

F. Late Re-Exportation of Duty-free and Zero Duty Merchandise.

1. If merchandise is duty-free or has a zero duty rate, claims for liquidated damages should still be assessed.
2. Claims for duty-free and zero duty Carnets will be processed in accordance with these guidelines.

G. Issuance of claims.

1. If a claim is received by the USCIB after the one-year period has expired, the claim will not be pursued.
2. Claims issued by Customs more than 30 days prior to the end of the one-year period will be presumed to be timely.
3. Claims should be issued by Customs as promptly as possible after discovery.

IV. Guidelines for Cancellation of Claims Involving Failure to Redeliver Merchandise into Customs Custody or Failure to Comply With a Notice of Refusal of Admission Issued by Another Government Agency (19 C.F.R. 141.113, 113.62(d) or 113.62(e)) (T.D. 94-38)

- A. Statutes and regulations enforced on behalf of the Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC).
1. The provisions of 21 C.F.R. 1.97 (FDA Regulations) and 16 C.F.R. 1500.271 (CPSC Regulations) require that the port director of Customs and the district director of the other agency be in agreement as to the amount to be accepted in cancellation of the claim for liquidated damages. All petitions for relief received in FDA and CPSC cases must be referred to those agencies for recommendation. By regulation Customs must follow the recommendation of FDA or CPSC.
 2. EXCEPTION: When the sole requirement which has been imposed by FDA on refused merchandise is exportation or destruction under Customs supervision, apply guidelines to be used in the case of other Customs statutes or regulations in Subparagraph K below.

3. If any merchandise which is requested for examination by the other agency is available for examination at the place designated by such other agency but is not examined for any reason, Customs will not issue liquidated damages with regard to such merchandise or will cancel any claim related to such merchandise without payment.
 4. If there is a compelling reason to depart from the recommendation of the other agency, state such reason in a referral memorandum and forward the case record to Customs Headquarters, Office of Regulations and Rulings, Penalties Branch.
- B. Statutes and regulations enforced on behalf of other agencies (not FDA or CPSC).
1. Any petition received should be forwarded to the other agency for recommendation. As a rule, the recommendation of the other agency as to appropriate mitigation will be followed.
 2. Customs is not required by regulation to follow the recommendation of agencies other than FDA and CPSC. If the FP&F Officer finds the recommendation of the other agency to be arbitrary and capricious, he may modify the recommendation to be consistent with Customs guidelines.
- C. Country of origin marking cases - merchandise marked with the country of origin after liquidation of the entry and outside the 30-day marking period.
1. If the merchandise is marked outside the 30-day marking period and after liquidation of the entry, the entry should be reliquidated if liquidation has not become final, and marking duties should be assessed and collected.
 2. If marking duties have been assessed and collected, cancel the claim upon payment of one percent of the value of the merchandise, but not less than \$100 for a first-time violation. Cancel upon payment of between one and five percent but not less than \$250 for a subsequent violation.
 3. Grant no relief in any case until marking duties are assessed and collected; however, if liquidation is final and marking duties cannot be assessed, cancel upon payment of an amount equal to 11 percent of the value of the merchandise but not less than \$100 for a first violation and between 11 and 15 percent but not less than \$250 for a subsequent violation.

- D. Country of origin marking cases - merchandise marked outside the 30-day period, but before liquidation.
1. If the merchandise is properly marked with the country of origin outside the 30-day period but before liquidation of the entry, liquidated damages are appropriate, but marking duties are not due.
 2. For a first time violation, if the merchandise has been marked under Customs supervision outside the 30-day period, cancel the claim upon payment of an amount equal to one percent of the value of the merchandise, but not less than \$100.
 3. For subsequent violations, cancel upon payment of an amount between one and five percent of the value of the merchandise but not less than \$250 depending upon the number of violations and the presence of aggravating and mitigating factors.
- E. Marking cases - merchandise not marked with the country of origin.
1. Relief from liquidated damages incurred is contingent upon deposit of marking duties. See, 19 C.F.R. 134.54(c).
 2. For a first-time violation, where marking duties have been assessed and collected, cancel the claim upon payment of an amount between 10 and 25 percent of the value depending on the presence of aggravating or mitigating factors.
 3. If it is a subsequent violation and marking duties have been assessed and collected, cancel the claim upon payment of an amount between 25 and 50 percent of the value of the merchandise.
 4. If marking duties have been assessed but not collected, grant no relief. If liquidation of the entry has become final, thereby barring the assessment of marking duties, cancel as follows:
 - a. If it is a first-time violation, cancel the claim for liquidated damages upon payment of an amount between 20 and 35 percent of the value.
 - b. If it is a second or subsequent violation, cancel the claim for liquidated damages upon payment of an amount between 35 and 60 percent of the value.
 5. Examples of aggravating factors:

- a. Offender is uncooperative, e.g., fails to provide information to Customs when requested.
 - b. A large number of violations of this type by the offender in relation to the total number of transactions engaged in.
 - c. Offender's experience in importing.
 - d. Offender's willful disregard or carelessness toward responsibilities under the applicable statutes or regulations.
6. Examples of mitigating factors:
- a. Contributory Customs error, e.g., offender demonstrates that he acted in accordance with instructions given by Customs personnel.
 - b. Offender cooperates with Customs personnel in resolution of the case.
 - c. Offender takes immediate remedial action.
 - d. Offender's lack of importing experience.
 - e. A small number of violations of this type by the offender in relation to the number of transactions engaged in.
- F. False designation of origin cases.
1. When merchandise is marked with a false designation of origin, and a claim for liquidated damages for failure to redeliver that merchandise results and the offender can demonstrate that the merchandise was marked with the correct country of origin outside the redelivery period designated in the notice of redelivery, the claim should be canceled upon payment of an amount equal to one percent of the value of the merchandise, but not less than \$100 for a first violation. For subsequent violations of this type, the claim should be canceled upon payment of an amount equal to one to five percent of the value of the merchandise, but not less than \$250.
 2. When merchandise is marked with a false designation of origin and the merchandise is not properly marked with the true country of origin and a first violation is involved, the claim should be canceled upon payment of an amount between 25 and 50 percent of the value of the merchandise.
 3. For a subsequent violation where the merchandise is not properly marked with the true country of origin, the claim should be canceled upon payment of an amount equal to no less than 50 percent of the value of the merchandise.
- G. Quota/visa violative merchandise.

1. If the importer fails to redelivery visa-violative merchandise, but subsequent to the assessment of the claim produces a valid visa or visa waiver, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than \$100, depending on the presence of aggravating or mitigating factors.
2. If no visa is ever produced, and it is a first-time violation, cancel the claim upon payment of an amount between 20 and 30 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.
3. If no visa is ever produced, and it is a subsequent violation, cancel the claim upon payment of no less than 40 percent of the value of the merchandise.
4. If the importer fails to redeliver quota merchandise, and it is a first-time violation, cancel the claim upon payment of an amount between 25 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating circumstances.
5. For subsequent quota redelivery violations, cancel the claim upon payment of no less than 50 percent of the value of the merchandise.
6. For merchandise that is not redelivered which is subject to both quota and visa restrictions, follow guidelines for cancellation of claims relating to quota-violative merchandise.

H. Copyright-violative merchandise.

1. If the importer fails to redeliver copyright-violative merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise from the copyright holder, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than \$100.
2. If no authorization is received from the copyright holder, cancel a first-time violation upon payment of an amount between 20 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.
3. For subsequent violations where no authorization of the copyright holder is received, cancel the claim upon payment of an amount

equal to no less than 50 percent of the value of the merchandise. In order to receive any relief, extraordinary mitigating factors must be shown.

I. Trademark-violative merchandise.

1. If the importer fails to redeliver trademark-violative merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise from the trademark holder, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than \$100.
2. If no authorization is received from the trademark holder, cancel a first-time violation upon payment of an amount between 20 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.
3. For subsequent violations where no authorization of the trademark holder is received, cancel the claim upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In order to receive any relief, extraordinary mitigating factors must be shown.
4. As a general rule, if the merchandise is counterfeit, no relief shall be granted. If the merchandise is genuine, that fact shall be considered as a mitigating factor in accordance with the above guidelines.

J. Failure to provide a sample.

1. If the importer fails to provide a sample within the time period prescribed on the request for a sample, but then does provide the sample subsequent to the issuance of liquidated damages and can prove to the satisfaction of the import specialist that the sample is, in fact, from the shipment in question and the merchandise is not violative of any provision of law regarding its admissibility, the claim for liquidated damages may be canceled upon payment of an amount between one and five percent of the value of the merchandise in the shipment, but not less than \$100.
2. If the importer fails to provide a sample, cancel the claim consistent with guidelines for the violation which the sample was being examined. For example, if a sample is sought to determine whether merchandise is copyright-violative, and the importer fails to provide a sample, cancel the claim consistent with guidelines for

failure to redeliver copyright-violative merchandise where no retroactive license is given.

K. Other Customs-enforced statutes and regulations.

1. If the merchandise is not redelivered for any reason not enumerated above or is redelivered outside the time period prescribed for redelivery in the notice of redelivery, the claim may be canceled upon payment of between 1 and 10 percent of the value of the merchandise depending upon the presence of aggravating or mitigating factors.
2. For subsequent violations, cancel the claim upon payment of an amount between 10 and 50 percent of the value of the merchandise, depending upon the presence of aggravating or mitigating factors.
3. If the issue is Customs supervision of exportation or destruction of merchandise which is the subject of a notice of refusal of admission issued by FDA or CPSC, and such exportation or destruction occurs, but not under supervision, cancel the claim in accordance with guidelines enumerated in subparagraphs K.1. or K.2. directly above.
4. If exportation or destruction (when ordered) never occurs, grant no relief.
5. Claims for liquidated damages arising for failure to comply with special marking for watch and clock movements, cases and dials as required by Chapter 91, Additional U.S. Note 4, United States Tariff Schedule (19 U.S.C. 1202) shall be canceled in accordance with the guidelines promulgated subparagraphs K(1) or K(2) directly above.

V. Guidelines for Cancellation of Claims Arising From Failure to Provide Missing Documents (19 C.F.R. 113.42) (T.D. 94-38)

- A. Except when another period is fixed by law or regulation, any document for the production of which a bond is given shall be delivered within 120 days from the date of notice from Customs requesting such document or any extension of time that may be granted under 19 C.F.R. 113.43.
- B. Issuance of modified CF-5955A. A modified CF5955A similar to that issued in cases involving late filing of entry summaries shall be issued in missing document cases.