. 7th floor, Washington, D.C. 20229-1177.

Sandra L. Bell
Executive Director, Regulations and Rulings
Office of International Trade
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I. Background and Introduction

Stopping the flow of fake goods is a priority for the U.S. government. U.S Customs and Border Protection (CBP), a component of the Department of Homeland Security, has a multi-layered approach to IPR enforcement that includes seizing fake goods at the border, pushing the border outward through audits of infringing importers, risk modeling, and cooperation with our international trading partners. CBP partners with industry and other government agencies to enhance these efforts.

In the international arena, CBP collaborates with international organizations and foreign governments to enhance IPR border enforcement efforts globally. Domestically, CBP coordinates enforcement efforts with U.S. government trade policy and law enforcement agencies, and works closely both with U.S. Immigration and Customs Enforcement (ICE) to carry out investigative IPR enforcement actions, and with the trade community. CBP conducts industry outreach by partnering with rights owners and industry organizations both to collaborate on IPR education, and share information on trends, and where appropriate, on individual cases of suspected IPR infringement. Members of the public may inform CBP of potential intellectual property rights violations via CBP’s on-line trade violation reporting mechanism called e-Allegations. The public may access e-Allegations and additional relevant information at http://www.cbp.gov/xp/cgov/trade/trade_programs/e_allegations/. CBP also maintains an on-line recordation system, Intellectual Property Rights e-Recordation, which allows rights owners to electronically record their trademarks and copyrights with CBP, and facilitates IPR seizures by making IPR recordation information readily available to CBP personnel. CBP’s on-line recordation system is available at https://apps.cbp.gov/e-recordations/.

As an administrative agency with law enforcement powers, CBP has the powers of search, seizure, and arrest, and the legal authority to make substantive determinations regarding infringement of trademarks and copyrights, pursuant to the Tariff Act of 1930, the Lanham Act of 1946, the Copyright Act of 1976, and the Digital Millennium Copyright Act of 1998. CBP enforces patents pursuant to Section 337 exclusion orders issued by the U.S. International Trade Commission (ITC). CBP issues reasoned written decisions on substantive issues of trademark and copyright infringement, as well as decisions relative to the enforcement and scope of ITC exclusion orders. There follows below an overview of the legal framework of CBP’s border enforcement of IPR.

II. Intellectual Property Rights

Intellectual property refers to creations of the mind: Inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Under U.S. law, a trademark is defined as a word, name, symbol, device, color or combination thereof used to identify and distinguish goods from those manufactured or sold by others and to indicate the origin and source of goods, even if that source is unknown. CBP protects
trademarks which are registered on the principal register of the United States Patent and Trademark Office. Registration of a trademark covers a specific class or classes of goods, and a registration granted on or after November 16, 1989, lasts for a period of ten years and is renewable. CBP’s border enforcement of trademarks is primarily concentrated on marks that have been recorded with the agency.

A trade name is the name under which a company does business. Trade names are not registered with the U.S. Patent and Trademark Office but may be recorded with CBP if the name has been used to identify a trade or manufacturer for at least six months. Notice of tentative recordation of a trade name shall be published in the Federal Register and the *Customs Bulletin and Decisions (Customs Bulletin)* to provide notice to the public and give interested parties an opportunity to oppose the recordation.

A copyright is a form of intellectual property that protects “original works of authorship,” which include literary, dramatic, musical, artistic, pictorial, graphic and sculptural works, motion pictures and other audio-visual works, sound recordings, and architectural works. Copyright protection for U.S. works commences the moment the work is fixed in any tangible medium of expression, and extends only to the expression of ideas -- words, pictures, and sounds -- but not to the ideas themselves. The term of copyright protection for current U.S. works created by an individual is the life of the author plus 70 years. If the work is anonymous or made for hire, copyright protection lasts 95 years from first publication or 120 years from its creation, whichever expires first. Thereafter, the work enters the public domain and may be freely used by anyone. CBP’s border enforcement of copyrights is primarily concentrated on works that have been recorded with the agency. Non-expired claims to copyrights that are registered with the U.S. Copyright Office may be recorded with CBP.

A patent registered with the U.S. Patent and Trademark Office may not be recorded with CBP. However, CBP enforces exclusion orders issued by the ITC pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. §1337), which provides relief to U.S. industries which have established the existence of unfair trade practices in importing. ITC exclusion orders are issued for findings of infringement, among other things, of patents. Accordingly, CBP has authority to exclude from entry articles infringing a patent pursuant to an exclusion order issued by the ITC.

**III. CBP Enforcement of Intellectual Property: How Does CBP Respond to Intellectual Property Rights Infringement?**

**A. Trademarks**

CBP is vested with the authority to exclude from entry, detain and/or seize violative trademarked merchandise. In this regard, CBP recognizes three levels of infringement in its enforcement of trademarks: counterfeit marks; copying or simulating marks; and restricted gray market goods (i.e., parallel imports).
1. Counterfeit Marks

Pursuant to Title 15, United States Code, section 1127 (15 U.S.C. § 1127), a counterfeit mark is defined as a spurious mark that is identical with, or substantially indistinguishable from, a federally registered and recorded trademark. Merchandise imported into the United States bearing marks “counterfeit” of a federally registered trademark recorded with CBP shall be seized and forfeiture proceedings instituted pursuant to Section 526(e) of the Tariff Act of 1930 (19 U.S.C. §1526(e)), as implemented by 19 CFR § 133.21. Such merchandise shall be seized and, absent the trademark owner’s written consent to import the merchandise, forfeited for violation of customs laws. After forfeiture, CBP shall destroy the merchandise. Alternatively, if the imported merchandise is safe, poses no health hazard, and the trademark owner consents, CBP may obliterate the counterfeit mark where feasible and dispose of the seized goods by (1) delivering the merchandise to any Federal, State, or local government agency, (2) donating the merchandise to a charitable institution, or (3) selling the merchandise at public auction provided more than 90 days have passed since the date of forfeiture, and no Federal, State, or local government agency or charitable institution has a need for such merchandise. CBP may impose a civil fine against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark that is seized under section 1526(e) and 19 CFR § 133.21. T.D. 99-76, 33 Cust. B. & Dec. No. 379 (Customs Bulletin and Decisions 1999).

Where administratively feasible and appropriate, CBP is authorized to seize merchandise bearing a mark that is counterfeit of a federally registered trademark that is not recorded with CBP. In certain limited circumstances CBP may seize such merchandise pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 18 U.S.C. § 2320.

2. Copying or Simulating Marks

In addition, pursuant to 15 U.S.C. § 1124, as implemented by 19 CFR § 133.22, a copying or simulating mark or trade name is one that so resembles a recorded mark or name as to be likely to cause the public to associate the copying or simulating mark or name with the recorded mark or name. Merchandise bearing a copying or simulating mark is subject to detention and possible seizure.

Specifcally, under 19 CFR § 133.22, merchandise bearing a copying or simulating mark shall be denied entry and detained for 30 days from the date on which the goods are presented for examination by CBP, during which time the importer shall be afforded the opportunity, before expiration of the 30-day period, to establish that any of the circumstances described in 19 CFR § 133.22(c) are applicable, e.g., the objectionable mark is removed or obliterated as a condition to entry in such a manner as to be illegible and incapable of being reconstituted, or the recordant gives written consent to importation of the merchandise. If the importer has not obtained release of the merchandise within the 30-day detention period, the merchandise shall be seized and
forfeiture proceedings instituted. Imported merchandise or packaging in which
trademark or trade name violations are involved may be seized and forfeited pursuant to
19 U.S.C. § 1595a(c)(2)(C) and 19 CFR § 133.22(f). Merchandise bearing a mark
which is confusingly similar to a trademark registered with the United States Patent and
Trademark Office, but which is not recorded with CBP is not subject to detention or
seizure.

3. Restricted Gray Market Articles (“Parallel Imports”)

Gray market goods are defined as foreign-manufactured goods bearing a genuine
trademark or trade name identical with, or substantially indistinguishable from, one
owned and recorded by a citizen of the United States or a corporation or association
created or organized within the United States which are imported into the U.S. without
the authorization of the U.S. trademark owner. In other words, gray market goods are
genuine products bearing a trademark/name which has been applied with the approval
of the right owner for use in a country other than the United States. Goods bearing
counterfeit marks, on the other hand, are never genuine as these are marks (identical to
or substantially indistinguishable from the genuine trademark) which have been applied
without the authority of the trademark/trade name owner. CBP provides limited
protection to trademark owners against importations of certain gray market goods
pursuant to 19 U.S.C. § 1526(a), as implemented by 19 CFR § 133.23.

Only trademarks and trade names that are recorded with CBP are entitled to gray
market protection. Gray market status is determined at the time of recordation with
CBP. Gray market protection is conferred where (1) the U.S. and foreign trademarks
are not owned by the same person, and (2) the U.S. and foreign trademark owners are
not a parent or subsidiary, or otherwise subject to common ownership or control.
“Common ownership” means individual or aggregate ownership of more than fifty
percent of the business entity. “Common control” means effective control in policy and
operations and is not necessarily synonymous with common ownership.

If a trademark/name receives gray market protection, foreign-made goods bearing the
protected mark or name that are imported into the U.S. will be detained pursuant to 19
CFR § 133.23 and 19 CFR § 133.25, except as provided in 19 CFR §133.23(b), and are
subject to potential seizure and forfeiture under 19 U.S.C. § 1526(b) (see also 19 CFR §
133.23(f)).

4. Lever Rule Protection

An exception to the common control provision of the gray market regulations is the
Lever-rule. Goods bearing marks not entitled to gray market protection, and thus
allowed unrestricted importation, may, in certain cases, be refused entry into the United
States when it is established that such goods are “physically and materially” different
from goods produced for the U.S. market under authority of the U.S. trademark owner.
Part 133 of CBP regulations provides that, even in affiliate exception cases, upon
application of the trademark owner and a finding that specific gray market goods are
“physically and materially” different from goods authorized by the U.S. trademark owner for importation into the U.S., CBP will restrict the importation of the gray market goods. In this instance, gray market goods will only be permitted entry into the commerce of the United States if the labeling requirements set forth in 19 CFR § 133.23(b) have been satisfied.

When applying for Lever-rule protection for specific products, a trademark owner must (1) state the basis for this claim with particularity; (2) support the claim by competent evidence; and (3) provide CBP with summaries of the alleged physical and material differences that exist between the merchandise authorized for sale in the United States and those intended for other markets. “Physical and material” differences between merchandise authorized for sale in the United States and those intended for other markets may include, but are not limited to:

- The specific composition of both the authorized and gray market product(s) (including chemical composition);
- Formulation, product construction, structure, or composite product components, of both the authorized and gray market product;
- Performance and/or operational characteristics of both the authorized and gray market product;
- Differences resulting from legal or regulatory requirements, certification, etc.;
- Other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

CBP will publish in the CBP Bulletin a notice listing the trademark(s) and specific product(s) for which Lever-rule protection has been requested and granted.

5. Personal Use Exemption from Trademark Restrictions

Under 19 U.S.C. § 1526(d), a traveler arriving in the United States with merchandise bearing a protected trademark may be granted an exemption to the import restrictions. Under the personal use exemption, a traveler may import one article of the type bearing a protected trademark. For example, a person arriving in the U.S. with three watches bearing an unauthorized mark (whether each watch bears the same mark or different marks) is allowed to retain only watch. This exemption applies to goods bearing a counterfeit or confusingly similar version of a registered and recorded trademark, or otherwise restricted gray market article. The exemption is applicable only if the article (1) accompanies a traveler to the United States, (2) is for personal use and not for sale, and if (3) the traveler has not been granted an exemption for the same type of article within 30 days preceding his or her arrival. See 19 CFR § 148.55.

B. Copyrights

CBP is vested with the authority to detain and/or seize piratical copies of protected copyrighted works. For CBP purposes, “piratical copies” are identical or substantially
similar copies of a registered copyrighted work which are produced and imported without authorization of the copyright owner.

While copyright protection exists the moment a work is fixed in any tangible medium of expression, CBP focuses its enforcement of copyrights on works that have been recorded with the agency. It is important to note that CBP only records claims to copyrights which are federally registered with the U.S. Copyright Office.

Copyright law gives the author the right to prevent copying of a copyrighted work in any medium; however, the determination of copyright piracy is complex. The basic test for copyright infringement is whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work. Two steps are involved in the test for infringement: (1) access to the copyrighted work, and (2) substantial similarity not only of general ideas, but the expression of those ideas as well. Access to the copyrighted work may be presumed even without direct evidence in cases where it is apparent that the importer has ample opportunity to view the copyrighted work, and the substantial similarities between the works are so striking as to preclude the possibility that they were arrived at independently.

As a general matter, CBP regulations provide for the possibility of border enforcement action to enforce the Copyright Act of 1976 where the suspect work is (1) clearly piratical or (2) possibly piratical of the protected work.

1. Clearly Piratical
"Clearly Piratical" is defined as overwhelming and substantial similarity between the copyrighted elements of the protected work and the suspect item so as to clearly indicate that one work was based upon the other. Imported merchandise constituting "clearly piratical" copies of a federally registered copyright recorded with CBP is subject to seizure and forfeiture pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602, as implemented by 19 CFR § 133.42. It should be noted that a person arriving in the United States may import one infringing copyrighted work as long as the infringing work is part of the traveler’s personal luggage, and is for private use and not for distribution.

If administratively feasible and appropriate, where a federally registered copyright has not been recorded with CBP and an agency determination is made that the merchandise is clearly piratical, such merchandise is subject to seizure pursuant to 19 U.S.C. § 1595a(c)(2)(C) for violation of 17 U.S.C. § 501.

2. Possibly Piratical
"Possibly Piratical" encompasses situations in which CBP has "reasonable suspicion" to believe that imported merchandise is piratical of copyrighted works recorded with CBP. In this instance, possibly piratical copies shall be detained and the process outlined in 19 CFR § 133.43 is to be followed. If such merchandise is determined to be piratical, it
may be seized and forfeited pursuant to 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 602.

3. Digital Millennium Copyright Act

The Digital Millennium Copyright Act (DMCA), among other things, prohibits gaining unauthorized access to a copyrighted work by circumventing a technological protection measure put in place by the copyright owner that is designed to control access to the copyrighted work.

Specifically, section 1201(a)(2) of Title 17 prohibits the manufacture or importation of devices, the provision of services, or trafficking in any technology, product, service, device, component, or part thereof, that circumvents technological measure that effectively control access to a work. To violate section 1201(a)(2), the suspect technology, service, device, or product must (1) be primarily designed or produced for the purpose of circumventing such technological measures, (2) have only limited commercially significant purpose or use other than to circumvent such measures, or (3) be marketed by the defendant or another acting in concert with that person's knowledge for use in circumventing a technological measure. Where CBP determines a device violates the DMCA, such device is subject to seizure and forfeiture under 19 U.S.C. § 1595a(c)(2)(C) for a violation of 17 U.S.C. § 1201.

C. Exclusion Orders

Under Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), unfair methods of competition and unfair practices in the importation or sale of goods, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated U.S. industry, or to restrain or monopolize trade and commerce in the United States, are unlawful. Additionally, Section 337 declares unlawful the importation into the United States of goods which infringe a U.S. patent, registered trademark, copyright, or mask work. Subsequent to an investigation of an alleged violation under Section 337, where the U.S. International Trade Commission (ITC) determines that Section 337 has been violated, it shall issue an order directing the Secretary of the Treasury, as delegated to the Secretary of Homeland Security, to exclude the subject goods from entry into the United States. The ITC may also issue seizure and forfeiture orders against specific importers where, after previously having had goods denied entry pursuant to an exclusion order and having been notified by CBP that seizure and forfeiture could result from future attempted entries of such goods, the importer attempts a subsequent importation of the same or similar goods which are the subject of the exclusion order. Once a seizure and forfeiture notice has been issued, importation of the subject goods by the identified importer will be subject to forfeiture pursuant to 19 U.S.C. § 1337(i), as implemented by 19 CFR § 12.39(c).

Unlike trademarks and copyrights, patents registered with the U.S. Patent and Trademark Office may not be recorded with CBP. Thus, CBP’s action with respect to patents is limited to the enforcement of ITC exclusion orders. In this regard, however,
CBP, upon written request from an importer or interested party, may issue rulings pursuant to 19 CFR Part 177, regarding whether prospective importations fall within the scope of an exclusion order issued by the ITC.

D. Criminal Enforcement

CBP may seize merchandise that meets the criteria for criminal seizure under the provisions of 19 U.S.C. § 1595a(c)(2)(C) for violation of the applicable criminal copyright or trademark statute. The determination to initiate criminal prosecution for a violation of an intellectual property right law is made by the United States Department of Justice through the United States Attorney for the jurisdiction where the violation occurred.

IV. Right Holders and Intellectual Property Rights

Following registration of a trademark or copyright, which relates to the official act of filing or having been granted (1) a trademark with the U.S. Patent & Trademark Office or (2) a copyright with the U.S. Copyright Office for a federal registration, a right holder may record its right (trademark or copyright) with CBP.

A. Recordation

While CBP regulations provide for the submission of written recordation applications, an applicant may also avail themselves of CBP’s on-line recordation system as an alternative method of filing via the Intellectual Property e-Recordation (IPRR), an on-line recordation system. The web-based IPRR tool:

- Eliminates paper applications and the need for supporting documents (including registration certificates);
- Allows right holders to upload images of the protected rights;
- Reduces time from filing of the application to enforcement by field personnel; and
- Allows for on-line payment by credit card or by submission of a check or money order after the filing of the application.

IPRR is available at CBP’s website homepage (https://apps.cbp.gov/e-recordations/).

1. Trademarks

In regard to trademarks, the information required to record a mark with CBP includes, but is not limited to, the following:

- The name, complete business address and citizenship of the trademark owner;
- The place of manufacture of goods bearing the recorded trademark;
- The names and addresses of any persons or companies authorized to use the trademark;
- The identity of any parent or subsidiary company or other foreign company under
common ownership or control which uses the trademark abroad; and
• A fee of $190 for each class of goods of a trademark the applicant wishes to record.

Trademarks that are registered on the principal register of the U.S. Patent and Trademark Office are eligible for recordation with CBP. To record a trademark with CBP, an applicant must include the following in its application. See 19 CFR §§ 133.1-133.2.

• The name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);
• The places of manufacture of goods bearing the recorded trademark;
• The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and
• The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad.

2. Copyright

In regard to copyrights, the information required to record with CBP includes, but is not limited to, the following:

• The name, complete business address and citizenship of the copyright owner;
• The country of manufacture genuine copies or phonorecords of the protected work;
• A fee of $190 for each class of goods of a trademark the applicant wishes to record.

Copyrights registered with the U.S. Copyright Office are eligible for recordation with CBP. The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual or potential injury because of actual or contemplated importations of copies (or phonorecords) of eligible works, may file a recordation application. To record a copyright with CBP, an applicant must include the following in its application. 19 CFR §§ 133.31, 133.32.

• The name and complete address of the copyright owner or owners;
• If the applicant is a person claiming actual or potential injury by reason of actual or contemplated importations of copies or phonorecords of the eligible work, a statement setting forth the circumstances of such actual or potential injury;
• The country of manufacture of genuine copies or phonorecords of the federally registered copyright;
• The name and principal address of any foreign person or business entity authorized or licensed to use the federally registered copyright, and a statement as to the exclusive rights authorized;
• The foreign title of the federally registered copyright, if different from the U.S. title; and
• In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and any other identifying names appearing on the surface of reproduction of the sound recording, or its label or container.

B. Intellectual Property Rights Search Database (IPRS)

The Intellectual Property Rights Search (IPRS) database contains CBP recorded trademarks, trade names, and copyrights which are available for viewing by right holders and the public. These recordations can be retrieved based on simple or complex search characteristics using keywords and Boolean operators. IPRS is available to right holders and the general public at http://iprs.cbp.gov/.

V. Disclosure of Information

CBP regulations provide for disclosure of certain information where merchandise is detained and/or seized for violations of the trademark laws.

A. Counterfeit Marks

Where merchandise is suspected of bearing a mark that is counterfeit of a recorded trademark, CBP will provide the trademark owner prior to seizure with any information appearing on the merchandise or its retail packaging, or a sample of the merchandise including its retail packaging, for the purpose of determining whether the imported merchandise bears or consists of a counterfeit mark.

Within five days from the date of the decision to detain the suspect merchandise, CBP will notify the importer in writing of the detention. 19 CFR § 133.21(b)(1). The notice will inform the importer that a disclosure of information concerning the detained merchandise may be made to the owner of the mark to assist CBP in determining whether any marks are counterfeit, unless the importer presents information within seven days of the notification (excluding weekends and holidays) establishing to CBP’s satisfaction that the detained merchandise does not bear a counterfeit mark. 19 CFR § 133.21(b)(1). CBP may disclose information appearing on the merchandise and/or its retail packaging, images (including photographs) of the merchandise and/or its retail packaging in its condition as presented for examination, or a sample of the merchandise and/or its retail packaging in its condition as presented for examination. CBP will release to the owner of the mark a sample when the owner furnishes CBP a bond in the form and amount specified by the port director, to hold the United States its officers and employees, and the importer, harmless from any loss or damage resulting from furnishing of the sample. 19 CFR §§ 133.21(b)(1), 133.21(c).
Where the importer does not timely provide information or the information provided is insufficient for CBP to determine that the merchandise does bear a counterfeit mark, CBP may proceed with the disclosure to the owner of the mark and will so notify the importer. Disclosure may include any serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, or other identifying marks appearing on the merchandise or its retail packaging, in alphanumeric or other formats. 19 CFR § 133.21(b)(1).

From the time merchandise is presented for examination until the time a notice of detention is issued, CBP may disclose to the owner of the mark any of the following information in order to obtain assistance in determining whether an imported article bears a counterfeit mark. Once a notice of detention is issued, CBP will disclose to the owner of the mark the following information, if available, within thirty days of the date of detention:

- Date of importation
- Port of Entry
- Description of Merchandise
- Quantity
- Country of Origin

19 CFR § 133.21(b)(2).

Notwithstanding the notice and seven-day response procedure described above, CBP may, at any time after presentation of the merchandise for examination but prior to the issuance of a detention notice, provide to the owner of the mark images or a sample of the detained merchandise or its retail packaging, provided that identifying information has been removed, obliterated, or otherwise obscured. Identifying information includes, but is not limited to, serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, the name or address of the manufacturer, exporter, or importer of the merchandise, in alphanumeric or other formats. CBP will release to the owner of the mark a sample when the owner furnishes CBP a bond in the form and amount specified by the port director, to hold the United States its officers and employees, and the importer, harmless from any loss or damage resulting from furnishing of the sample. 19 CFR §§ 133.21(b)(3).

Where merchandise is seized because it bears a mark that is counterfeit of a recorded trademark, CBP shall provide the right owner the following information, if available, within 30 business days (excluding weekends and holidays) of the date of the seizure:

- Date of importation
- Port of Entry
- Description of Merchandise
- Quantity
- Country of Origin
- Name and address of manufacturer
- Name and address of exporter
- Name and address of importer

19 CFR § 133.21(d).

Any time following seizure of the merchandise, CBP may provide a sample of the suspect merchandise to the right owner for examination, testing, or other use in pursuit of a related private civil remedy. If a request for sample is made, the right owner must provide CBP with a bond in the form and amount specified by the port director, to hold the United States its officers and employees, and the importer, harmless from any loss or damage resulting from furnishing of the sample. 19 CFR § 133.21(e).

B. Copying or Simulating Marks

Where merchandise is detained for bearing a mark confusingly similar to a recorded trademark, CBP may disclose to the owner of the mark the following information prior to issuing a detention notice. However, once a detention notice is issued, CBP shall disclose to the right owner the following information, if available, within 30 business days (excluding weekends and holidays) of the date of detention:

- Date of Importation
- Port of Entry
- Description of Merchandise
- Quantity
- Country of Origin

19 CFR § 133.25.

Any time after presentation of the merchandise for CBP examination, but prior to seizure, CBP may provide a sample to the owner of the mark for examination or testing. If a request for a sample is made, the mark owner must provide CBP with a bond in the form and mount specified by the port director, conditioned to hold the United States its officers and employees, and the importer, harmless from any loss or damage resulting from furnishing of the sample. 19 C.F.R. § 133.25(c). Prior to release of the sample, CBP shall remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer.

C. Clearly Piratical Works

Where merchandise is seized because it is piratical of a work protected by a recorded copyright, CBP shall provide the right owner the following information, if available, within 30 business days (excluding weekends and holidays) of the date of the seizure:

- Date of importation
- Port of Entry
- Description of Merchandise
- Quantity
- Country of Origin
- Name and address of manufacturer
- Name and address of exporter
- Name and address of importer

19 CFR § 133.42(d).

Any time following seizure of the merchandise, CBP may provide a sample of the suspect merchandise to the right owner for examination, testing, or other use in pursuit of a related private civil remedy. If a request for sample is made, the right owner must provide CBP with a bond in the form and amount specified by the port director, to hold the United States its officers and employees, and the importer, harmless from any loss or damage resulting from furnishing of the sample. 19 CFR § 133.42(e).

### D. Possibly Piratical Works

Where merchandise is detained because it is piratical of a work protected by a recorded copyright, CBP may disclose to the copyright owner the following information prior to issuing a detention notice. However, once a detention notice is issued, CBP shall disclose to the copyright owner the following information, if available, within 30 business days (excluding weekends and holidays) of the date of detention:

- Date of Importation
- Port of Entry
- Description of Merchandise
- Quantity
- Country of Origin

19 CFR § 133.43(b).

Any time after presentation of the merchandise for CBP examination, but prior to seizure, CBP may provide a sample to the copyright owner for examination or testing. If a request for sample is made, the right owner must provide CBP with a bond in the form and amount specified by the port director, conditioned to hold the United States its officers and employees, and the importer, harmless from any loss or damage resulting from furnishing of the sample. Prior to release of the sample, CBP shall remove or obliterate any information indicating the name and/or address of the manufacturer, exporter, and/or importer. 19 CFR § 133.43(c).

### VI. Remedies Following the Seizure of Merchandise

Upon receiving a seizure notice, an importer may choose to do one of the following:
• Request administrative forfeiture proceedings as provided under 19 U.S.C. § 1607 and 19 CFR § 162.45;
• File a claim and cost bond requesting that CBP immediately refer the case to the United States Attorney for court action;
• File a petition for administrative relief with the Port Director of CBP pursuant to 19 U.S.C. § 1618 and 19 CFR § 171.11; or
• Tender an offer in compromise to the Commissioner of Customs through the Fines, Penalties, and Forfeitures at the port of seizure pursuant to 19 U.S.C. § 1617 and 19 CFR § 161.5.

VII. Penalties

In accordance with 19 CFR § 133.27, CBP, as authorized by 19 U.S.C. § 1526(f), may impose a civil fine relative to seizures effected for merchandise bearing counterfeit marks pursuant to 19 U.S. § 1526(e). For the first seizure of such merchandise, the fine shall be no more than the domestic value the merchandise would have had if it were genuine, based upon the manufacturer’s suggested retail price (MSRP) at the time of seizure. For second and subsequent violations, the fine shall not be more than twice such value.

Additional information concerning civil monetary fines and mitigation guidelines for trademark violations, as well as, a chart outlining the parameters for levying such fines are set forth in the ICP entitled Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp069.ckt/icp069.pdf.
ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet’s World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the “Know Before You Go” publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is http://www.cbp.gov

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions (“Customs Bulletin”) is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.
Importing into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of Importing Into the United States contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. Importing into the United States is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the “What Every Member of the Trade Community Should Know About:…” series. Check the Internet web site http://www.cbp.gov for current publications.
Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.
“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT

Visit our Internet web site: http://www.cbp.gov
Background
The Advisory Committee on Commercial Operations of Customs and Border Protection’s Trade Enforcement and Revenue Collection Subcommittee (TERC), and its Intellectual Property Rights Working Group (IPRWG) provide advice and recommendations to U.S. Customs and Border Protection (CBP) on improving Intellectual Property Rights (IPR) enforcement. The TERC continues to examine CBP programs and processes used to facilitate legal trade while supporting its mission to effectively and efficiently enforce against violative goods. At the May 22, 2014 Public Meeting, the COAC made three principal IPR recommendations to CBP focused on (1) Simplified Enforcement for Express Consignment, (2) Document Imaging System, and (3) Voluntary Disclosure.

Current Status
- **Simplified Enforcement for Express Consignment:** The COAC recommended that CBP collaborate with its express consignment industry partners and stakeholders to develop a simplified and mutually beneficial IPR enforcement process in the express consignment environment through which CBP would offer the importer and the U.S. consignee an abandonment option on detention notices for shipments detained by CBP on suspicion of trademark or copyright violations.
  - On October 6th, CBP is slated to issue proof of concept guidance to the UPS Louisville Port, testing this recommendation, which provides streamlined procedures for the administrative processing of small shipments of counterfeit goods in the express consignment environment. Though this process, CBP will offer the importer and U.S. ultimate consignee an abandonment option on detention notices for shipments detained by CBP on suspicion of trademark or copyright violations.
  - This change is expected to have a significant, yet positive impact on resources, as the express environment now accounts for more than half of all intellectual property rights seizures. In addition, collaboration with CBP express consignment industry partners has been mutually beneficial in providing IPR enforcement in the express consignment environment.

- **Document Imaging:** The COAC recommended that CBP pilot the use of the Document Imaging System (DIS) in ACE within the next 12 months as a means for importers and customs brokers to voluntarily provide information to assist CBP in assessing a shipment’s IPR risk.
  - On September 11, 2014 CBP began solicitation for nine non-partnership program participation filer volunteers to transmit advanced IPR authenticating documentation as a means to expedite the release of legitimate goods and reduce costs to CBP and the trade.
Once qualified participants are identified, CBP expects to begin its pilot phase, testing this method for furnishing advanced information about a shipment’s IPR compliance, determining whether DIS could be used to provide facilitation benefits to legitimate importers.

At the conclusion of the pilot, CBP will collect and share pilot results with the COAC, offering the COAC an opportunity to further review and comment on the initiative.

**Voluntary Disclosure:** The COAC recommended that CBP pilot an IPR Voluntary Disclosure program within the next 12 months, which would will allow members of the trade to provide CBP with intelligence for targeting purposes by voluntarily disclosing violations of the laws prohibiting importation of goods infringing U.S. registered trademarks or copyrights, without incurring liability for any otherwise applicable CBP fines and penalties. In addition, COAC recommended that CBP open a sub-working group of the COAC-TERC-IPRWG, specific to this initiative, in order to finalize the details of the pilot program. The sub-WG would use both the July 20, 2010 concept document, which was co-created by CBP and the COAC regarding this proposal, as well as additional stakeholder input received, as a framework to allow for COAC discussion and comment on a final program document before implementation of the pilot.

A sub-working group of the IPRWG has been convened and is in the process of revising the 2010 document, discussing issues to include the disclosure process and means of destruction of the infringing articles. The goal of such a program is to enable the trade community to work with CBP to stop infringing items imported contrary to law from being sold or delivered into the commerce of the United States.

A follow-up meeting is planned for October to address comments, suggestions and questions put forward by the sub-working group to CBP, so that a determination can be made about the viability of the program.

At the conclusion of the pilot, CBP will collect and share pilot results with the COAC, offering the COAC an opportunity to further review and comment on the initiative.

This working group will also examine methods by which importers that are not good fits for the Customs-Trade Partnership Against Terrorism (C-TPAT) and Importer Self-Assessment (ISA) programs might be assessed for IPR compliance and assessed supply and distribution chain risk accordingly, in relation to possible IPR infringement and vulnerabilities.
APPENDIX vii

IPR Guide
Intellectual Property Rights Enforcement

How Businesses Can Partner with CBP to Protect their Rights
OUR MISSION

We are the guardians of our Nation’s borders.

We are America’s frontline.

We safeguard the American homeland at and beyond our borders.

We protect the American public against terrorists and the instruments of terror.

We steadfastly enforce the laws of the United States while fostering our Nation’s economic security through lawful international trade and travel.

We serve the American public with vigilance, integrity, and professionalism.
U.S. Customs and Border Protection (CBP) is the primary federal agency responsible for securing America’s borders. This includes the protection of intellectual property rights, which guards against the infringement of U.S. patents, copyrights, and trademarks. CBP intercepts counterfeit and pirated goods that harm the U.S. economy and threaten the security, health, and safety of Americans.

The agency employs a multi-layered, risk-based approach to enforce intellectual property rights at the border. This strategy, which mitigates the risk of fraudulent shipments coming into the country, relies on two key elements:

**Enforcement**

At the border, CBP is authorized to exclude, detain and/or seize imported merchandise that infringes federally registered and recorded trademarks and copyrights and/or is covered by an exclusion order issued by the U.S. International Trade Commission. CBP publishes annual statistics of intellectual property seizures at [www.cbp.gov/ipr](http://www.cbp.gov/ipr). This information includes the number of seizures, the domestic value, and the Manufacturer’s Suggested Retail Price (MRSP) of the goods.
Partnerships

CBP collaborates with other federal agencies and foreign governments to protect America’s innovation and competitiveness. One of these important partnerships is with the National Intellectual Property Rights Coordination Center (IPR Center). As one of the six founding members of the IPR Center, CBP holds one of the Deputy Director positions, with personnel permanently present at the Center to actively exchange valuable enforcement, targeting and intelligence data with the other Center partners to support our mutual IPR enforcement goals. Through the IPR Center, CBP also participates in multi-agency operations targeting counterfeit and pirated goods. CBP is the number one source for criminal investigative leads referred to Immigration and Customs Enforcement/Homeland Security Investigations.

One of CBP’s most important collaborative partnerships is with the trade community. Enforcing intellectual property rights is a complex process and partnering with rights owners and industry organizations is critical to CBP’s success. This guide outlines a number of ways in which businesses and rights owners can work with the government to increase enforcement of their intellectual property rights at the border.
PARTNERING WITH CBP TO PROTECT YOUR INTELLECTUAL PROPERTY RIGHTS

The flow of counterfeit and pirated goods is a global problem that requires vigorous collaboration between customs agencies and rights owners to ensure effective intellectual property enforcement at the border. Working with CBP provides many benefits for rights owners of patents, copyrights, and trademarks to ensure maximum intellectual property rights protection. The three steps you can take to maximize your relationship with CBP are e-Recordation, e-Allegations, and information sharing.

**e-Recordation: Recording Intellectual Property with CBP**

Trademarks and copyrights registered with the U.S. Patent and Trademark Office or U.S. Copyright Office can be recorded with CBP to maximize their protection at the border. The benefits of e-Recordation include:

» Making intellectual property rights information available at the ports to help CBP personnel with infringement determinations.
» Eliminating paper applications and the need for supporting documents.
» Allowing rights owners to upload images of their protected rights.

https://apps.cbp.gov/e-recordations/
How to Record Your Trademark or Copyright with CBP:

» Register your trademark with the U.S. Patent and Trademark Office at www.uspto.gov or your copyright with the U.S. Copyright Office at www.copyright.gov.

» After a registration is issued, access the online e-Recordation application at https://apps.cbp.gov/e-recordations/ and provide the following information:
  • The trademark or copyright registration number;
  • The name, complete business address, and citizenship of the rights owner;
  • The place(s) of manufacture;
  • The name and address of individuals authorized to use the trademark or licensed to use the copyright; and
  • The identity of a parent company or subsidiary authorized to use the trademark or licensed to use the copyright.

### e-Allegations

Businesses and rights owners are encouraged to submit allegations of infringing shipments or conduct to CBP. CBP uses this information to target these activities and may refer cases for criminal investigations.

If you have information about infringing goods being imported into the country, let CBP know. Information submitted through CBP’s online reporting system, e-Allegations, is disseminated to the appropriate office or port of entry for investigation. This important information-sharing tool improves CBP’s enforcement of your intellectual property rights at the border.

» Submissions can be anonymous and may include photos and other documentation.

» Issues that pose an immediate threat to public health and safety should also be reported to CBP’s 1-800-BE-ALERT.
INFORMATION SHARING

CBP enforcement employs a risk-based targeting model to determine shipments most likely to contain infringing goods. Information shared with CBP helps identify infringing shipments while facilitating legitimate trade.

Counterfeit and pirated goods are becoming much more sophisticated, which means that it is also becoming much more difficult to distinguish legitimate goods from fakes. CBP reaches out to rights owners for assistance in making infringement determinations, but there are ways in which you can proactively help CBP with this process.

Product Identification Guides

These guides, produced by rights owners, help CBP make infringement determinations at the port. All guides submitted to CBP are placed on CBP’s internal websites and linked to the e-Recordation system. This provides extensive information about recorded intellectual property rights to the field to assist with infringement determinations.
What should I include in my product identification guide?

An effective manual should be brief and should include the following:

» Information about the company;
» The intellectual property owned by the company;
» Contact information;
» Registration number;
» Recordation number;
» U.S. International Trade Commission investigation number. Product identification guides prepared in connection with exclusion orders enforced by CBP will not be placed on the agency’s intranet. Rather, the information therein will be incorporated as appropriate in the field instructions that implement the order.
» Physical characteristics of the product;
» Photos of genuine and suspect versions of the goods;
» Manufacturing information; and
» An appropriate legal disclaimer, which can be found at www.cbp.gov/ipr.

Product Training Sessions

Many companies also provide product identification training to CBP personnel at ports of entry. This allows your company to interact face to face with the officers and import specialists who will actually inspect shipments and look for intellectual property rights infringements.

To conduct product identification training, direct your requests to the Assistant Port Director for Trade at each port of entry. A listing of field offices with contact information can be found at www.cbp.gov/ipr. Product identification training in respect of ITC exclusion orders must first be coordinated with the IPR and Restricted Merchandise Branch.
A number of offices within CBP work together on intellectual property issues. All are available to work with you to protect your intellectual property rights.

We, at CBP, are here to serve you by securing America’s borders to protect our nation and the U.S. economy. Our goal is to facilitate legitimate trade while enforcing our laws. If you have additional questions regarding intellectual property enforcement, please contact us in one of the following ways:

**IPR Help Desk**

CBP’s IPR Help Desk is staffed on weekdays to answer questions on intellectual property rights enforcement. The IPR Help Desk provides the public, businesses and rights owners, CBP officers, and import specialists with information on intellectual property rights border enforcement procedures and receives allegations of intellectual property rights infringement. In addition, the IPR Help Desk assists owners of recorded intellectual property rights with developing product identification training materials. These materials help CBP officers at ports of entry identify infringed goods. Contact the IPR Help Desk by phone at 562–980–3119, ext. 252 or by email at ipr.helpdesk@dhs.gov.

**IPR and Restricted Merchandise Branch**

The IPR and Restricted Merchandise Branch oversees the intellectual property rights e-Recordation program and provides intellectual property infringement determinations and rulings. Additionally, the IPR and Restricted Merchandise Branch provides answers to legal questions about CBP’s intellectual property enforcement procedures. Contact CBP intellectual property rights attorneys for help by phone at 202–325–0020 or by email at hqiprbranch@dhs.gov.

**IPR Policy and Programs**

The IPR Policy and Programs Division provides leadership and direction for CBP’s intellectual property rights strategy, policy, and programs. The division also coordinates with rights owners and other members of the trade community, federal agencies, and foreign governments on intellectual property issues. Contact the IPR Policy and Programs Division by phone at 202–863–6020 or by email at iprpolicyprograms@dhs.gov.
ADDITIONAL RESOURCES

CBP has additional resources to assist you with intellectual property rights enforcement.

Intellectual Property Rights Enforcement Directives

Three intellectual property rights directives are posted on the CBP website, www.cbp.gov/ipr, under IPR Legal Resources. These directives describe CBP’s enforcement of ITC exclusion orders, trademark and trade name protection, and detention and seizure authority for copyright and trademark violations.

An informed compliance publication entitled “CBP Enforcement of Intellectual Property Rights,” also under IPR Legal Resources, www.cbp.gov/ipr, provides guidelines for the trade community on intellectual property rights, trademark and copyright infringements, and importer remedies following the seizure of suspected goods.

Intellectual Property Rights Search (IPRS)

To see what trademarks, trade names and copyrights have been recorded with CBP, rights owners may use IPRS, a searchable database containing public versions of intellectual property rights e-Recordations, http://iprs.cbp.gov. Searches can be performed using individual and combinations of keywords and phrases, recordation numbers, and agency registration numbers.

National Intellectual Property Rights Coordination Center (IPR Center)

The IPR Center encourages members of the general public, rights holders, trade associations, law enforcement and government agencies to report instances of IPR theft. To support this goal, the IPR Center maintains a “To Report IP Theft” button on its website where violations can be reported, http://www.iprcenter.gov/referral. Violations may also be reported by calling 1-866-IPR-2060. The information provided is reviewed by IPR Center staff and disseminated to IPR Center partners for appropriate investigative response and tactical use.