

departing carrier or agent of that carrier for any liquidated damages that may arise due to his (the holder of the slot charter's) malfeasance.

- E. These guidelines should also be used for claims for liquidated damages arising from violation of the provisions of 19 C.F.R. 113.64(c) for late filing of export documents (e.g., bills of lading) in order to complete the outward manifest.

## **VII. Guidelines for Cancellation of Claims for Shortage, Irregular Delivery, Non-Delivery or Delivery Directly to the Consignee of In-bond Merchandise (19 C.F.R. 18.8) (T.D. 99-29)**

### **A. Assessment.**

All claims for liquidated damages assessed for breach of the provisions of 19 C.F.R. 18.8 for shortage, irregular delivery, non-delivery or delivery directly to the consignee of in-bond merchandise will be assessed for the value of the merchandise or three times the value of the merchandise if the merchandise is restricted or is alcoholic beverages.

### **B. Documents filed late or merchandise delivered late.**

- 1. Modified CF 5955A. Notices of liquidated damages incurred for this violation may be issued on a modified CF-5955A. If a modified form is issued, it shall specify two options from which the petitioner may choose to resolve the demand.

- a. Option 1. The bond principal or surety may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, the principal or surety waives the right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

- b. Option 2. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The Fines, Penalties and Forfeitures Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the Fines, Penalties and

Forfeitures Officer may cancel the claim upon payment of an amount no less than \$100 greater than the Option 1 amount.

2. If merchandise is delivered untimely to the port of destination or exportation (not within 15 days if transported by air, 30 days if transported by vehicle, or 60 days if transported by vessel) but is otherwise intact, the Fines, Penalties and Forfeitures Officer may cancel the claim upon payment of an amount between \$100 or \$500, depending on the presence of aggravating or mitigating factors.
  3. If merchandise is delivered timely but the documentation is not filed with Customs within 2 days of arrival in the port of delivery, the Fines, Penalties and Forfeitures Officer may cancel the claim upon payment of an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.
  4. If the bonded carrier consistently fails to deliver paperwork timely and Customs business is impeded by these repeated failures, the Fines, Penalties and Forfeitures Officer may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.
- C. Failure to deliver, shortage or delivery directly to the consignee.
1. If the in-bond carrier can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.
  2. If the in-bond carrier can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.
  3. If the merchandise which was not delivered, delivered short or delivered directly to the consignee could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.
  4. If the in-bond carrier comes forward and discloses the violation to Customs, the claim for liquidated damages may be canceled upon

payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus \$50.

5. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was not designated for Customs examination and the in-bond carrier can show that the merchandise was entered and duties, fees, taxes and charges paid thereon (in the case of an IT) or that the merchandise was exported (in the case of an IE or T&E), the claim for liquidated damages may be canceled upon payment of an amount between \$250 and \$2,000 depending on the presence of aggravating or mitigating factors.
6. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was not designated for Customs examination and the in-bond carrier cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon (in the case of an IT), or that the merchandise was exported (in the case of an IE or T&E), the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between \$300 and \$2,500 depending on the presence of aggravating or mitigating factors.
7. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was designated for Customs examination and the in-bond carrier can show that the merchandise was entered and duties, fees, taxes and charges paid thereon (in the case of an IT), or that the merchandise was exported (in the case of an IE or T&E), the claim for liquidated damages may be canceled upon payment of an amount between \$2,500 and \$20,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.
8. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was designated for Customs examination and the in-bond carrier cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon (in the case of an IT), or that the merchandise was exported (in the case of an IE or T&E), the claim for liquidated damages may be canceled upon payment of an amount equal to

the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between \$3,000 and \$25,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

9. If the in-bond carrier has a history of not delivering, delivering short or delivering directly to the consignee, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of HQ, ORR, Penalties Branch shall be sought to determine appropriate mitigation.
10. Theft of in-bond merchandise. In-bond merchandise which is stolen from the carrier prior to having been delivered to Customs at the port of destination or exportation shall be treated as having been not been delivered. The carrier will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1448 or 1499 may also be assessed against the individuals who steal the merchandise from the bonded carrier. Theft of merchandise in those instances will be mitigated in accordance with guidelines articulated in Section III.B.10. of the Guidelines for Delivery of Cargo Without Customs Authorization in the Vessel Section of this Handbook.

D. Mitigating and Aggravating Factors.

1. Mitigating Factors

- a. Carrier inexperienced in the handling of in-bond cargo.
- b. Carrier has a general good performance and low error rate in the handling of in-bond cargo.
- c. Carrier demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

- a. Carrier refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
- b. Carrier has a rising error rate, which is indicative of deteriorating performance in the delivery of in-bond cargo.

E. Restricted or Prohibited Merchandise.

If Customs has reason to believe that the merchandise which was not delivered, delivered short or delivered directly to the consignee may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in mitigation at the high end of the mitigation range.

**VIII. Guidelines for Cancellation of Claims Arising From Violation of Warehouse Proprietor's Bond (19 C.F.R. PART 19, 19 C.F.R. 113.63) (T.D. 94-38)**

The following guidelines apply to violations involving bonded warehouse proprietors and duty-free store operators.

- A. Defaults Involving Merchandise. Defaults involving merchandise include violations involving merchandise which:
1. Cannot be located or accounted for in a bonded warehouse.
  2. Has been removed from a bonded warehouse without a Customs permit.
  3. Has been deposited, manipulated, manufactured, or destroyed in a bonded warehouse:
    - a. Without proper Customs permit;
    - b. Not in accordance with the description of the activity in the permit; or
    - c. In the case of Class 6 warehouses, not manufactured in accordance with the formula specified in section 19.13(e) of the Customs Regulations (19 C.F.R. 19.13(e)).
- B. Defaults Not Involving Merchandise. Defaults not involving merchandise include those instances of failure, other than those involving merchandise, to comply with Customs laws and regulations. The same act shall not be regarded as both a default involving merchandise and a default not involving merchandise.
- C. Defaults Involving Merchandise; Petitions. Petitions received in cases arising from defaults involving merchandise should be processed in accordance with the following.