

Bureau of Customs and Border Protection

CBP Decisions

CBP DEC. 06-34

NEW GUIDELINES FOR MITIGATION OF PENALTIES FOR MERCANDISE DELIVERED FROM THE PORT WITHOUT CBP AUTHORIZATION OR EXAMINATION; PUBLIC SAFETY

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice.

SUMMARY: This document provides new guidelines for mitigation of penalties for merchandise delivered from the port without U.S. Customs and Border Protection (CBP) authorization or examination, or both, which affects public safety. CBP is providing new guidelines because of the concern that removal or delivery of merchandise without authorization or examination places an unacceptable risk upon the security, health, or safety of the populace.

EFFECTIVE DATE: This action is effective on December 6, 2006, and shall be applicable to all penalty cases assessed on or after that date.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Bornstein, Penalties Branch: (202) 572-8750.

SUPPLEMENTARY INFORMATION:

Background

Since the events of September 11, 2001, CBP has heightened its vigilance over all of America's ports and borders, and dedicated extensive efforts and resources to safeguarding the security, health, and safety of the populace of the United States through the enhanced targeting and inspection of merchandise. Accordingly, CBP will continue to review, target, and inspect shipments throughout the supply chain, and to enhance proper control mechanisms to prevent the unauthorized removal and/or delivery of merchandise from the place of unloading, the terminal, or the ports. The unauthorized

removal or delivery from the ports of merchandise constitutes a violation of the Customs laws and creates an unacceptable risk to the public security, health, and safety of the United States. By the new guidelines below, CBP is conveying the seriousness of its concerns to the importing community with respect to the recurrence of these violations.

In instances in which merchandise is removed or delivered from the place of unloading, the terminal, or the port without CBP authorization or examination, or both, a monetary penalty shall be assessed in an amount equal to the domestic value of the merchandise under the provisions of 19 U.S.C. § 1595a(b), for a violation of the provisions of 19 U.S.C. § 1448 (delivery from the place of unloading without authorization), or 19 U.S.C. §1499 (delivery without CBP examination).

Under the existing guidelines for violations of 19 U.S.C. § 1595a(b) for violations of 19 U.S.C. § 1448, or 19 U.S.C. §1499, which appear in T.D. 99-29, as amended, violations for the removal or delivery of merchandise without authorization or delivered without examination, are mitigated to an amount between \$2,500 and \$20,000, depending on aggravating or mitigating factors. In the past, many of these penalties had been mitigated to an amount of \$2,500, regardless of whether the violations could have placed the security, health, or safety of the populace at risk.

Under the new guidelines, if CBP considers the removal or delivery of the merchandise from the place of unloading, the terminal, or the port without CBP authorization or examination, or both, to place the security, health, or safety of the populace at risk, the penalty assessed under 19 U.S.C. § 1595a(b) for violations of 19 U.S.C. § 1448, or 19 U.S.C. §1499, shall be mitigated as follows:

A first violation may be mitigated upon payment of an amount equal to the lesser of: 1) 75% of the domestic value of the merchandise, removed or delivered without authorization and/or examination, or 2) a flat sum between \$10,000 and \$25,000, as determined at CBP's sole discretion.

A second violation may be mitigated upon payment of an amount equal to the lesser of: 1) 75% of the domestic value of the merchandise, removed or delivered without authorization and/or examination, or 2) a flat sum between \$25,001 and \$50,000, as determined at CBP's sole discretion.

Third and subsequent violations may be mitigated upon payment of an amount equal to the lesser of: 1) 75% of the domestic value of the merchandise, removed or delivered without authorization and/or examination, or 2) a flat sum between \$50,001 and \$75,000, as determined at CBP's sole discretion.

Assessment of separate penalties against multiple parties may arise for a single removal or delivery without authorization. (In

other words, each party involved in the violation may be subject to a penalty.)

Any violation involving removal and/or delivery without authorization, or examination, or both, that is deemed to fall outside these guidelines may be mitigated in accordance with the guidelines for violations of 19 U.S.C. § 1595a(b) for violations of 19 U.S.C. § 1448, or 19 U.S.C. §1499, which appear in T.D. 99-29, as amended.

The text of the new guidelines is set forth below.

Dated: November 13, 2006

W. RALPH BASHAM,
Commissioner,
U.S. Customs and Border Protection.

Attachment

[Attachment]

Delivery of Merchandise Without Customs Authorization or Examination (19 U.S.C. 1595a(b) for Violation of 19 U.S.C. 1448 and /or 19 U.S.C. 1499)

First violation. If CBP considers a removal or delivery of merchandise to place the security, health, or safety of the public at risk, the assessed penalty may be mitigated upon payment of the lesser of: 1) 75% the domestic value of the merchandise removed or delivered without authorization and/or examination, or 2) a flat sum between \$10,000 and \$25,000, as determined by CBP.

Second violation. If CBP considers a removal or delivery of merchandise to place the security, health, or safety of the public at risk, the assessed penalty may be mitigated upon payment of the lesser of: 1) 75% the domestic value of the merchandise removed or delivered without authorization and/or examination, or 2) a flat sum between \$25,001 and \$50,000, as determined by CBP.

Third and subsequent violations. If CBP considers a removal or delivery of merchandise to place the security, health, or safety of the public at risk, the assessed penalty may be mitigated upon payment of the lesser of: 1) 75% the domestic value of the merchandise removed or delivered without authorization and/or examination, or 2) a flat sum between \$50,001 and \$75,000, as determined by CBP.

Any violation involving removal and/or delivery without authorization, or examination, or both, that is deemed to fall outside

these guidelines may be mitigated in accordance with the guidelines for violations of 19 U.S.C. § 1595a(b) for violations of 19 U.S.C. §§ 1448 or 1499, which appear in T.D. 99–29, as amended.



General Notices

RECEIPT OF AN APPLICATION FOR “LEVER-RULE” PROTECTION

AGENCY: U.S. Customs & Border Protection, Department of Homeland Security

ACTION: Notice of receipt of application for “Lever-Rule” protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs & Border Protection has received an application on behalf of American Standard International, Inc. seeking “Lever-Rule” protection.

FOR FURTHER INFORMATION CONTACT: Paul Pizzeck, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572–8704.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs & Border Protection has received an application from Neville Peterson LLP on behalf of American Standard International, Inc. seeking “Lever-Rule” protection. Protection is sought against importations of the following products intended for sale in foreign markets:

1) Spin-On Air Dryer Desiccant Cartridges which bear the following trademark(s):
“WABCO” (U.S. Patent & Trademark Office Registration No. 1,150,784; U.S. Customs & Border Protection Recordation No. TMK 05–00136).

Pursuant to 19 CFR 133.2(f), Customs & Border Protection will publish an additional notice in the Customs Bulletin indicating whether the trademark(s) will receive Lever-rule protection for spin-on air dryer cartridges in the event that Customs & Border Protection determines that the subject air dryer cartridges are physiz-

cally and materially different from the products authorized for sale in the United States.

Dated: November 13, 2006

GEORGE F. MCCRAY, ESQ., CHIEF,
Intellectual Property Rights Branch,
Office of Regulations and Rulings.

