

GUIDELINES FOR THE ASSESSMENT AND MITIGATION OF PENALTIES FOR FAILURE TO COMPLY WITH THE ELECTRONIC PASSENGER AND CREW MANIFEST REQUIREMENTS FOR VESSEL AND AIRCRAFT - 19 U.S.C. 1436 and 1644 (CBP Dec. 05-41)

On April 7, 2005, the Bureau of Customs and Border Protection (“CBP”) published in the Federal Register (70 FR 17819) a Final Rule (CBP Dec. 05–12) requiring the electronic transmission to CBP, by way of a CBP-approved electronic data interchange system, of Advance Passenger Information System (“APIS”) manifest information pertaining to passengers and crew members on board commercial aircraft and vessels arriving in, or departing from, the United States.

On December 7, 2005, CBP published “**Guidelines for the Assessment and Mitigation of Penalties for Failure to Comply with the Electronic Passenger and Crew Manifest Requirements for Vessel and Aircraft**” in the CBP Bulletin and Decisions as CBP Dec. 05-41. The guidelines below are based on those publications.

I. Commercial Aircraft Arriving in, or Departing from, the United States:

A. Penalty Assessment:

Pursuant to 19 U.S.C. 1644a(b)(1)(D), Customs and Border Protection (“CBP”) may by regulation, apply to civil air navigation the laws and regulations on carrying out the customs laws, to the extent and under conditions CBP considers necessary. Pursuant to 19 U.S.C. 1644a(b)(2), a person violating a CBP Regulation is liable for a civil penalty of \$5,000 for each violation. An aircraft involved in the violation may be seized and forfeited under the customs laws.

1. Commercial Aircraft Arriving in the United States:

a. Violations Relating to the Passenger Manifest :

Port Directors may assess a civil monetary penalty under 19 USC 1644a(b)(2) and 19 CFR 122.161, for violation of the provisions of 19 CFR 122.49a, against an appropriate official (defined in 19 CFR 122.49a(a) as the master, commanding officer, or authorized agent, owner, or consignee) of a commercial aircraft arriving in the United States (defined in 19 CFR 122.49a(a) as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico) from any place outside the United States for the following violations:

- (1) Failing to transmit the required passenger arrival manifest;
- (2) Failing to transmit the required passenger arrival manifest in the CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of the manifest; or
- (4) Omitting manifest information or transmitting inaccurate or invalid manifest information in a required manifest for any of the required data elements.

This penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 may be assessed in the amount of \$5,000 for each passenger for whom one or more of the four violations listed above occurs, regardless of whether the violation is a first-time violation or a subsequent violation. In no case may the penalty exceed \$5,000 per passenger for each arrival of a commercial aircraft into the United States. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 per passenger. Where penalties for multiple passengers are assessed under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of 19 CFR 122.49a, these penalties may be combined for the same arrival and included on a single notice of penalty (CBP Form 5955A). However, as a matter of policy, a cumulative penalty for multiple passengers will not exceed \$75,000 for any single flight. (The combined penalties for a single flight for violations relating to the passenger manifest, and violations relating to the crew/non-crew member manifest, may exceed \$75,000, provided neither penalty exceeds \$75,000.)

The international carrier bond provided for at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 122.49a may be seized under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the pilot or operator of the aircraft at the time of the violation cannot be ascertained, seizure of the aircraft would be appropriate); or 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an aircraft lacks a bond to secure payment of a

penalty or the pilot or operator of the aircraft is a foreign national and the likelihood of collection of a monetary penalty is remote).

b. Violations Relating to Manifest for Crew Members, (including Non-Crew Members on all-cargo flights):

Port Directors may assess a civil monetary penalty under 19 U.S.C. 1644a(b)(2). and 19 CFR 122.161 for violation of the provisions of 19 CFR 122.49b, against an appropriate official (defined in 19 CFR 122.49a(a), which 19 CFR 122.49b(a) incorporates, as the master, commanding officer, or authorized agent, owner, or consignee) of a commercial aircraft arriving in the United States (defined in 19 CFR 122.49a(a), which 19 CFR 122.49b(a) incorporates, as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico) from any place outside the United States for the following violations:

- (1) Failing to transmit the required crew member arrival manifest or, for all-cargo flights, the non-crew member arrival manifest;
- (2) Failing to transmit the required crew member arrival manifest or, for all-cargo flights the non-crew member arrival manifest in the CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of a manifest; or
- (4) Omitting manifest information or transmitting inaccurate or invalid manifest information in a required manifest for any of the required data elements.

The term “non-crew member” is defined to mean air carrier employees and their family members and persons traveling onboard a commercial aircraft for the safety of the flight (such as an animal handler when animals are onboard). The definition of “non-crew member” is limited to all-cargo flights. (See 19 CFR 122.49b(a).)

This penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 may be assessed in the amount of \$5,000 for each crew member, or non-crew member (for all-cargo flights), for whom one or more of the four violations listed above occurs, regardless of whether the violation is a first-time violation or a subsequent violation. In no case may the penalty exceed \$5,000 per crew member or non-crew member (for all-cargo flights) for each arrival of a commercial aircraft into the United States. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data, the penalty notice should cite all violations, but the penalty may not exceed \$5,000

per crew member or non-crew member (for all-cargo flights). Where penalties for multiple crew members or non-crew members (for all-cargo flights) are assessed under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of 19 CFR 122.49b, these penalties may be combined for the same arrival and included on a single notice of penalty (CBP Form 5955A). However, as a matter of policy, a cumulative penalty for multiple crew members or non-crew members (for all cargo flights) will not exceed \$75,000 for any single flight. (The combined penalties for a single flight for violations relating to the passenger manifest, and violations relating to the crew/non-crew member manifest, may exceed \$75,000, provided neither penalty exceeds \$75,000.)

The international carrier bond provided for at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 122.49b may be seized under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the pilot or operator of the aircraft at the time of the violation cannot be ascertained, seizure of the aircraft would be appropriate); or 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an aircraft lacks a bond to secure payment of a penalty or the pilot or operator of the aircraft is a foreign national and the likelihood of collection of a monetary penalty is remote).

2. Commercial Aircraft Departing from the United States:

a. Violations Relating to the Passenger Manifest:

Port Directors may assess a civil monetary penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of the provisions of 19 CFR 122.75a, against an appropriate official (defined in 19 CFR 122.49a(a), which 19 CFR 122.75a(a) incorporates, as the master, commanding officer, or authorized agent, owner, or consignee) of a commercial aircraft departing from the United States (defined in 19 CFR 122.49a(a), which 19 CFR 122.75a(a) incorporates, as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico) to any port or place outside the United States, for the following violations:

- (1) Failing to transmit the required passenger departure manifest;
- (2) Failing to transmit the required passenger departure manifest in the CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of the manifest; or
- (4) Omitting manifest information or transmitting inaccurate or invalid manifest information in a required manifest for any of the required data elements.

This penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 may be assessed in the amount of \$5,000 for each passenger for whom one or more of the four violations listed above occurs, regardless of whether the violation is a first-time violation or a subsequent violation. In no case may the penalty exceed \$5,000 per passenger for each departure of a commercial aircraft from the United States. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 per passenger. Where penalties for multiple passengers are assessed under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of 19 CFR 122.75a, these penalties may be combined for the same departure and included on a single notice of penalty (CBP Form 5955A). However, as a matter of policy, a cumulative penalty for multiple passengers will not exceed \$75,000 for any single flight. (The combined penalties for a single flight for violations relating to the passenger manifest, and violations relating to the crew/non-crew member manifest, may exceed \$75,000, provided neither penalty exceeds \$75,000.)

Active duty military personnel being transported as passengers on a departing DOD commercial chartered aircraft are excepted from passenger manifest reporting requirements.

The international carrier bond provided for at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 122.75a may be seized under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the pilot or operator of the aircraft at the time of the violation cannot be

ascertained, seizure of the aircraft would be appropriate); or 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an aircraft lacks a bond to secure payment of a penalty or the pilot or operator of the aircraft is a foreign national and the likelihood of collection of a monetary penalty is remote).

b. Violations Relating to Manifest for Crew Members, (Including Non-Crew Members on All-Cargo Flights):

Port Directors may assess a civil monetary penalty under 19 U.S.C. 1644a(b)(2) for violation of the provisions of 19 CFR 122.75b, against an appropriate official (defined in 19 CFR 122.49a(a), which 19 CFR 122.75b(a) incorporates, as the master, commanding officer, or authorized agent, owner, or consignee) of a commercial aircraft departing from the United States (defined in 19 CFR 122.49a(a), which 19 CFR 122.75b(a) incorporates, as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico) to any port or place outside the United States, for the following violations:

- (1) Failing to transmit the required crew member departure manifest or, for all-cargo flights, the non-crew member departure manifest;
- (2) Failing to transmit the required crew member departure manifest or, for all-cargo flights, the non-crew member departure manifest in the CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of a manifest; or
- (4) Omitting manifest information or transmitting inaccurate or invalid manifest information in a required manifest for any of the required data elements.

The term “non-crew member” is defined to mean air carrier employees and their family members and persons traveling onboard a commercial aircraft for the safety of the flight (such as an animal handler when animals are onboard). The definition of “non-crew member” is limited to all-cargo flights. (See 19 CFR 122.49b(a).)

This penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 may be assessed in the amount of \$5,000 for each crew member, or non-crew member (for all-cargo flights), for whom one or more of the four violations listed above occurs, regardless of whether the violation is a first-time violation or a subsequent violation. In no case may the penalty exceed \$5,000 per crew member or non-crew member (for all-cargo flights) for each departure of a commercial

aircraft from the United States. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 per crew member or non-crew member (for all-cargo flights). Where penalties for multiple crew members or non-crew members (for all-cargo flights) are assessed under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of 19 CFR 122.75b, these penalties may be combined for the same departure and included on a single notice of penalty (CBP Form 5955A). However, as a matter of policy, a cumulative monetary penalty for multiple crew members or non-crew members (for all-cargo flights) will not exceed \$75,000 for any single flight. (The combined penalties for a single flight for violations relating to the passenger manifest, and violations relating to the crew/non-crew member manifest, may exceed \$75,000, provided neither penalty exceeds \$75,000.)

The international carrier bond provided for at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 122.75b may be seized under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the pilot or operator of the aircraft at the time of the violation cannot be ascertained, seizure of the aircraft would be appropriate); or 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an aircraft lacks a bond to secure payment of a penalty or the pilot or operator of the aircraft is a foreign national and the likelihood of collection of a monetary penalty is remote).

B. Penalty Mitigation For Manifest Violations -- Arriving and Departing Commercial Aircraft

1. First Violation:

- a. Non Customs-Trade Partnership against Terrorism ("C-TPAT") member: Mitigate to an amount between \$500 and \$1,500 for each \$5,000 penalty assessed.
- b. Certified C-TPAT member: Mitigate to \$250 or to a lesser amount (e.g. \$200, \$150, etc.) for each \$5,000 penalty assessed.

2. Subsequent Violations:

- a. Definition. A violation shall be considered a subsequent violation only if the violation involves a violation of the same regulation (19 CFR 122.49a, 122.49b, 122.75a or 122.75b), and involves the same type of violation within each regulation, and only if the subsequent violation was committed more than 30 days after the issuance of a notice of penalty (CBP Form 5955A) for the first violation, which is not remitted in full. A violation shall be considered a subsequent violation without regard to the port of departure or arrival, the flight number, or the identity of the pilot or other airline official.

Example 1. An air carrier untimely transmits the passenger manifest for an arriving flight on November 1, 2005. On November 15, 2005, CBP issues the notice of penalty against the air carrier. On December 20, 2005, and again on December 21, 2005, the same air carrier untimely transmits the passenger manifests for arriving flights. The December 20, 2005 and December 21, 2005 violations will be considered subsequent violations. However, if the violations occur on December 10, 2005, and December 21, 2005, the December 10, 2005, will not be considered a subsequent violation but the December 21, 2005, will be considered a subsequent violation.

Example 2. An air carrier untimely transmits the crew member manifest for an arriving flight, and, more than thirty days after the issuance of a penalty notice for this violation, untimely transmits the passenger manifest for a subsequent arriving flight. The second violation is not considered a subsequent violation.

Example 3. An air carrier untimely transmits the passenger manifest for an arriving flight, and, more than thirty days after the issuance of a penalty notice for this violation, untimely transmits the passenger manifest for a subsequent arriving flight. The second violation is considered a subsequent violation.

Example 4. An air carrier untimely transmits the passenger manifest for an arriving flight, and, more than thirty days after the issuance of a penalty notice for this violation, omits manifest information or transmits inaccurate or invalid passenger manifest information for a second arriving flight. The second violation is not considered a subsequent violation.

b. Mitigation:

- (1) Non C-TPAT member: Mitigate to an amount between \$500 and \$2,500 for each \$ 5,000 penalty assessed.
- (2) Certified C-TPAT member: Mitigate to \$250, or to a lesser amount (e.g. \$200, \$150, etc.) for each \$5,000 penalty assessed.

c. Exception: Subsequent violations for failing to transmit at all a required manifest to CBP, whether or not the violator is a certified C-TPAT: No mitigation.

3. Notwithstanding these mitigation guidelines, in the presence of one or more of the aggravating factors listed below (section III.B.) or if CBP determines that law enforcement goals were compromised by the violation, CBP may deny or limit the mitigation provided for herein, regardless of whether the violator is or is not a C-TPAT member.
4. Seizures of aircraft may be remitted in accordance with the guidelines set forth above.

II. Commercial **Vessel** Arriving In or Departing From the United States

A. Penalty Assessment

Pursuant to 19 U.S.C. 1436 and 19 CFR 4.3a, any master of a commercial vessel who fails to comply with, or violate, the CBP Regulations prescribed at 19 CFR 4.7b and 19 CFR 4.64 or who presents or transmits electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to CBP is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation. Any conveyance used in connection with any such violation is subject to seizure and forfeiture.

1. Commercial Vessel Arriving in the United States

Port Directors may assess a civil monetary penalty, under 19 USC 1436 and 19 CFR 4.3a for violation of the provisions of 19 CFR 4.7b, against a master of a commercial vessel arriving in the United States (defined in 19 CFR 4.7b(a) as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico), for the following violations:

- (1) Failing to transmit a required passenger arrival manifest and/or crew member arrival manifest;
- (2) Failing to transmit a required passenger arrival manifest and/or crew member arrival manifest in a CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of the required manifests; or
- (4) Omitting manifest information or transmitting inaccurate or invalid information in a required manifest for any of the required data elements.

This penalty of \$5,000 under 19 U.S.C. 1436 and 19 CFR 4.3a may be assessed against the master of the commercial vessel, in care of the carrier, for one or more of the four violations listed above. A \$10,000 penalty (also under 19 U.S.C. 1436) may be assessed against the same master of the vessel, in care of the carrier, for any subsequent violation of the same type. For each arrival of a vessel in the United States, the penalty may not exceed these amounts, regardless of the number of passengers or crew members for whom the violation pertains, and regardless of whether several types of violations have occurred. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data for several passengers or crew members, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 for a first-time violation, or \$10,000 for a subsequent violation against the same master of the vessel.

The international carrier bond provided at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 4.7b may be seized under 19 U.S.C. 1436 and 19 CFR 4.3a generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the master of the vessel at the time of the violation cannot be ascertained, seizure of the vessel would be appropriate); or 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if a vessel lacks a bond to secure payment of a penalty or the master of the vessel is a foreign national and the likelihood of collection of a monetary penalty is remote).

2. Commercial Vessel Departing From the United States

Port Directors may assess a civil monetary penalty, under 19 USC 1436 and 19 CFR 4.3a for violation of the provisions of 19 CFR 4.64, against a master of a commercial vessel departing from the United States (defined in 19 CFR 4.7b(a), which 19 CFR 4.64(a) incorporates, as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico), for the following violations:

- (1) Failing to transmit a required passenger departure manifest and/or crew member departure manifest;
- (2) Failing to transmit a required passenger departure manifest and/or crew member departure manifest in a CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of the required manifests; or
- (4) Omitting manifest information or transmitting inaccurate or invalid information in a required manifest for any of the required data elements.

This penalty of \$5,000 may be assessed against the master of the vessel, in care of the carrier, for one or more of the four violations listed above. A \$10,000 penalty (also under 19 U.S.C. 1436 and 19 CFR 4.3a) may be assessed against the same master of the vessel, in care of the carrier, for any subsequent violation of the same type. For each departure of a vessel from the United States, the penalty may not exceed these amounts, regardless of the number of passengers or crew members for whom the violation pertains, and regardless of whether several types of violations have occurred. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data for several passengers and crew members, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 for a first-time violation, or \$10,000 for a subsequent violation against the same master of the vessel.

The international carrier bond provided at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 4.64 may be seized under 19 U.S.C. 1436 and 19 CFR 4.3a generally only in the following circumstances: 1) there is lack of information necessary to assess a

penalty (e.g., if the identity of the master of the vessel at the time of the violation cannot be ascertained, seizure of the vessel would be appropriate); or 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if a vessel lacks a bond to secure payment of a penalty or the master of the vessel is a foreign national and the likelihood of collection of a monetary penalty is remote).

B. Penalty Mitigation For Manifest Violations -- Arriving and Departing Commercial Vessel

1. First Violation:

- a. Non C-TPAT member: Mitigate to an amount between \$1,000 and \$3,500.
- b. Certified C-TPAT member: Mitigate to \$500 or to a lesser amount (e.g. \$400, \$300, etc.).

2. Subsequent Violations by Same Master of A Vessel:

- a. Definition. A violation shall be considered a subsequent violation only if the violation involves a violation of the same regulation (19 CFR 4.7b or 4.64) and involves the same type of violation within each regulation, and only if the subsequent violation was committed more than 30 days after the issuance of a notice of penalty (CBP Form 5955A) for the first violation, which is not remitted in full. A violation shall be considered a subsequent violation without regard to the vessel's port of departure or arrival; however, the commercial vessel or vessels involved in the subsequent violations must have had the same master.

Example 1. The master of a commercial vessel untimely transmits the passenger manifest for an arriving vessel on November 1, 2005. On November 15, 2005, CBP issues the notice of penalty against the master of the vessel in care of the carrier. On December 20, 2005, and again on December 21, 2005, the same master untimely transmits the passenger arrival manifests. The December 20, 2005 and December 21, 2005 violations will be considered subsequent violations. However, if the violations occur on December 10, 2005, and December 21, 2005, the December 10, 2005, will not be considered a subsequent violation but the December 21, 2005, will be considered a subsequent violation.

Example 2. The master of a commercial vessel untimely transmits the crew member manifest for an arriving vessel, and, more than thirty days after the issuance of a penalty notice for this violation, the same master untimely transmits the crew member manifest for

a subsequent departing vessel. The second violation is not considered a subsequent violation.

Example 3. A master of a commercial vessel untimely transmits the crew member manifest for an arriving vessel, and, more than thirty days after the issuance of a penalty notice for this violation, the same master untimely transmits the crew member manifest for a subsequent arriving vessel. The second violation is considered a subsequent violation.

Example 4. A master of a commercial vessel untimely transmits the crew member manifest for an arriving vessel, and, more than thirty days after the issuance of a penalty notice for this violation, the same master omits manifest information or transmits inaccurate or invalid crew member manifest information for a second arriving vessel. The second violation is not considered a subsequent violation.

b. Mitigation:

- (1) Non C-TPAT member: Mitigate to an amount between \$3,500 and \$5,000.
- (2) Certified C-TPAT member: Mitigate to \$1,750 or to a lesser amount (e.g. \$1,500, \$1,250, \$1,000 etc.).

c. Exception: Subsequent violations for failing to transmit at all a required manifest to CBP, whether or not the violator is a certified C-TPAT member: No mitigation.

3. Notwithstanding these mitigation guidelines, in the presence of one or more of the aggravating factors listed below (section III.B.) or if CBP determines that law enforcement goals were compromised by the violation, CBP may deny or limit the mitigation provided for herein, regardless of whether the violator is or is not a C-TPAT member.
4. Seizures of vessels may be remitted in accordance with the guidelines set forth above.

III. Mitigating and Aggravating Factors (Vessels and Aircraft):

A. Mitigating Factors:

1. Inexperienced in transmitting advance electronic manifest information.
2. A general good performance and low error rate with regards to electronic transmission of manifest information.
3. Demonstrated remedial action has been taken to prevent future violations.

B. Aggravating Factors:

1. Lack of cooperation with CBP or CBP activity is impeded with regard to the case.
2. There is a rising error rate, indicative of deteriorating performance in the transmission of manifest information.
3. Evidence of smuggling or attempt to introduce or introduction of passenger, crew member or non-crew member contrary to law. This may be considered an extraordinary aggravating factor.
4. Evidence of link to terrorist activity or organization. This may be considered an extraordinary aggravating factor.