What Every Member of the Trade Community Should Know About:

Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures and Liquidated Damages

U.S. CUSTOMS and BORDER PROTECTION

AN INFORMED COMPLIANCE PUBLICATION

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贸易界应知：每位成员须知

海关行政执行程序：罚款、没收与违约金

U.S. CUSTOMS and BORDER PROTECTION

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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.

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

前言

1993年12月8日，《北美自由贸易协定实施法》(Pub.L.103-182,107 Stat.2057)第六编，又称《海关现代化法》或"Mod"法，开始生效。这些条款修订了1930年《关税法》的许多条文及相关法律。

《海关现代化法案》产生了两个新概念，即"知情合规"和"共同责任"，其前提理念是：为使贸易界最大限度地自愿遵守美国海关与边境保护局的法律法规，必须清晰、完整地告知贸易界其法律义务。据此，《海关现代化法案》对美国海关与边境保护局课以更大义务，即向公众提供关于贸易界在海关法规及相关法律下权利与责任的更完善信息。此外，贸易界与美国海关与边境保护局共同承担执行这些要求的责任。例如，根据经修订的《关税法》第484条(19 U.S.C.1484)，登记进口商有责任以合理注意办理进口申报、归类并确定进口货物的价值，并提供任何其他必要信息，使美国海关与边境保护局能够正确评估关税、收集准确统计资料，并确定是否已满足其他适用的法律要求(如有)。随后，CBP负责确定货物的最终归类与价值。登记进口商未履行合理注意义务可能延误货物放行，并在某些情况下可能导致处罚。

法规与裁定办公室(ORR)在履行美国海关与边境保护局的知情合规职责方面被赋予重要角色。为向公众提供信息，CBP 已就新的或修订的要求、法规或程序以及各种归类与估价问题发布了一系列知情合规出版物和视频。

本出版物由法规与裁定办公室国际贸易合规处编写，是《海关行政执行程序》的指南。《海关行政执行程序：罚款、处罚、没收与违约金》是关于海关程序的一系列知情合规出版物之一。我们诚挚希望本材料连同研讨会以及更多获取美国海关与边境保护局裁定的途径，将有助于贸易界改进对海关法律的自愿遵守并理解相关行政程序。

本出版物中的材料仅供一般信息参考之用。由于海关问题可能涉及许多复杂因素，进口商可考虑根据《美国海关与边境保护局法规》19 C.F.R.Part 177 取得裁定，或向专精海关事务的专家(例如持证报关代理人、律师或顾问)寻求建议。

欢迎提出意见和建议，请寄至美国海关与边境保护局法规与裁定办公室助理专员，地址：1300 Pennsylvania Avenue, NW,(Mint Annex), Washington, D.C.20229。

迈克尔·T·施密茨，助理专员

法规与裁定办公室

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Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures & Liquidated Damages

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.

海关行政执行程序：罚款、处罚、没收与违约金

一、引言

自1789年依据《美国宪法》建立联邦政府以来，执行海关法、航运法及相关法律一直是美国海关署的一项重要职能。新联邦政府的第二项法案是1789年7月4日的法案，“对进口至美国的货物、商品和 merchandise(原文如此)征收关税”。第三项法案是1789年7月20日的法案，“对船舶的吨位征税”。这些及后续的关税法案一直是联邦收入的主要来源，直至20世纪初所得税问世。为管理和执行这些重要的税收法律，国会的第五项法案，即1789年7月31日的法案，设立了一个海关署，由已批准新宪法的十一个州中59个地区的征税官、海军军官和检查员组成(北卡罗来纳州和罗德岛州尚未批准宪法，在关税法下被视为外国)。

1789年7月31日的法案还设立了罚款和处罚，并规定对违反各项条款的货物予以没收。查封以及执行罚款、处罚或保证金条款的权力被授予海关现场人员，征税官则被授权提起司法程序以完成没收并收取已产生的罚款或处罚。在早期，所有罚款、处罚和没收都需要司法执行，且没有任何规定允许给予衡平救济。然而，这些问题在1797年3月3日的法案中得到了部分补救，该法案将通过免除或减轻处罚的方式给予罚款或没收衡平救济的权力授予财政部长，前提是已在法院提交寻求此类救济的申请，且法官已向部长报告相关事实。

最初的程序非常繁琐。征税官将所有执行行动转交美国地区检察官(现更名为美国检察官)，由其提起司法征收或没收诉讼。寻求救济的人必须承认违规，或等待法院判决认定违规，并提交减免申请，说明导致违规的事实和情节。随后法官审查相关情节并向财政部长报告事实，财政部长可减轻或免除罚款、处罚或没收，并命令终止诉讼。

后续立法简化了程序，允许在诉讼开始之前直接向部长提交减免申请，并确立了没收和处罚评定的行政程序。最初，这些程序仅适用于涉及低价值没收或小额金钱罚款或处罚(50 美元以下)的案件，但最终这些程序扩展至所有案件。

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.

早年，财政部长亲自行使免除或减轻罚款、处罚或没收的权力。多年来，随着国家发展及部长职责增加，部长免除或减轻处罚和没收的权力被授予财政部和海关总署的下属官员。目前的免除和减轻权力

载于 19 U.S.C.1618 和 19 U.S.C.1623(c)，其规定如下：

19 U.S.C. 1618：

凡对本章规定查封的任何船舶、车辆、航空器、货物或行李享有权益的人，或已招致或被指控已招致本章项下任何罚款或处罚的人，在海关法项下向财政部长、在航行法项下向海岸警卫队司令或海关专员(视情况而定)提出申请(减免)，请求免除或减轻该罚款、处罚或没收，且该申请系在该船舶、车辆、航空器、货物或行李出售之前提出的，财政部长、海岸警卫队司令或海关专员如认定该罚款、处罚或没收系非因故意过失或非因申请人意图欺诈税收或违反法律而招致，或认定存在足以证明免除或减轻该罚款、处罚或没收正当的减轻处罚情节，可按其认为合理公正的条款和条件免除或减轻该罚款、处罚或没收，或命令终止与之相关的任何追诉。为使其能够查明事实，财政部长可向任何海关官员发出委托书，就该申请取证：但本条规定不得解释为剥夺任何人在提出该申请之前已获得的补偿裁决。

19 U.S.C. 1623(c)：

财政部长可授权在违反保证金任何条件的情况下，在支付该等较小金额或处罚后，或按其认为充分的其他条款和条件，取消本条规定的任何保证金或对该保证金可能已提出的任何收费。为确保统一、合理和公平的决定，财政部长应发布指南，确立设定取消保证金或据此收费的条款和条件的标准。

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.

部长还被授予和解主张的权力。该权力目前载于 19 U.S.C.1617，其规定：

> 经海关官员、美国检察官或任何特别检察官报告，该报告负责根据海关法产生的任何索赔，显示该索赔所依据的事实、追回的可能性以及可达成和解的条件，财政部长有权对此类索赔进行和解，前提是此类行动须经财政部总法律顾问建议。

II.财政部对与罚款、处罚、没收及违约金有关职能的权力授予

海关拥有充分权力评定处罚和违约金主张，并因违反海关法或海关总署执行的其他法律而查封商品。除财政部保留决定申请和补充减免申请的行政权力的某些特定情形外，海关已被授予广泛的权力，以免除、减轻、取消或和解没收、处罚和违约金主张。

财政部决定 00-57 和 00-58 以及其他命令或指示规定了决定所提交申请和补充申请的最新权力授予。此类规定已纳入《海关法规》第 171 部分和第 172 部分，如下：

A. 原始救济申请

罚款、处罚和没收官员(FPFO)：一般而言，评估
没收、处罚和违约金主张由各地海关的当地 FPFO 作出。目前共有四十三(43)名 FPFO 和四(4)名国家查封与处罚官(NSPO)，分布于各海关现场办公室。

1. 违约金。对于因违反基本进口保证函、未提交或迟延提交报关单摘要、或未支付或迟延支付预估关税而产生的所有违约金主张，FPFO 可决定其减免申请。对于任何其他违约金主张、因违反任何海关保证函或任何其他原因产生的主张，当主张金额不超过 200,000 美元时，FPFO 可决定其减免申请。

2. 19 U.S.C.1592、19 U.S.C.1593a。对于根据这些条款规定产生的任何处罚的所有主张，当该等罚款、处罚或没收的评定总额不超过 50,000 美元时，FPFO 可决定其减免申请。

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

3. 19 U.S.C.1436、1453、1595a(b) 和 1641。FPFO 可裁决针对依据第 1436、1453 和 1641 条规定招致的所有罚款、处罚或没收，以及依据第 1595a(b) 条招致的任何处罚的减免申请，上述情形分别涉及未经海关授权从卸货地交付货物，或未经适当查验而违反 19 U.S.C.1448 或 19 U.S.C.1499 的规定，且索赔金额不超过 $200,000。

4.除上述情形或财政部长保留管辖权的情形外，对于根据海关执行的任何其他法律产生的任何罚款、处罚或没收，当其总额不超过 100,000 美元时，FPFO 可决定其减免申请。

处长，处罚处，国际贸易合规司，办公室法规与裁定。海关总部处罚处处长被授权决定就既未被列为仍属财政部长原始管辖范围、也未被委托给罚款、处罚和没收官员的案件所提交的所有初始减免申请。

助理专员，法规与裁定办公室。尽管有任何其他权力授予。海关总部法规与裁定办公室助理专员或其代表有权免除或减轻根据 19 U.S.C.1584(a)(2) 对超级承运人未申报麻醉药品所评定的任何处罚。

财政部长。财政部长或其代表保留对就以下案件提交的原始减免申请的管辖权：

1. 特定民事罚款。对因违反《美国法典》第31编第5321条规定而处以的罚款享有完全管辖权，可决定免除或减轻处罚；

2. 特定货币工具查封。对因违反《美国法典》第31编第5316条规定而依《美国法典》第31编第5317条规定应予没收的货币工具实施查封，且该货币工具价值超过500,000美元的；

3. 出口管制。对依《美国法典》第22编第401条规定应予没收的货物实施查封，且该货物价值超过500,000美元的；

4. 未申报货物。对因违反《美国法典》第19编第1497条规定未申报货物而产生的所有罚款、处罚和没收，且责任总额超过250,000美元的；以及

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.

5. 运输工具查封。对涉及管制物质进口或运输以外的违法行为而查封运输工具，且该运输工具价值超过500,000美元的。

B. 补充救济申请

罚款、处罚和没收官员的决定。补充申请就原始决定由罚款、处罚和没收官员作出的案件提交的申请，将首先由该官员审查。罚款、处罚和没收官员可选择给予更多救济，并作出决定，向申请人说明额外救济。

如果罚款、处罚和没收官员决定不再给予进一步救济，补充申请将转交指派至现场地点的NSPO进行审查和决定，但涉及报关代理人违反19 U.S.C.1641的案件中，所处罚款金额超过10,000美元的补充申请，将转交海关总部法规与裁定办公室处罚处处长审查和决定。

国际贸易合规处罚处处长裁决
法规与裁定办公室某处。对于原决定由海关总部法规与裁定办公室处罚处处长作出的案件，如处罚处处长认为无需进一步减免，则提交的补充申请将转交海关总部国际贸易合规司司长审查和决定。就本文件而言，凡提及国际贸易合规司(以下简称“ITC 司”)，均包括处罚处处长和国际贸易合规司司长。

法规与裁定办公室助理专员的决定。
就原始决定由海关总部法规与裁定办公室助理专员或其代表作出的案件提交的补充申请，将由法规与裁定办公室助理专员保留审查和决定，不予下放。此外，授予任何总部官员的任何权力亦归属于助理专员或其指定人员。

财政部的决定。就原始决定由财政部作出的案件提交的补充申请，将转交海关总部法规与裁定办公室处罚处处长，由其将补充申请连同处置建议一并转交财政部，由财政部处置。

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

C. 清偿协议与满足的概念

根据法规，按照减免申请行政决定支付减轻后的金额，构成对政府请求的债务清偿与和解。见19 CFR 171.23(b)(适用于无担保处罚和查封)及19 CFR 172.22(b)(适用于有担保处罚和违约金请求)。支付减轻后的金额绝不构成提交补充减免申请的障碍。

III.因违反海关法或其他法律而查封财产案件中没收主张的行政程序

A. 什么是扣押以及何时可以实施扣押?

对于某些违反海关及相关法律的行为，财产可被"查封"。在查封中，政府官员对货物或其他物品(如车辆、船舶或航空器)实施实际占有。

根据海关法，查封有两种类型。第一种是法律规定对财产予以"没收"。在此类情形下，如通过适当的司法或行政手段完成没收，被查封财产将成为联邦政府的财产，所有人和任何其他主张权利人将丧失对该财产的权益。在大多数此类案件中，没收"追溯"至犯罪之时，美国自该日起取得有效所有权。在第二种查封中，查封财产是为了担保金钱处罚的支付。如未支付处罚，财产将被出售以支付处罚，余额用于满足所有人、留置权人或其它合法主张权利人的主张。

要启动查封，海关必须有合理根据相信存在违反海关法或海关执行的其他法律的行为，且该行为涉及特定财产(例如，未申报或走私的财产；假冒商标商品)。如果依据法定权限和海关查封政策对财产实施查封，该查封即代表针对该财产的执法行动(即没收主张)。除为确保处罚付款而实施的查封外，被视为违法者的是财产，而非进口商。

扣押商品和违规行为的类型包括：

- 违禁货物(例如，管制物质、色情物品、假冒商品等);
- 受限货物(例如，纺织品配额协定、消费品安全委员会、外国资产控制、环境保护局、食品和药物管理局/美国农业部等施加的限制);
- 未申报、未报告或走私的货物(例如，入境美国的旅客未申报的货物、超过10,000美元的未报告货币等)；以及

- 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.

• 协助或便利非法进口货物的物品(例如，用于藏匿或隐蔽非法货物的运输工具或货物)。

海关可考虑各种替代查封或在查封之前采取的措施。第一，海关可以拒绝或不予报关。第二，海关可以扣留货物。扣留代表一项正式的海关程序，要求在作出适用限制的决定后五(5)日内通知进口商。第三，如果货物不被禁止，可将其存入保税仓库或对外贸易区(FTZ)，待缺陷或限制纠正后再提取。第四，如果与货物有关的缺陷或限制得到纠正，海关可处以罚款(例如，19 U.S.C.1592 或 1595a(b))以代替查封。根据政策，对国内价值达 100,000 美元或以上的某些财产的预期查封，须事先提交总部并由其批准。

B. 海关何时可以着手进行没收?

一般而言，如果查封的货物属于下列情形，则依19 U.S.C.1607进行行政没收是适当的：

• 没收价值不超过 500,000 美元；
• 用于走私毒品的运输工具；
• 违禁商品；或
• 任何金额的货币工具。

但是，主张权利人也可以通过提交保证金的方式获得司法没收，保证金金额为被主张财产没收价值的5,000美元或10%中的较低者，但不得低于250美元。(见19 U.S.C.1608和19 CFR 162.47。)

在几乎所有其他案件中，依19 U.S.C.1610进行司法没收是适当的。

对于须经行政没收的货物或其他财产，向对被查封财产享有利益的已知各方发送查封通知，告知其可选方案。一般而言，这些各方可以：

• 选择不作任何行动，在此情况下，政府将在通知指定的日期在报纸上发布公告，启动没收程序；

• 请求海关在指定日期之前提前启动没收程序；
在通知中；
• 提交减免申请(同时放弃立即启动没收程序);
程序）；
• 根据19 U.S.C.1617提出妥协方案以了结案件；或
• 提交主张和保证金，以立即转交美国检察官启动司法没收。

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

对于须经司法没收的货物，向已知享有利益的各方发送查封通知和程序选择通知(可选择依19 U.S.C.1618申请行政救济，或请求立即启动没收程序)。

对于可能与潜在刑事起诉相关的任何财产查封，海关必须向相应的美国检察官报告该事项。如美国检察官要求，可推迟查封的行政处理，以避免干扰任何刑事起诉。假设刑事起诉被拒绝，或者如被接受，海关已获得美国检察官同意进行行政处理，则将发出上述通知。

一般而言，大多数被查封财产的主张权利人放弃其立即没收的权利，选择提交申请，请求对没收给予行政救济。除财政部长明确保留管辖权的某些情形外，海关依19 U.S.C.1618被授予广泛权力，可通过其申请决定免除或减轻没收请求(即提供行政救济)。

在适用行政没收的案件中，如果未提交减免申请，或未依据 19 U.S.C.1608 提出主张并提供保证金，海关将通过在查封地海关口岸和司法辖区发行的报纸上连续至少三周发布公告，继续没收运输工具或商品。或者，该公告将张贴在离查封地点最近的海关大楼内公众可及的显眼处，并在其上注明张贴日期，且至少连续张贴三周，此后财产即被视为没收(除非在此期间提交了主张和费用保证金)。(见19 U.S.C.1609。)

C.海关何时允许提前发还被扣押财产?

在就第1618条申请作出最终决定之前(见下文讨论)，海关还受理提前放行被查封财产的请求，但须满足下列条件：

- 决定不进行没收；
- 该进口不属于禁止性进口(注：如果货物仅属受限货物且限制已得到补救，可允许提前放行);
- 申请人存入一笔大致相当于免除没收最终金额的款项；
- 申请人同意使政府免受损害，并支付与查封相关的行政费用(例如仓储费)及其他费用(例如留置权)；以及
- 不存在待决的刑事调查或并行的刑事诉讼程序。

负责该查封的当地 FPFO 在查封财产的没收价值小于或等于以下金额的案件中作出提前放行决定：

$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).

$100,000。没收价值大于 $100,000 的，该决定须经 OR&R 的 ITC 处批准。

D.2000年民事资产没收改革法

2000年4月25日，总统签署了《2000年民事资产没收改革法》(公法第106-185号，以下简称"CAFRA")。CAFRA所创设的关于民事没收的新规则，构成改革民事资产没收法律的一项努力，旨在使程序更加公平公正。CAFRA经颁布后，前瞻性地修订了大量成文法，并实施了新的查封与没收法定条款，这些条款在实体和程序两方面简化了2000年8月23日及之后发生的联邦查封与没收。

CAFRA 的大多数条款和要求不适用于《1930 年关税法》或《美国法典》第 19 编所载任何其他法律条款下的没收，或其他传统海关没收，例如 19 U.S.C.1497(未申报)、1595a(a)(便利非法进口的运输工具)、1595a(c)(违法进口)；《1986 年国内税收法典》；《联邦食品、药品和化妆品法》(F.F.D.C.A.),21 U.S.C.301 及以下各条；《与敌贸易法》，50 U.S.C.App.1 及以下各条；以及《中立法》，22 U.S.C.401(违法出口的主要没收条款)。但是，根据任何其他法定条款实施的查封，包括但不限于根据《银行保密法》31 U.S.C.~~5317(c~~) 对货币/货币工具查封的民事没收、根据《洗钱控制法》18 U.S.C.981 对洗钱违法行为的没收，以及《违禁品法》49 U.S.C.80302 及以下各条，均须遵守 CAFRA 的新要求。

因此，海关处理的大部分查封和没收仍将依据本出版物前述 A、B、C 节所述的标准且更为传统的规则进行。CAFRA 条款旨在与其他现行没收条款协同运作，以确保财产可能被查封和没收的个人的公平，同时保护执法需要。CAFRA 所推动的全面变革在某种程度上影响了每一个查封和没收财产的机构。

1. CAFRA 扣押与没收程序

作为一般规则，如果没收未被明确排除在 CAFRA 条款之外，海关必须在查封后**60 天内**向对财产享有利益的任何人发出 CAFRA 查封通知，除非：

- 该查封最初由州或地方当局作出，并由海关采纳以完成联邦没收。在此类情形下，CAFRA 查封通知必须在州或执法机构查封之日起**90 个日历日**内发出(而非自移交或采纳之日起 90 天内)。

- 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.

- 主张权利人的身份或权益在查封之后才确定的，但在没收完成之前确定的。在此情况下，海关自身份或权益确定之日起有**60个日历日**的时间签发及时通知。

- 情况为调查办公室助理专员基于调查利益将签发查封通知的时间延长30个日历日(即从查封之日起60日延长至90日)。**行政上仅可获得一次30日的延期。**因此，任何后续的额外延期必须由法院批准。

- 获得法院命令，允许在60日(或经行政延期的90日)之后签发查封通知。

一般而言，如果CAFRA查封通知未及时签发，海关将把财产返还给主张权利人，除非该财产为违禁品(即大麻、可卡因等)，或主张权利人无合法权利持有该财产(即被定罪的重罪犯不得合法持有枪支)，~~且~~不影响政府日后启动没收程序的权利。

例如，如果同一财产随后被用于不同的违法行为，政府不因基于新的违法行为而查封和没收该财产受到妨碍。此外，政府可以重新查封该财产(在放行之后)，以针对同一基础违法行为启动刑事没收。

2. 根据CAFRA提出的索赔

对查封财产的申请可以在任何查封通知中设定的截止日期之前提出(**且在任何情况下不得早于查封通知邮寄之日起35日**)。如果未收到该查封通知，则申请可以在**财产没收通知最终公布之日起30日内**提出。

CAFRA进一步废除了在CAFRA查封中就申请提交费用保证书的要求，这与常规第19编或出口查封中的申请和费用保证书不同。申请必须包括以下要求：

1. 必须以书面形式提出；
2. 必须在宣誓下作出，并受伪证罪处罚；
3. 必须指明所主张的具体财产；以及
4. 必须说明索赔人对该财产的权益。

如前所述，如果主张权利人在提出申请时未能满足上述标准，该提交将被视为19 CFR Part 171下的减免申请。

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.

3. 案件处理期间财产的返还

依据CAFRA的规定，如果海关已查封财产，且继续查封将对主张权利人造成重大困难，其可寻求在没收程序结束前立即放行该查封财产。即使未因重大困难而提出立即放行财产的请求，在最终行政决定作出前(如本出版物第III C节所述及依据19 CFR Part 171)，仍可实现财产的提前放行。

但是，这不适用于违禁品、货币及其他货币工具或电子资金，除非它们构成已被查封的合法业务的资产。它也不适用于将用作违法行为证据的财产，或因其设计或其他特性特别适合用于非法活动的财产(即设有秘密隔舱的船只)，或可能被用于实施犯罪行为的财产。

如果主张权利人已对查封财产提出申请(而非减免申请)，且该财产属于可提出困难减免申请的种类和性质，则必须向主张权利人签发通知，告知其有权提出困难减免申请。申请与减免申请之间的区别将在本文件中进一步讨论。

批准或拒绝立即放行请求的决定属于FP&F官员的单独裁量权。在这方面，**未在请求之日起15个日历日内作出决定**的放行请求将被视为**拒绝**。寻求放行的一方随后可以向法院寻求司法救济。

E. 没收减免申请程序的步骤是什么?

在收到查封通知后，对查封财产享有权益的人可向当地FPFO提交减免申请。减免申请无特定格式要求。就此而言，详细说明基本事实和情况的信函即可。但是，海关可要求申请及支持申请的任何文件为英文或附有英文译文。依据19 CFR171.1，申请必须载明以下内容：

1. 所涉财产的描述(如发生扣押);
2. 违规或扣押的日期和地点；
3. 申请人据以证明减免或减轻处罚合理的事实和情况；以及
4. 如属扣押案件，则需提供对被扣押财产享有可申请返还权益的证明。

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.

减免或减轻处罚申请必须由申请人、其律师或报关代理人签署。如果申请人是公司，申请可以由公司的高级职员或负责的监督官员，或该公司负责的员工代表签署。

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.

在非商业违法行为中，不会讲英语的申请人(或存在可能妨碍提出申请的残疾的申请人)可以指定一名代表(即家庭成员)代表其提出申请。决定的海关官员在受理该申请之前可能要求提供此类代表的证明。此外，值得注意的是，根据新规定，电子签名也是可以接受的。

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.

通常情况下，申请的处置遵循非常具体的准则，依据减轻因素(例如，申请人在海关调查中超出通常预期的合作)或加重因素(例如，申请人先前有类似违规~~记录~~)来决定给予或拒绝减免。如果给予减免，作为没收的替代，海关向申请人收取一笔金额，通常依据查封财产应税价值的特定百分比(例如，对于首次故意违法进口，在支付应税价值30-50%后免除没收)。通常，应税价值(海关据以评估关税的价值)低于查封货物的没收(国内)价值。

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.

申请期限通常限制为三十(30)日，除非FPFO延长该期限。如前所述，在就减免申请作出行政决定之后，申请人可以提出补充申请，寻求对申请的进一步审查。在违法者未提出申请的情况下，案件可以移交美国检察官进行司法没收，或进行行政处理，以简易没收方式处置。

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.

根据CAFRA处理的查封财产的主张权利人，如果选择提出减免申请(而非提出申请)并在程序选择表上如此注明，则可以根据海关法规提出减免申请。

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.

此外，关于管辖权金额以及为根据CAFRA决定减免申请之目的，本文件第二节中讨论的相同授权结构适用。同样，所有因价值而应经司法没收的财产，无论是否为CAFRA案件，仍必须经司法没收。

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.

F. 海关对没收减免的处置方式是什么，如果申请人不遵守此类救济，海关可以采取什么行动？

海关在申请人支付一定金额及与查封相关的~~费用~~(例如仓储费)以及签署无害免责协议后，可以减免没收(即返还财产)。在许多情况下，包括根据19 U.S.C.1595a(c)~~违法~~引入(或协助引入)商品的情形，海关将在支付以下范围内金额后放行被查封的财产：

- 首次违法且有减轻因素但无加重因素：支付被查封货物应税价值的10-30%。
- 首次违法且有加重因素，或第二次违法且无加重因素：支付被查封货物应税价值的30-50%。
- 第二次违法且有加重因素，或第三次/后续违法：支付被扣押货物应税价值的50-80%。

对于在22 U.S.C.401下**出口管制**案件中应予没收的货物的减免，如果出口商纠正了违法行为，海关通常将在支付以下范围内金额后放行被查封的财产，适用于三(3)年内发生的违法行为：

- 实质性违规(即未能取得州或商务部许可证）
- 首次违法：$2,500或违法货物的发票价值，以降低。
- 第二次违法：$3,500或违法货物的发票价值，以降低。
- 第三次违法：$5,000或违法货物的发票价值，以降低。
- 第四次违法：$7,000 - $10,000(取决于减轻或加重因素)，或货物的发票价值，以较低者为准。
- 技术性违规(即未能验证、提交或引用州或商务部许可证)

  首次违规：500美元或违规货物的发票价值，以较低者为准。

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.

第二次违法：$750或违法货物的发票价值，以较低者为准。第三次违法：$1,500或违法货物的发票价值，以较低者为准。第四次及后续违法：$2,000-$4,000(取决于减轻或加重因素)，或违法货物的发票价值，以较低者为准。

对于依据 19 U.S.C.1497 未申报货物的案件中的责任免除，海关采用 19 CFR Part 171 附录 A 中规定的准则。尽管应查阅这些准则以全面了解减轻和加重因素以及违规类别，但海关通常会在支付以下范围内的金额后免除责任：

• 涉及应税物品的违规行为：

如属首次违规，且知晓申报要求，未申报物品由海关关员发现，且无减轻或加重因素：处以税款的三倍(但不低于50美元)，或国内价值，以较低者为准。

如存在减轻因素：处以税款的一倍半至三倍，或国内价值，以较低者为准。

如存在特殊减轻因素：海关可将减轻后金额降至税款的一倍。

如存在加重因素：处以税款的三至六倍(但不低于100美元)，或国内价值，以较低者为准。

如存在特殊加重因素：处以税款的六至八倍(但不低于250美元)，或国内价值，以较低者为准，适用于第二次或后续违规的情形。在第二次或后续违规且存在加重因素的情形下，拒绝减免或将减轻后金额定为不低于税款的八倍，或国内价值，以较低者为准。

• 涉及绝对免税(HTSUS 免税条款)或
有条件免税(普遍优惠制[GSP]、HTSUS第98章等)物品：

如属首次违规，涉及有条件免税物品：处以物品如不享有优惠待遇本应缴纳的税款的一倍。

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

如属首次违规，涉及绝对免税物品：处以国内价值的百分之一至百分之五，但不低于50美元(或国内价值，以较低者为准)，且不超过1,000美元。

如存在减轻因素：海关可将减轻后金额降至更低数额。

如存在加重因素：对于有条件免税物品，处以税款的一至二倍(但不低于100美元)，或国内价值，以较低者为准；对于绝对免税物品，处以国内价值的百分之五至百分之十(但不低于100美元)。

对于涉及违反 31 U.S.C.5316 和 5317 项下**货币工具或现金报告规定**的案件中应予没收的货物，海关一般会在支付以下标准金额后，放行所运输的货币工具或现金(前提是该报告违规行为与非法活动无关)。这些标准金额以所运输的金额为基础确定：

- 运输金额为15,000美元或以下：标准金额500美元；
- 运输金额为 15,001 至 25,000 美元：标准金额为 1,000 美元；
- 运输金额 25,001 至 40,000 美元：标准金额 2,500 美元；
- 运输金额在 40,001 至 70,000 美元之间：标准金额为 5,000 美元；
- 运输金额在70,001至120,000美元之间：标准金额为10,000美元；
- 运输金额在 120,001 至 200,000 美元之间：标准金额为 20,000 美元；
- 运输金额 200,001 至 500,000 美元：标准金额 30,000 美元；
- 运输金额 500,001 至 1,000,000 美元：标准金额 50,000 美元；
- 运输超过1,000,000美元：根据海关财政部授权和政策决定。

[注意：没收价值超过500,000美元的情形需财政部批准。]

关于任何没收案件的处置，**减轻处罚因素**在适用时，可使主张权利人为获得没收减免而必须支付的处罚金额减少，每存在一项因素最多可减少标准金额的百分之十(10%)，但减少总额不得超过标准金额的百分之三十(30%)。特殊减轻处罚

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]

因素可能值得免除全部或标准金额的显著部分。通常，减轻因素包括：

- 缺乏经验；
- 与海关官员合作，或主动向海关官员披露违规行为；
- 共同海关过失；以及
- 与违规者沟通受损(因语言障碍、精神状况或身体疾病)。

在任何海关拒绝向主张权利人提供任何减免或主张权利人未遵守海关所给予的减免的情形下，案件将被移送美国检察官进行司法没收，或由海关进行行政处理以作行政没收处置。

依据31 U.S.C.5316和5317提出的货币工具没收主张适用CAFRA的规定。与所有免除的条件一样，此类没收的免除主张权利人必须支付查封和保管费用(除非存在特殊情形)，以及支付任何免除金额，签署免责协议，并遵守任何被视为适当的条款和条件。

CAFRA的规定还允许在任何主张权利人在与没收财产相关的任何民事诉讼中"实质胜诉"的情形下判给律师费、利息和费用。在任何情况下，没收的免除均不会被视为为支付律师费、利息或费用之目的的"实质胜诉"。因此，这些费用、利息和费用仅由法院判给在民事司法程序中实质胜诉的主张权利人。

关于过度罚款和比例审查，CAFRA对18 U.S.C.983(g)的修正规定，主张权利人可向法院申请裁定没收是否在宪法上过度。在这方面，CAFRA编纂了U.S.v.Bajakajian, 524 U.S.324 (1998)中规定的标准。

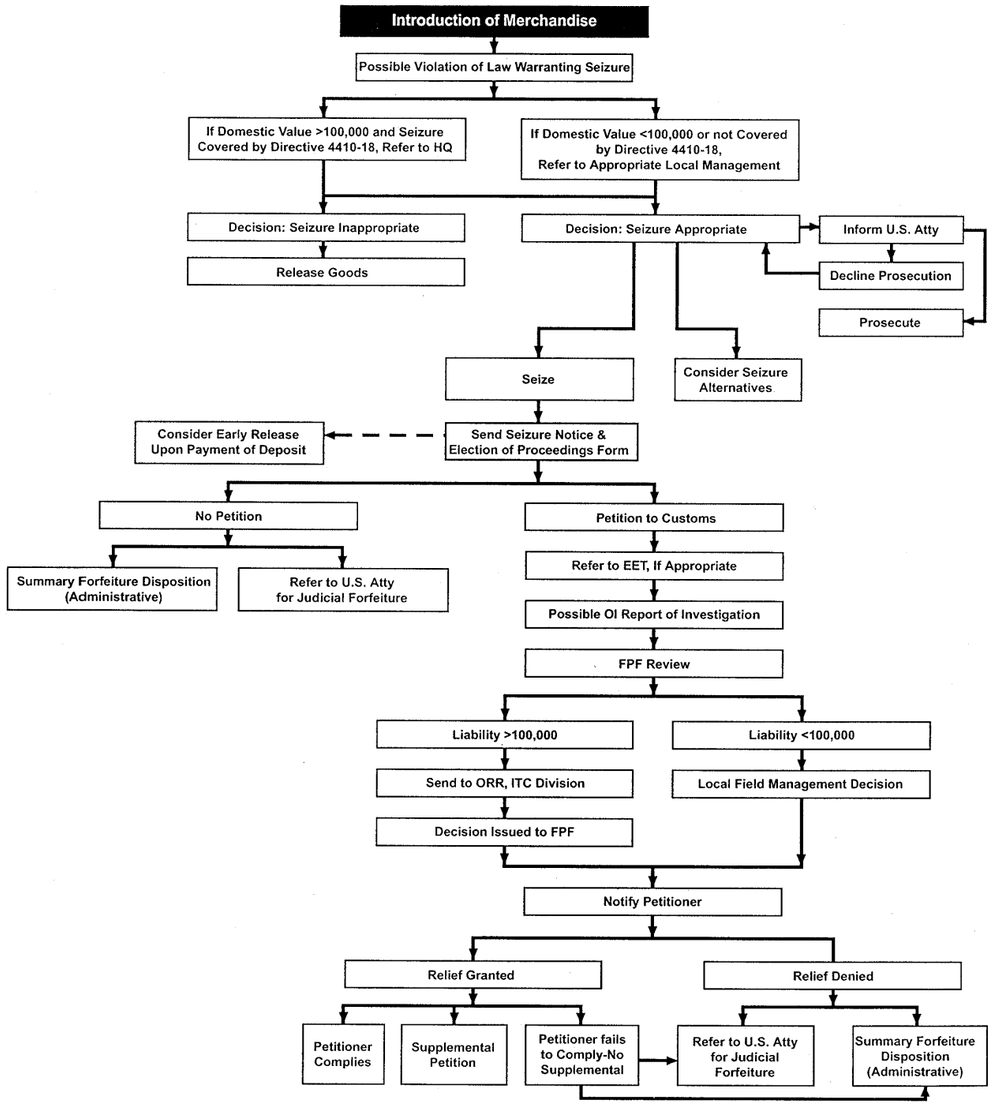
G. 民事没收诉讼的时效

CAFRA修改了19 U.S.C.1621，规定了政府提起没收诉讼的时限。该修正适用于所有海关没收查封，并规定了自发现违规之日起相同的五(5)年时效，但增加了一项规定，要求在上述五(5)年期限内，或自发现财产涉及犯罪之日起两(2)年内启动程序，以较晚者为准。

[扣押流程图表见下页]

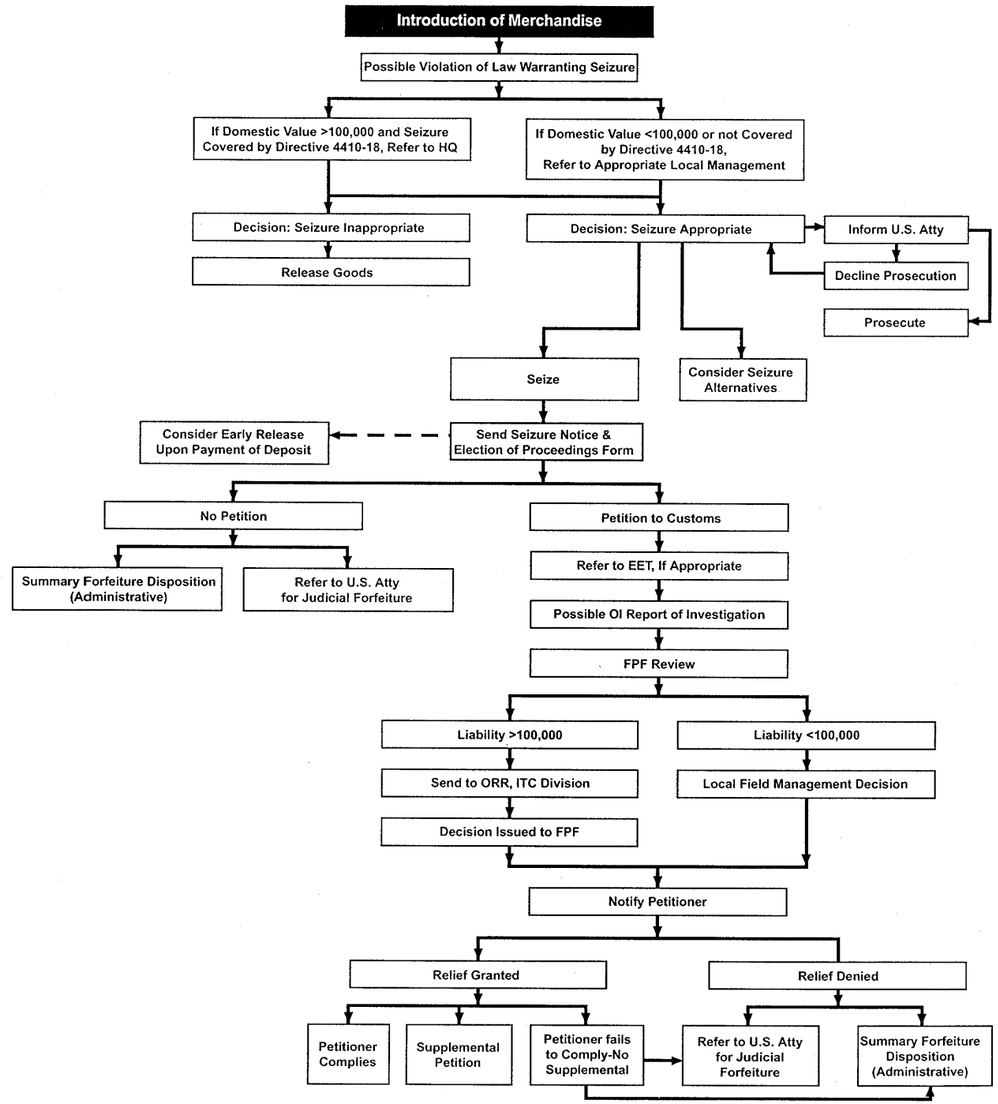
Administrative Process:

Seizures



Administrative Process:

Seizures



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
- equipment and vessel repairs (19 U.S.C. 1466).

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:

IV.对涉及违规的个人所评定货币处罚的行政程序

A. 何时对个人处以罚款?

当发现违反海关法或海关执行的法律时，除查封和/或移交刑事起诉外，或作为替代，海关通常可选择对被指控违规者处以个人处罚。在某些情况下，商业违规首先由多学科执法评估小组(EET)审查，以确定是否应发出处罚或根据情况采取其他更适当的行动。EET可建议从合规改进计划到移交刑事起诉不等的行动。

B. 处罚程序的步骤有哪些?

1. 海关签发预处罚通知和/或处罚通知

虽然处罚程序通常始于FPFO向被指控违规者签发处罚通知(CF 5955A)，但某些法规要求在海关提出处罚主张(即签发处罚通知)之前签发预处罚通知并给予答复机会。

预处罚通知是海关"正在考虑"对指定个人和/或实体签发处罚的书面通知。在此初步阶段，指定个人和/或实体获得有关被指控违规的信息，并获得机会陈述海关为何完全不应签发处罚主张，或不应按所考虑金额签发处罚主张的理由。

要求在签发处罚通知之前签发预处罚通知的处罚包括：

- 商业欺诈与过失(19 U.S.C.1592);
- 退税罚款(19 U.S.C.1593a);
- 报关行处罚(19 U.S.C.1641);
- 记录保存处罚(19 U.S.C.1509);
- 虚假性或缺乏载货清单(19 U.S.C.1584(a)(1))；以及
- 设备与船舶修理(19 U.S.C.1466)。

通常，被指控违规者自预处罚通知邮寄之日起有三十(30)天时间作出答复。

不需要发出处罚前通知的处罚包括，但不限于
限于：

- 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
- coastwise trade (Jones Act) violations (46 U.S.C. App. 883).

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 form 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

• 协助非法进口的处罚(19 U.S.C.1595a(b));
• 与毒品相关的舱单处罚(19 U.S.C.1584(a)(2));
• 假冒商标处罚(19 U.S.C.1526(f));
• 运输工具到达、报告、入境和结关违规(19 U.S.C.1436);
和
• 沿海贸易(琼斯法案)违规(46 U.S.C.App.883)。

2. 被指控违规者答复和/或申请

收到被指控违规者的预处罚答复后，FPFO将要么在违规行为得到证实的情况下继续签发处罚主张，要么签发书面声明表明海关已选择不评定处罚。

如FPFO评定处罚，通常被指控违规者自处罚通知邮寄之日起有六十(60)天时间提交减免申请。如被指控违规者未作答复(申请)，海关可将案件移送催收行动。

大多数处罚按适用于所指控违规行为的法定最高限额评估(例如，大多数第1592条欺诈处罚按国内价值最高额~~评估~~)。但在多数情况下，减轻处罚申请依据19 U.S.C.1618提出。根据所涉法律和法规，申请人可能被允许向海关官员作口头陈述。

例如，当所受处罚系因违反19 U.S.C.1592或1593a时，申请人有作口头陈述的法定权利。对于所有其他违规行为，是否给予口头陈述机会，由有权处理该申请或补充申请的海关或财政部官员酌情决定。

海关依据所涉特定处罚法规的既定指南决定批准或拒绝减轻处罚。例如，第1592条和第1641条处罚的指南分别载于《海关条例》第171部分附录B和附录C。

被指控的违规者可提出补充申请，请求进一步减免处罚。一般而言，决定初次申请的办公单位可批准进一步减免。但是，如果进一步减免请求被建议拒绝，则必须由更高级别的办公单位决定该事项。

3. 如果评估或减轻后的处罚未在以下期限内支付，海关可将索赔移交催收行动和/或司法执行：

• 处罚通知所述期限(例如，未针对海关处罚索赔提出减免申请的案件)；或

- 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?

1. Commercial Fraud and Negligence Penalties (19 U.S.C. 1592)

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).

• 请愿(或补充请愿)决定中所述的时间，

罚款请求将转交催收行动。

4. 海关也可以妥协或"了结"索赔

除依据19 U.S.C.1618减免和减轻处罚及没收的权力外，财政部长授予海关关长的权力还包括依据19 U.S.C.1617，经财政部总法律顾问或其指定人员(通常为海关首席法律顾问办公室)建议，对处罚索赔进行和解(了结)的权力。决定是否和解索赔的唯一相关因素是：

• 政府在追回所评定罚款的诉讼中面临的风险
金额；以及
• 被指控的违规者无力支付评估或减轻后的
处罚。

被指控的违规者可在处罚程序进行期间的任何时间提出和解提议。

依据第1592(d)条提出的、因商业欺诈、重大过失或过失违规而导致海关合法应征税款损失(即征税要求)的索赔，只能由财政部长或其指定人员经总法律顾问办公室或其指定人员批准后和解。财政部长未将其和解征税索赔的权力授予海关。

C. 构成各种金钱处罚的具体要素是什么?

1. 商业欺诈与过失处罚(19 U.S.C.1592)

19 U.S.C.1592规定对以下任何人处以罚款：

• 通过欺诈(即自愿且故意)、重大过失(即实际知情或肆意无视)或过失(即未行使合理注意),

• 将任何商品输入或引入(或试图输入或引入)美国商业，

• 通过任何文件或电子传输的数据或信息、书面或口头陈述，或具有实质性和虚假性的行为，或任何具有实质性的遗漏(即虚假性有可能改变商品的归类、估价或可接受性(是否准予入境)，或关税责任，或倾向于掩盖反倾销、反补贴税或类似法规下的不公平贸易行为，或涉及专利或版权侵权的不公平行为)。

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:

第1592条规定对所指控的违规者评估处罚，最高为：

• 在欺诈违规案件中，商品的国内价值；

• 在重大过失违规案件中，为政府所受合法关税、税款和费用损失的四倍，或国内价值，或如果违规未影响关税评估，则为应税价值的40%(但在任何情况下不得超过商品的国内价值)；以及

• 在过失违规案件中，为政府所受合法关税、税款和费用损失的两倍，或
如果违规未影响关税评估，则为应税价值的20%(但在任何情况下不得超过商品的国内价值)。

依据19 U.S.C.1592(d)，对于违反19 U.S.C.1592(a)并导致合法关税损失的行为，海关还可在处罚之外发出征税要求索赔。FPFO向任何负有支付实际关税责任的人(例如，违规者、进口商，或如无力支付，则担保人)发出通知。

针对第1592条处罚的减免申请可依据19 U.S.C.1618提出。所有申请均提交至评估处罚口岸的FPFO。在处罚索赔金额小于或等于50,000美元的案件中，由FPFO和NSPO决定申请和补充申请。在处罚索赔金额大于50,000美元的案件中，由OR&R的ITC处决定这些申请和补充申请。

海关在整个申请阶段考虑各种减轻和加重因素。

• **减轻处罚因素**，可作为进一步减免的理由包括：海关自身存在促成性错误、配合调查、立即采取补救措施、缺乏进口经验以及此前记录良好。

• **特殊减轻处罚因素**，可作为进一步减免的理由包括：无法获得对违规者的管辖权或无法对其执行判决、无力支付减轻后的处罚、被指控违规者承担特殊费用，以及海关对违规行为的知情。

• **加重处罚因素**包括：妨碍调查、隐瞒证据、就违规行为提供误导性信息、纺织品转运，以及此前经最终行政裁定认定存在过错程度的实质性 1592 违规行为。

一般而言，海关可将第1592条处罚减轻至以下范围内：

- 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).

For further information concerning prior disclosures, consult Customs Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: The ABC's of Prior Disclosure*, dated May, 1998.

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.

• 欺诈--最低为关税损失总额的5倍至最高8倍，或
在非税收损失案件中为应税价值的50%至80%，但绝不得超过商品的国内价值；

• 重大过失--最低为关税损失总额的2.5倍至最高4倍，或在非税收损失案件中为应税价值的25%至40%，但绝不得超过商品的国内价值；或

• 过失--最低为关税损失总额的0.5倍至最高2倍，或在非税收损失案件中为应税价值的5%至20%，但绝不得超过商品的国内价值。

在知悉正式调查开始之前或不知悉正式调查开始的情况下披露第1592条违规情况(即作出事前披露)的人，可获得大幅减轻的处罚。

• 在过失或重大过失违规案件中，如果存在实际税收损失(即海关已对报关单作出最终清关核定后损失的关税、税款或费用)，减轻后的处罚为相当于自清关核定之日起至关税缴纳之日止的利息金额。

• 在过失或重大过失违规的情形下，如果存在潜在的税收损失(即在海关对报关单作出最终清关核定之前损失的关税、税款或费用)，则处罚全额免除。

• 对于**欺诈**违规行为，减轻后的处罚始终等于实际和潜在税收损失的一倍(若违规行为未影响关税评定，则为应税价值的10%)。

有关事前披露的进一步信息，请参阅海关知情合规出版物《贸易界每位成员都应了解：事前披露入门》,1998 年 5 月。

经授权，法规与裁定办公室(OR&R)国际贸易合规司(ITC Division)和首席法律顾问办公室均须批准依据第1617条提交的、针对第1592条处罚诉讼的所有和解提议。被指控的违规人可随时提出和解提议，无论海关是否已发出处罚前通知或处罚通知。

一般而言，海关不会查封受第1592条处罚诉讼约束的商品。但是，在海关有合理理由相信以下情形时，将查封此类商品：

• 被指控的违规者已资不抵债；
• 被指控的违规者在美国管辖范围之外；
• 扣押对于保护税收至关重要；或
• 查封对于防止引入禁止或限制
商品是必要的。

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.

2. 退税罚款(19 U.S.C.1593a)

第1593a条规定对以下任何人处以罚款：

• 通过欺诈或过失，
• 寻求、诱导、影响或试图寻求、诱导、影响向该人或他人支付或贷记任何退税申请

• 通过任何文件或电子传输的数据或信息、书面或口头陈述，或重大虚假的行为，或任何重大遗漏。

退税，在相关部分，是指对依据联邦法律征收的关税、费用或国内税收(与货物进口相关)的全部或部分退还或免除。退税申请是指法规要求的、用以请求支付退税的退税报关及相关文件。(有关退税的进一步信息，请参阅海关知情合规出版物《贸易界每位成员都应了解的：退税》，1998年3月。)

此外，对于违反第1593a(a)条且已导致政府收入损失的行为，海关可依据19 U.S.C.1593a(d)在处罚之外另行提出关税主张。关税主张通知可发给任何有责任支付实际关税的人(例如进口商，或在其无力支付时的担保人)。

一般而言，海关可将第1593a条处罚减轻至以下幅度：

• 欺诈--实际或潜在收入损失的三(3)倍至一倍半(1 1/2)倍；

• 重复过失违规--实际或潜在收入损失的百分之五十(50%)至百分之二十五(25%)；以及

• 首次过失违规--收入损失的百分之二十(20%)至百分之十(10%)
收入。

罚款、处罚和没收办公室(FPFO)对评估处罚金额小于或等于50,000美元的案件中的申请作出决定，法规与裁定办公室国际贸易合规司对评估处罚金额大于50,000美元的案件中的申请作出决定。国家处罚办公室(NSPO)对评估处罚金额小于或等于50,000美元的案件中的补充申请作出决定，法规与裁定办公室国际贸易合规司对评估处罚金额大于50,000美元的案件中的补充申请作出决定。

与第1509条(下文讨论)规定的记录保存合规计划类似，在不存在欺诈或重复过失违规的情况下，退税合规计划的参与者可收到违规书面通知，以代替其首次罚款。

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).

3. Broker Penalties (19 U.S.C. 1641)

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

海关考虑前文针对第1592条处罚所列的相同减轻和加重因素。此外，对第1593a条违规情形的事前自愿披露也可能导致处罚大幅减轻。

如前文关于19 U.S.C.1592处罚所述，法规与裁定办公室国际贸易合规司和首席法律顾问办公室均须批准依据第1617条提交的、针对退税处罚诉讼的所有和解提议。

海关在 2000 年 1 月 25 日《联邦公报》第 65 卷第 3803 页公布了其最终的退税处罚条例。依照这些条例，海关可对在 1998 年 11 月 25 日(即自动化退税选择性计划实施之日)或之后提交虚假退税申请的任何人员处以退税处罚。

3. 经纪人处罚(19 U.S.C.1641)

一般而言，对于任何一份处罚通知中所包含的违规行为，海关对报关代理人(即根据 19 CFR Part 111 获准代表他人办理海关业务者)所处的罚款最高可达 30,000 美元。对于违反报关代理人法定或监管职责的行为，海关可作出处罚，或撤销、中止报关代理人的执照或许可。(详情请参见我们的出版物《贸易界每位成员都应了解的：报关代理人》(2000 年 3 月)。)这些违规行为包括：

• 报关代理人未能对海关业务行使负责任的监督和控制。见19 U.S.C.1641(b)(4);

• 报关员涉及的案件：
  • 在以下情形中作出重大虚假或误导性陈述或遗漏重大事实：
    与向海关提交的任何许可证或执照申请或报告相关；
  • 在提交执照或许可证申请后的任何时间，曾被判定犯有某些列举的重罪或轻罪；
  • 违反了海关执行的任何法律的任何规定，或依据任何此类规定发布的规则或条例；
  • 曾建议、诱导、明知而协助或教唆他人违反海关执行的任何法律，或依据任何此类规定发布的规则或条例；
  • 未经财政部长书面批准，曾明知而雇用或继续雇用任何被判定犯有重罪的人；以及
  • 在海关业务过程中，意图欺诈，故意和明知地欺骗、误导或威胁任何客户或潜在客户。(见19 U.S.C.1641(d)(1)和(d)(2)(A))。

此外，依据19 U.S.C.1641(b)(6)，海关可对故意进行交易的任何人员处以处罚(每笔交易不超过10,000美元)

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.

4. Recordkeeping Penalties (19 U.S.C. 1509)

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 these 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

除仅代表自身外，未持有有效报关代理人执照而从事报关业务。

在报关代理人被指控以欺诈方式违反海关执行的任何法律、规则或条例(即19 U.S.C.1641(d)(1)(C))的案件中，海关适宜依据19 U.S.C.1592处以额外处罚。海关的政策是，在过失或重大过失案件中，仅当报关代理人分享的经济利益超过通行报关费时，才依据19 U.S.C.

罚款、处罚和没收办公室对所有报关代理人处罚案件中的初始申请作出决定。国家处罚办公室对处罚主张金额小于或等于10,000美元的案件中的补充申请作出决定。法规与裁定办公室国际贸易合规司对处罚主张金额大于10,000美元的案件中的补充申请作出决定。

法规与裁定办公室国际贸易合规司和首席法律顾问办公室均须批准依据第1617条提交的、针对报关代理人处罚诉讼的所有和解提议。

4. 记录保存处罚(19 U.S.C.1509)

某些人若在接到要求后未能出示依据 19 U.S.C.1509(a)(1)(A) 在《海关条例》中列明的入境记录(通常称为"(a)(1)(A) 清单")，可能受到记录保存处罚。(a)(1)(A) 清单指法律或法规就货物入境所要求的记录(无论海关在入境时是否要求出示该等记录)。见 19 CFR Part 163 App。

可能承担记录保存处罚责任的当事方包括但不限于
包括但不限于

- 所有者，
- 进口商，
- 收货人，
- 记录进口商或报关申报人。

当这些当事方或其代理人(包括报关代理人)从事以下行为时，海关可对其处以记录保存处罚：将货物进口至美国、提交退税申请、运输或储存以保证金承运或持有的货物，或明知而致使以保证金承运或持有的货物进口至美国或从美国运输或储存。海关还可对从事需要提交申报和/或报关的活动之当事方，以及对填写并签署NAFTA原产地证书的当事方处以记录保存处罚。

海关根据两种可能的过错程度之一处以记录保存处罚。这两种过错程度是**故意不履行**和**过失**。如果一方未能遵守海关对报关记录的要求是出于故意

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.

未能提供该记录的，海关可按每批放行(即每份C.F.3461)对该当事人处以不超过100,000美元的处罚，或处以相当于该货物估定价值百分之七十五(75%)的金额，以较低者为准。如果当事人未能遵守海关对报关记录的要求是由于过失，海关可按每批放行对该当事人处以不超过10,000美元的处罚，或处以相当于该货物估定价值百分之四十(40%)的金额，以较低者为准。

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.

记录保存人在满足一般记录保存要求后，可被认证为记录保存合规计划的参与者。记录保存要求根据记录保存合规计划或为适应记录保存人和海关需要而协商确定的替代计划制定。记录保存合规计划的参与者，在不存在故意或反复过失违规的情况下，可收到海关发出的违规书面通知以代替罚款。但是，记录保存人反复过失违规可能导致海关发出处罚并取消该计划下的认证，直至采取纠正措施达到海关满意为止。

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.

海关开始对未能提供自1996年7月15日(即"(a)(1)(A)清单"在《联邦公报》上公布之日)起依法要求的报关记录的行为，征收第1509条记录保存处罚。在FPFO签发记录保存处罚前通知之前，拟签发该前通知的当地海关办公室必须首先获得OR&R国际贸易合规司的审查和批准。该审查程序自海关能够开始签发记录保存处罚之时(即1996年7月15日)起生效，并将持续有效至最终记录保存指南实施日期起满一年(至2001年11月8日)。此后，OR&R国际贸易合规司可自行决定，在情况需要时审查任何记录保存处罚前通知。

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.)

在裁定针对记录保存处罚的减免申请时，海关会考虑与上述第1592条处罚所规定的类似的减轻和加重因素。(有关记录保存的进一步信息，请参阅美国海关与边境保护局知情合规出版物《贸易界每位成员都应了解的：记录与记录保存要求》,1998年6月。)

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

5. 虚假或不具备舱单(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.

任何驶往美国的船舶的船长或任何运输工具的负责人，如未能向提出要求的海关官员出示舱单，应承担1,000美元的处罚责任。此外，如海关认定船舶船长或责任方未将船上、航空器上或运输工具上的任何货物列入舱单(即溢装)，该船舶船长或责任方应承担相当于10,000美元或该货物国内价值中较低者的处罚责任。如货物已列入舱单但未找到，可针对短少处以1,000美元的处罚。

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.

6. Drug Related Manifest Penalties (19 U.S.C. 1584(a)(2))

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.

进口承运人、保税承运人、集装箱货运站经营者、保税运输人、保税仓库或对外贸易区所有者、进口商或报关代理人如发现任何舱单差异，必须报告该差异。此类当事方应提交舱单差异报告(MDR)，以报告并更正舱单数量或数据要素中的差异。

只有超过1,000美元的第1584(a)(1)条处罚才需要FPFO发出处罚前通知。第1584条处罚可通过国际承运人的保证金(即承运人或其代理人与担保人之间、以海关为受益人的合同，海关据此可收取处罚或违约金)予以担保。由于第1584(a)(1)条处罚最高只能处以10,000美元，FPFO已被授权决定所有申请(减免),NSPO已被授权决定所有补充申请(减免)。

6. 药物相关舱单处罚(19 U.S.C.1584(a)(2))

如果任何未列入舱单的货物(依据19 U.S.C.1584(a)(1)规定)包含某些管制物质(如大麻、可卡因或鸦片等非法毒品)，海关将根据数量对船长、车辆负责人、船只或车辆所有人或任何其他责任方处以处罚。例如，每盎司大麻500美元，或每盎司海洛因或可卡因1,000美元。第1584条处罚由国际承运人的保证金担保。

在处罚责任金额小于或等于100,000美元的案件中，FPFO裁定申请，NSPO裁定补充申请。在处罚责任金额大于100,000美元的案件中，由OR&R的ITC处裁定这些申请和补充申请。但是，在所有涉及超级承运人倡议计划签署方的此类案件中，无论处罚责任金额多少，均由OR&R助理专员裁定申请。

第1584(a)(2)条承运人倡议索赔的两个主要要素是：a) 知情和 b) 最高程度的注意和勤勉。如果海关发现承运人知道毒品被放置在货物或运输工具上(即知情)，则不予减轻处罚。如果没有此类知情且承运人行使了最高程度的注意和勤勉，海关将全额减轻处罚。在所有其他情况下，减免金额取决于过错程度。

一般而言，OR&R将按如下方式减轻对未申报毒品的处罚：

• 在过失案件中，处罚将从原处罚评估金额的百分之十(10%)减轻至百分之二十五(25%)；以及

• 在重大过失案件中，处罚将从原处罚评估金额的百分之二十五(25%)减轻至百分之五十(50%)。

7. Equipment and Vessel Repairs (19 U.S.C. 1466)

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, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the 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).

7. 设备与船舶修理(19 U.S.C.1466)

根据美国法律登记从事对外或沿海贸易的船舶的所有人或船长，有责任就下列在任何外国发生的费用，申报并缴纳50%的从价关税：

• 为船舶购买的设备；
• 用于船舶的修理部件或材料；以及
• 修理费用。

如果船舶所有人或船长故意或明知地疏忽或未能报告、申报并缴纳关税，或对此类购买或修理作出任何虚假陈述，且没有合理理由相信该陈述的真实性，或协助或促使就任何重要事项作出任何虚假陈述，且没有合理理由相信该陈述的真实性，海关可评估最高达船舶价值的处罚，或查封并没收该船舶。

根据现行准则，FPFO就设备与船舶修理违规发布所有处罚前通知，金额为收入(关税)损失的四(4)倍或船舶价值中的较低者。如果违规仅包括迟交文件，FPFO将按收入损失的两(2)倍发布处罚前通知。第1466条处罚由国际承运人保证金担保。

在处罚金额小于或等于100,000美元的案件中，FPFO和NSPO裁定申请和补充申请。在处罚金额大于100,000美元的案件中，由OR&R的ITC处裁定这些申请和补充申请。

8. 协助非法进口的处罚(19 U.S.C.1595a(b))

根据19 U.S.C.1595a(b)，海关可处以等于违反法律引入或试图引入美国的任何物品的国内价值的处罚。任何指导、提供财务或其他协助、或以任何方式参与19 U.S.C.1595a(a)规定的任何非法活动的人，应承担等于所引入或试图引入的物品国内价值的处罚。第1595a(a)条涉及违反法律引入、带入、卸货、着陆、移除、隐藏、窝藏或后续运输正在或已经被引入或试图引入美国的任何物品。引入违禁商品和限制商品是海关可能发出第1595a(b)条处罚的常见例子。海关发出第1595a(b)条处罚的一些具体违规行为包括：19 U.S.C.1304(不当原产地标记)、19 U.S.C.1448(未经授权从海关保管中移除)、19 U.S.C.1499(未经海关查验交付货物)和21 U.S.C.331(引入掺假或贴错标签的食品)。

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 unlading 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.

9. Counterfeit Trademark Penalties (19 U.S.C. 1526(f))

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).

一般而言，在商品国内价值小于或等于100,000美元的案件中，FPFO决定申请(减免),NSPO决定补充申请。在商品国内价值大于100,000美元的案件中，OR&R的ITC部门决定申请和补充申请。第1595a(c)条查封的减免减轻指南适用于第1595a(b)条处罚的减轻。但对于因违反19 U.S.C.1448规定未经海关授权从卸货地点交付货物，或违反19 U.S.C.1499未经海关查验交付货物而评估的第1595a(b)条处罚，减轻指南见T.D.99-29。

9. 假冒商标处罚(19 U.S.C.1526(f))

第1526(f)条规定，对任何指使或协助(以财务或其他方式)进口供销售或公开分销的、依据19 U.S.C.1526(e)被查封的货物的人，处以罚款。第1526(e)条规定，对带有假冒商标、违反15 U.S.C.1124进口的货物予以查封，并在未取得商标所有人书面同意的情况下对该等货物予以没收。[假冒商标是指与注册商标相同或实质上无法区分的伪造商标。19 CFR 133.21(a)。](有关假冒货物的更多信息，请参阅海关知情合规出版物《贸易界每一成员都应了解的：海关知识产权执法》，1999年6月。)

海关将按如下方式评估第1526(f)条罚款：

• 首次查封--处罚最高可达基于制造商建议零售价(MSRP)的正品价值。

• 后续查封--处罚最高可达基于MSRP的正品价值的两倍。

在罚款小于或等于100,000美元的案件中，FPFO和NSPO裁定申请和补充申请。在罚款大于100,000美元的案件中，由OR&R的ITC处裁定这些申请和补充申请。

海关可将第1526(f)条处罚减轻至以下范围内：

• 首次违规且有减轻因素但无加重因素：被查封货物MSRP的10-30%。

• 首次违规有加重因素，或第二次违规无加重因素：被查封货物MSRP的30-50%。

• 第二次违规有加重因素，或第三次/后续违规：被查封货物MSRP的50-80%。

海关适用先前就第1526(e)条项下没收减轻所规定的相同减轻和加重因素。

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.

11. Coastwise Trade (Jones Act) Violations (46 U.S.C. App 883)

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.

10. **抵达、报告、入境和清关违规(19 U.S.C.1436)**

任何船舶船长、车辆负责人或飞机驾驶员实施以下任何违规行为，首次违规应承担5,000美元处罚，此后每次违规应承担10,000美元处罚：

- 未能遵守19 U.S.C.1431(即提交舱单)、19 U.S.C.1433(即报告船舶、车辆和飞机到达)、19 U.S.C.~~143~~4(即提交船舶申报)或46 U.S.C.App.91(即取得船舶结关);
- 根据19 U.S.C.1431、19 U.S.C.1433(d)、19 U.S.C.1434或46 U.S.C.App.91，向海关提交或传送任何伪造、变造或虚假的文件、信息或舱单，且未披露事实；或
- 未能按19 U.S.C.1434、19 U.S.C.1644(即民用航空航行法律及船舶申报与结关法规)或46 U.S.C.App.91的要求进行申报或取得结关。

此外，与此类违规相关的任何运输工具均可被查封和没收。一般而言，除非存在加重因素或有其他违法证据，海关不会查封运输工具。

第1436条罚款可通过国际承运人保证金予以担保。

在处罚责任金额小于或等于200,000美元的案件中，FPFO和NSPO裁定申请和补充申请。在处罚责任金额大于200,000美元的案件中，由OR&R的ITC处裁定这些申请和补充申请。

11. 沿海贸易(琼斯法案)违规(46 U.S.C.App 883)

46 U.S.C.App.883禁止外国旗船舶将沿海港口装载的货物运输至任何其他沿海港口(无论是直接运输还是经由外国港口)。第883条规定，对不当运输的货物予以查封和没收，或评估相当于该货物国内价值的罚款。海关可对船长、所有人或任何负责不当运输的当事方评估处罚。

第883条处罚的评估金额最高可达以不合格船舶进行沿海运输的货物价值或运输费用中的较高者。如果违规是由于船舶发生紧急情况，出于安全或其他人道主义原因需要进行沿海运输，则处罚金额不应超过100,000美元。如果违规是为了商业便利，海关不限制处罚金额。第883条处罚通常由国际承运人的保证金提供担保。

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]

在处罚责任金额小于或等于100,000美元的案件中，FPFO和NSPO裁定申请和补充申请。在处罚责任金额大于100,000美元的案件中，由OR&R的ITC处裁定这些申请和补充申请。

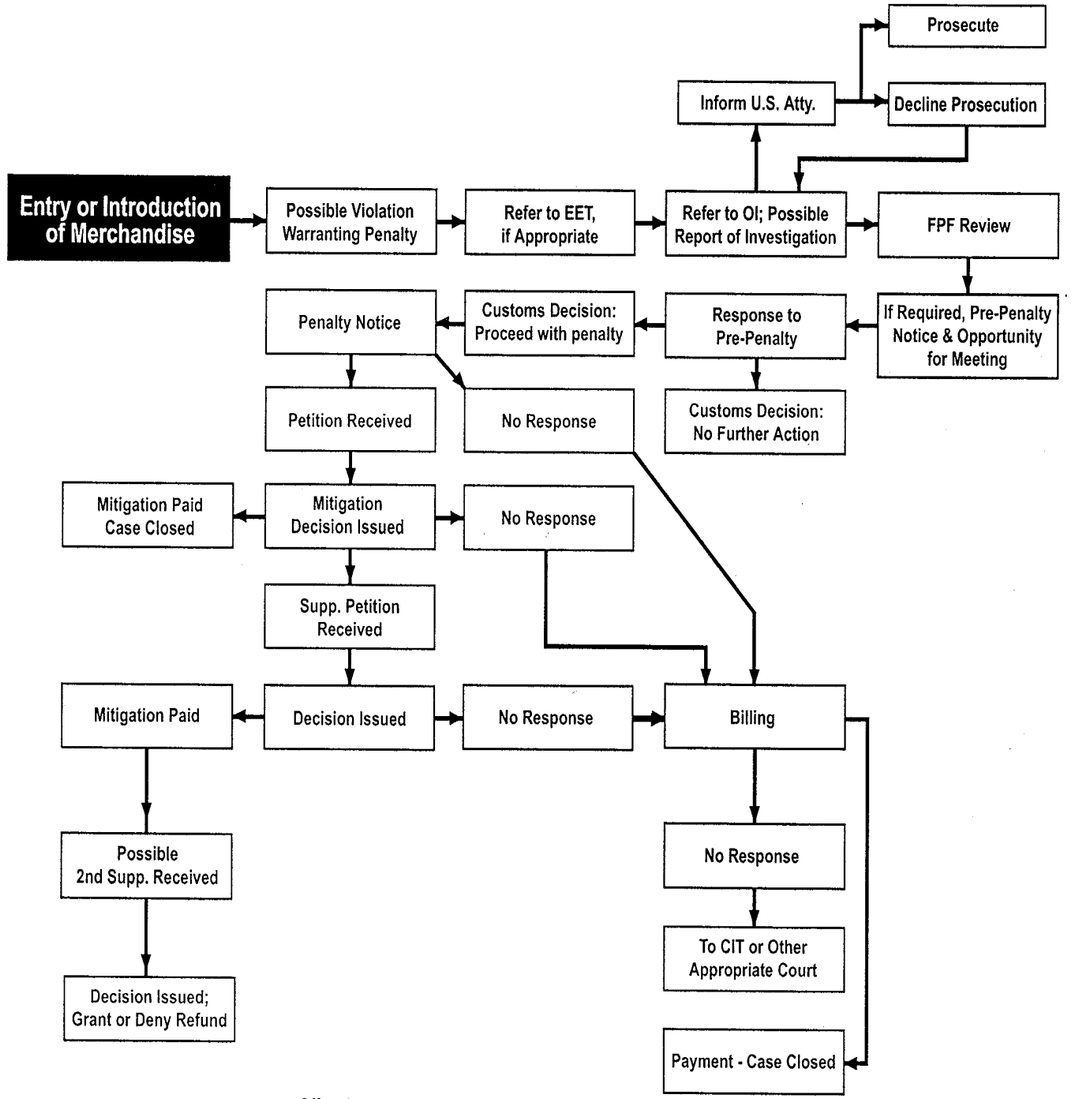
如果减免申请证明违规是运输船舶遇险抵达的直接结果，即船舶处于危险之中或由于不可抗力(例如飓风)，则全额减轻处罚是适当的。如果船舶未遇险，但运输是由于其他人道主义原因(例如受伤船员生命垂危需下船)，索赔可全额减轻。如果违规是由于商业便利所致，海关可将处罚减轻至评估金额的35%至50%之间。

[罚款程序流程图见下页]

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Administrative Process:

Penalties

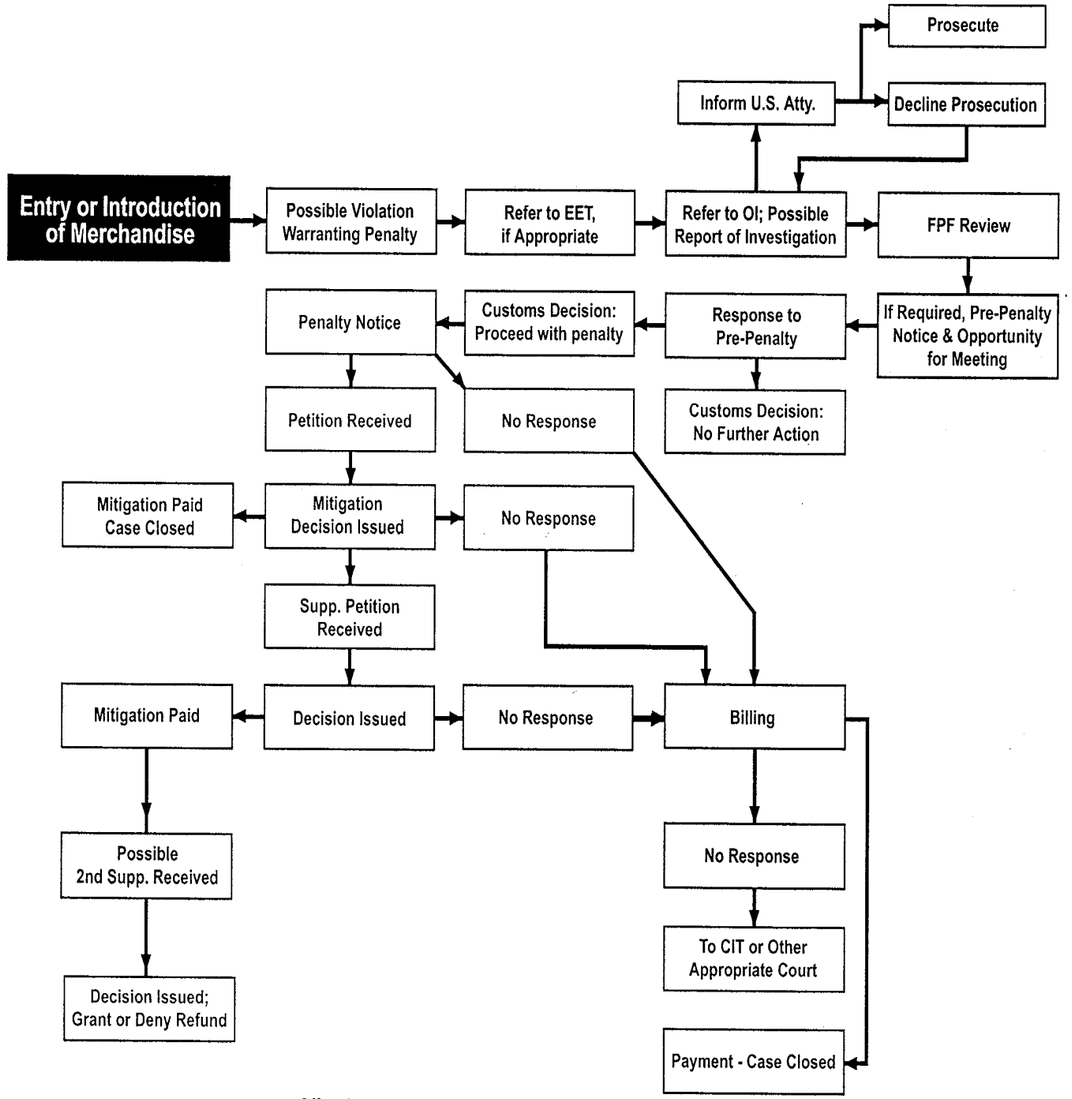


Offers in compromise may be submitted at any point in the process. All are subject to approval by ORR, ITC Division and Chief Counsel.

Administrative Process:

Penalties

海关行政执行程序
2004年2月



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

V. 违约金行政处理程序
对违反保税条件负有责任的当事人进行评估

A. 什么是保证金，何时违反保证金义务会引发违约金索赔?

海关法律和法规要求登记进口商、仓库经营人及其他货物保管人、保税承运人和国际货物承运人提交保证金，以确保遵守与进口货物进入和通过美国的申报、运输和储存有关的各种义务。保证金是主债务人(例如进口商、承运人、仓库经营人等)与担保人之间的合同，海关为保证金受益人。

如果存在违反保证金项下义务的情况(例如进口商未能遵守将货物重新交付海关保管的正当要求)，海关可按法规针对所涉违规类型规定的金额签发违约金索赔。(例如，对于未能重新交付FDA拒绝的食品，海关目前按违规所涉货物估定价值的三倍向进口商评估违约金。)作为担保方，如果保证金主债务人不支付违约金索赔，担保人在法律上负有责任，即“代位”主债务人。

通常，处罚不由保证金担保。有一个例外，即国际承运人保证金。尽管海关可对违约责任方(主债务人)评估和收取最高达法律规定金额的处罚，但在针对担保人的收款诉讼中，海关仅限于保证金规定的金额。

B. 保证金的主要类型有哪些，它们涵盖哪些类型的违规行为?

三种主要类型的保证金是**进口保证金**、**保管保证金**和**国际承运人保证金**。

首先，进口商和报关代理人等当事方向海关提交进口(或报关)保证金。可能构成违反进口(或报关)保证金的行为类型示例包括：

- 报关摘要迟交或未提交；
- 迟缴或未缴预估关税；
- 临时进口违规行为；以及
- 未将货物重新交付海关监管

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

见 19 CFR 113.62 关于基本进口和入境保证条件。

其次，保税运输承运人以及仓库、集装箱货运站(CFS)、集中查验站(CES)和免税店的经营者等当事方向海关提交保管保证金。可能构成违反保管保证金的行为类型示例包括以下情形：

- 在免税店或保税区内无法找到或说明商品去向，或保税仓库；或
- 货物未经许可或违反规定被移走；或
- 货物未经许可或违反许可证所述活动而被存放、处理、制造或销毁；或
- 保税运输承运人错误交付或不规则交付的货物。

关于保管保证金的基本条件，见19 CFR 113.63；关于对外贸易区经营者保证金条件，见19 CFR 113.73。

第三，负责舱单和货物交付的承运人等当事方向海关提交国际承运人保证金。可能构成违反国际承运人保证金的行为类型示例包括：

- 运输工具到达或报告违规(例如，未立即向海关报告船舶到达)；
- 舱单处罚(例如，未能持有舱单、到达时未能提交舱单、未能持有完整舱单，或未向海关提交舱单差异报告)；以及
- 货物交付或卸货违规(例如，未能将货物交付至CES、未经海关授权交付货物、未经许可卸货、未能及时通知海关未报关或无人认领的一般命令货物，或沿海贸易违规。)

C. 违约金流程有哪些步骤?

1. 海关可考虑"选项1"解决方案

当发生保证金违约或违规行为时，海关首先会根据违规行为的种类和性质，考虑是否可能采用**"选项1"**方式解决。选项1解决方式可被描述为一种"停车罚单"式做法，因为它涉及支付一笔预先设定的金额以省去申请(减免)程序，从而快速了结案件。值得注意的是，即使选项1程序可用，海关仍按正常金额评估违约金索赔(即法规规定的、不超过保证金所载金额的数额)。

选项1和解仅适用于海关在初步审查时已知悉全部事实且对政府的损害易于量化 and 理解的情形。违约金

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 caseswhere 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.

可通过选项1程序解决的索赔，最常见的例子是与迟延提交报关单汇总、发票或其他报关文件有关的索赔。

对于货物未被扣留接受海关查验且货物放行相关事实不明的情况，不适用选项1解决方式。同样存在问题的还有涉及临时进口保证金(TIB)而海关仅有未结报关的情况。在此情况下，海关不知道货物是继续留在美国境内、已在保证金期限内出口，还是已及时出口但未经海关必要的监管。由于海关只有在提交减免申请后才能了解事实，选项1不可行，必须通过申请程序解决该事项。

如果无法通过选项1解决，或者向违规者提出选项1金额但未获支付，海关将通知主债务人其违约金责任，并同时要求付款。保证金担保人将同时被告知主债务人产生的责任，并在主债务人不付款的情况下获得支付选项1金额的机会。

2. 当事人可提交救济申请

罚款、处罚与没收办公室(FPFO)和国家处罚办公室(NSPO)负责裁定违约金索赔金额小于或等于200,000美元的申请(减免)及补充申请。此外，无论违约金索赔金额多少，FPFO对所有的未提交及迟延提交报关单汇总案件以及未支付或迟延支付预估关税案件均保持管辖权。除上述案件外，法规与裁定办公室(OR&R)进口贸易合规(ITC)处负责裁定违约金索赔金额大于200,000美元的申请(减免)及补充申请。财政部不复审任何违约金案件。

3. 海关可将索赔移交催收行动和/或司法执行

如果海关作出申请裁定，且任何对违约金负有责任的当事方未在裁定通知邮寄之日起六十(60)日内(或FPFO可能准许的额外时间)提交补充减免申请或支付违约金，FPFO将把该索赔移交首席法律顾问办公室的适当部门，以准备将该索赔移交司法部进行催收。

4. 海关也可对索赔进行妥协或“和解”

经授权，FPFO可根据印第安纳波利斯/账户服务部副首席法律顾问的建议，批准所有和解提议，以依据第1617条解决违约金索赔或任何由保证金担保的处罚，前提是其在任何案件中拥有原始申请管辖权。

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:

法规与裁定办公室(OR&R)国际贸易合规司处罚处处长，根据首席法律顾问办公室(或其代表)的建议，批准其有权裁定减免申请的所有和解提议。

D. 海关对违约金索赔的减轻处罚或取消的标准是什么?

依据19 U.S.C.1623，海关可在支付较低金额或处罚或按海关认为充分的其他条款和条件的情况下，取消任何保证金或针对该保证金提出的任何违约金索赔。所有保证金取消指南均已公布。现行指南见：

- *T.D.99-29*,涵盖与一般命令通知、保税货物错误交付以及未经海关授权从集装箱货运站或集中查验站交付货物有关的索赔；
- *T.D.98-53*,涵盖与提交软木木材许可证有关的索赔；
- *T.D.94-38*,涵盖与迟延提交报关单汇总、TIB、未能将货物重新交付海关保管、保税仓库、对外贸易区、托运人出口申报单(SED)和出境(出口)违规以及机场安全有关的索赔；
- *T.D.94-38*,涵盖与迟延提交报关单汇总、TIB、未能将货物重新交付海关保管、保税仓库、对外贸易区、托运人出口申报单(SED)和出境(出口)违规以及机场安全有关的索赔；以及
- *T.D.01-41*,涵盖因违反对外贸易区规定而产生的索赔
  法规。

海关根据T.D.99-29对货物错误交付指南作出了近期修改，大幅提高了减轻处罚金额。特别是当涉及违约的货物需要海关查验时。

根据1994年对保税仓库和对外贸易区指南的修订(T.D.94-38)(T.D.01-41)，海关调整了金额，以更准确地与所受损害相对应。例如，对于涉及货物损失的违规行为，海关现在根据所涉税收损失的倍数来确定其处置金额。另一方面，对于不涉及货物的违规行为(例如，文件提交、档案夹更新)，海关的处置金额为固定数额。海关还修订了临时进口保税(TIB)指南，以考虑违规行为的严重程度(例如，文件提交违规行为的指南不如涉及未经监管出口的违规行为严厉)。

虽然应查阅上述财政部决定以获取完整解释，但违约金索赔的一些减轻处罚幅度包括以下内容：

- 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]

- 未提交或迟交报关摘要：100 美元或 200 美元，外加支付所有估算应缴税款加利息。

- 临时进口保证金违约：从索赔金额的百分之一至百分之五(1%至5%)但不低于100美元(迟延提交出口文件)，至不予减轻处罚(如果货物未出口或销毁，则处以关税、税费和费用的两倍)。

- 未能重新交付海关保管：从索赔金额的百分之一至百分之五(1%至5%)但不低于100美元(货物在允许期限之后重新交付)，至对受限或禁止货物不予减轻处罚(最高为货物价值的三(3)倍)。

- 保税货物错误交付：从100至500美元(迟延向海关交付文件或货物)，至对受限货物错误交付不予减轻处罚(最高为货物价值的三(3)倍)。

- 仓库/对外贸易区保税违规：

  - 涉及货物的违规--在货物丢失案件中，处以收入损失的一至六(1至6)倍；对受限货物不予减轻处罚(价值的三(3)倍)。
  - 不涉及商品的违规行为(通常与文件相关)--100美元每次违反。

- 机场安全保证金违规：从文件违规的100美元，到未交还通行证、未经授权进入安全区域或未遵守海关官员命令的不予减免(每项违规1,000美元)。

- 出口文件(SEDs/提单)逾期提交：逾期一天从50美元起(依规定)不予救济(1,000美元)，对未申报不予救济。

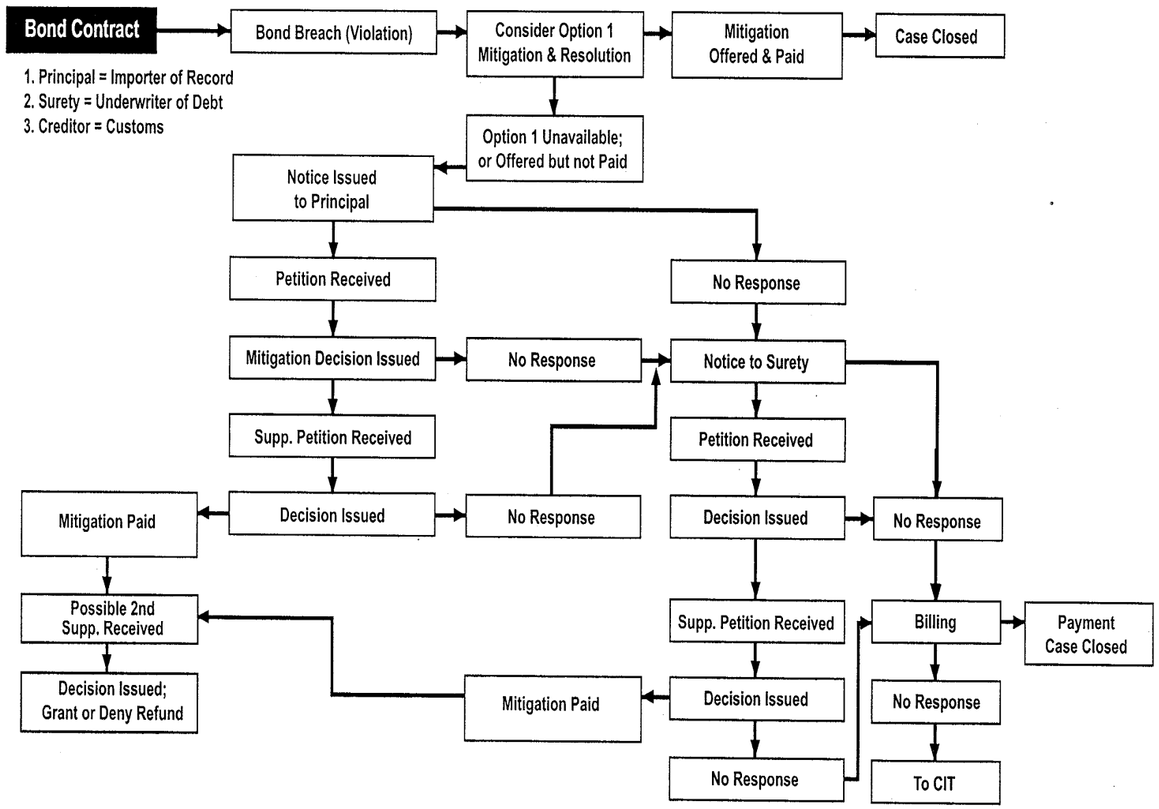
- 一般命令资格通知(每份提单):100美元起(逾期通知)，至未通知不予救济(1,000美元)。

请注意，海关保留根据任何案件的具体事实和情况偏离这些准则的权力。

[违约金流程图表见下页]

Administrative Process:

Liquidated Damages*

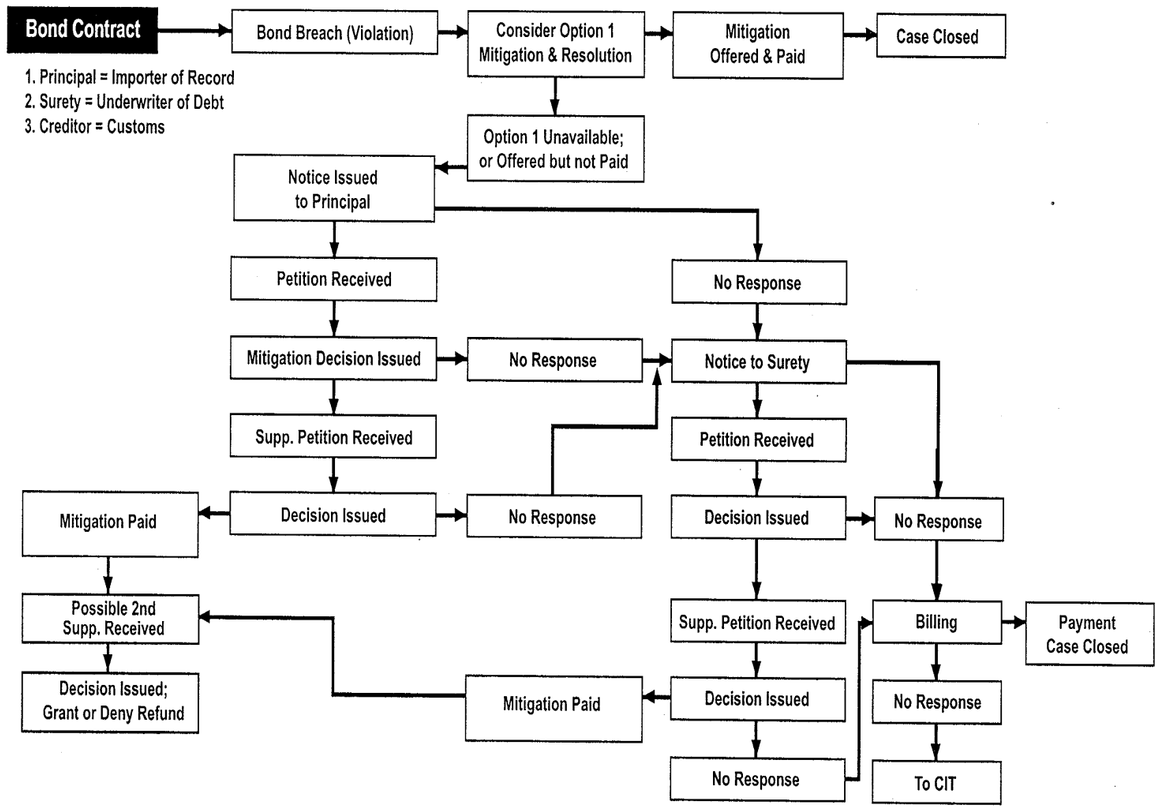


* This process also applies to collections from sureties of penalties secured by bonds.

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.

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.

补充信息

互联网

美国海关与边境保护局在互联网万维网上的主页，向贸易界提供有关 CBP 运作及特别关注事项的当前相关信息。该网站发布的信息--包括拟议法规、新闻稿、出版物和通知等--可供搜索、在线阅读、打印或下载至个人计算机。该网站设立为一种便利贸易的机制，以协助进出口界。该网站还链接至许多其他机构的主页，美国海关与边境保护局协助执行这些机构的进出口法规。该网站还包含大量不仅贸易界而且更广泛公众感兴趣的信息。例如，2001 年 6 月 20 日，CBP 推出了"Know Before You Go"出版物和旅客意识宣传活动，旨在帮助教育国际旅客。

美国海关与边境保护局的网址是 http://www.cbp.gov

海关条例

现行版《美国海关法规》为活页订阅出版物，可从华盛顿特区 20402 美国联邦政府印刷局文件主管处获取；电话 (202) 512-1800。2003 年精装版《联邦法规汇编》第 19 编收录了截至 2003 年 4 月 1 日对法规的所有修改，亦可从同一地址购买。所有拟议法规和最终法规均公布在《联邦公报》上，该公报由美国国家档案与记录管理局联邦公报办公室每日出版，并由文件主管处发行。有关在线访问《联邦公报》的信息，可在东部时间上午 7 点至下午 5 点拨打 (202) 512-1530 获取。这些公告亦公布于下文所述的每周《海关公报》上。

海关公报

《海关公报与裁决》*("海关公报")*是一份每周出版物，包含裁决、裁定、法规提案、公告以及贸易界感兴趣的其他信息。它还包含美国国际贸易法院发布的裁决，以及美国联邦巡回上诉法院与海关相关的裁决。政府印刷局每年出版《海关公报》的精装合订本。可通过上述地址和电话号码向文件主管处购买订阅。

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.

进口至美国

本出版物概述进口流程，并载有关于进口要求的一般信息。2002 年 2 月版《进口美国》包含大量依据《海关现代化法》(“Mod Act”)作出的新增和修订内容。《海关现代化法》从根本上改变了进口商与美国海关与边境保护局之间的关系，将申报进口货物价值、归类及适用关税税率的法律责任转移给进口商。

2002年2月版包含一个题为“知情合规”的章节。知情合规的一个关键组成部分是美国海关与边境保护局与进口界之间的共同责任，即美国海关与边境保护局向进口商传达其要求，而进口商则运用合理注意，确保向美国海关与边境保护局提供与其进口相关的准确、及时的数据。

单本可从美国海关与边境保护局当地办公室获取，或从美国海关与边境保护局公共事务办公室获取，地址：1300 Pennsylvania Avenue NW, Washington, DC 20229。在线版本可在CBP网站获取。进口美国也可通过致电(202) 512-1800向文件总监购买单本或批量订购，或通过邮寄方式向政府印刷局文件总监订购，地址：P.O.Box 371954, Pittsburgh, PA 15250-7054。

知情合规出版物

美国海关与边境保护局已在“贸易界每位成员都应了解的：.....”系列中编写了多份知情合规出版物。请访问互联网网站http://www.cbp.gov获取最新出版物。

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.

价值出版物

*1979*年贸易协定法下的海关估价是一本96页的书籍，详细叙述了海关估价制度、《贸易协定法》中的海关估价标题(1930年关税法第402条，经1979年贸易协定法修订(19 U.S.C.152.000-152.108)(该书籍出版后部分法规条款已作修订)以及有关估价制度的问答。可向美国海关与边境保护局法规与裁定办公室估价处索取副本，地址：1300 Pennsylvania Avenue, NW,(Mint Annex), Washington, D.C.20229。

海关估价百科全书(含更新)由相关法定条款、实施该法规的CBP法规、《海关估价法典》部分内容、司法判例以及涉及估价法适用的行政裁定组成。可向政府印刷局文件总监以象征性费用购买副本，地址：P.O.Box 371954, Pittsburgh, PA 15250-7054。本出版物也可在美国海关与边境保护局互联网网站上获取。

本出版物中提供的信息仅供一般参考之用。认识到海关问题可能涉及许多复杂因素，进口商可能希望根据CBP法规19 C.F.R.Part 177获得裁定，或从专门从事海关事务的专家(如持牌报关代理人、律师或顾问)处获得建议。仅依赖本手册中的一般信息可能不被视为合理注意。

还可从美国海关与边境保护局口岸获取更多信息。请查阅电话簿以找到您附近的办公室。该 listings 将在美国政府国土安全部项下找到。

“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

“您的意见很重要”

设立小企业监管执法监察员及10个地区公平委员会，旨在接收小企业关于联邦机构执法活动的意见，并评估各机构对小企业的回应情况。如您希望就美国海关与边境保护局的执法行动提出意见，请致电1-888-REG-FAIR(1-888-734-3247)。

举报走私 1-800-BE-ALERT 或 1-800-NO-DROGA

访问我们的互联网网站：http://www.cbp.gov

How this file was made

This is a complete Chinese translation of the CBP guide Customs Administrative Enforcement Process: Fines, Penalties, Forfeitures and Liquidated Damages. Tables, captions, headers, footers and numbering all keep their original positions. Nothing has been cut.

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This page is a translator's note; it is not part of the original document.

这份文件是怎么做出来的

本译本是CBP《海关行政执行程序：罚款、处罚、没收与违约金》的中文全译本，共 49 页。表格、图注、页眉页脚、编号层级都按原文位置一一还原，未做任何删节。

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