

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.

1. If the breach resulted from clerical error or mistake (a non-negligent inadvertent error), the claim should be canceled without payment.
2. If the breach resulted from negligence but no threat to the revenue occurred (e.g., the merchandise was not manipulated in accordance with the permit to manipulate) the claim should be canceled upon payment of an amount between one and 15 percent of the value of the merchandise involved in the breach, but not less than \$100 nor more than \$10,000. If the merchandise involved in the breach is restricted merchandise, that shall be considered an aggravating factor which shall result in mitigation on the higher end of the range.
3. If the breach resulted from negligence and a potential loss of revenue resulted (e.g., merchandise cannot be located in the warehouse, merchandise is removed from the warehouse without a permit), the claim shall be canceled upon payment of an amount between one and three times the loss of revenue (loss of revenue to include duties, fees and taxes), but not less than \$100. If the merchandise involved in the breach is restricted merchandise, the claim shall be canceled upon payment of an amount between three and five times the loss revenue but in no case less than 10 percent of the value of such merchandise.
4. If the breach is intentional (e.g., the warehouse proprietor conspires to remove merchandise from the warehouse without proper entry), there will be no relief granted from liquidated damages.
5. Aggravating factors.
  - a. Principal's failure or refusal to cooperate with Customs.
  - b. Large number of violations compared to number of transactions handled.
  - c. Experience of principal.
  - d. Principal's carelessness or willful disregard toward its responsibilities.
6. Mitigating factors.
  - a. Contributory error by Customs.
  - b. Small number of violations compared to number of transactions handled.
  - c. Remedial action taken by principal.
  - d. Cooperation with Customs.
  - e. Lack of experience of principal.

- f. Merchandise which cannot be located or released without permit is returned to Customs custody.
- D. Defaults Not Involving Merchandise; Modified CF 5955A. Defaults not involving merchandise shall be processed in accordance with the following guidelines.
1. Modified CF 5955A. Notices of liquidated damages incurred may be issued on a modified CF-5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.
    - a. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his 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. Petition for relief. 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 FP&F Officer shall grant full relief when the petitioner demonstrates that the violation did not occur. If the petitioner fails to demonstrate that the violation did not occur, the FP&F Officer may cancel the claim upon payment of an amount no less than \$100 greater than the Option 1 amount.
  2. Maximum Assessments. In cases involving violations which do not involve merchandise which are assessed at \$1,000 for each business day that the violation continues, a maximum of \$10,000 shall be assessed for any one such continuing violation unless the district director can articulate a legitimate enforcement purpose for exceeding said limit. These claims shall be canceled in conformance with the terms of these guidelines.
  3. Clerical Error. If the breach resulted from clerical error, the claim may be canceled without payment.
  4. Negligence. If the breach resulted from negligence, the claim may be canceled upon payment of an amount between \$100 and \$250 per default actually assessed, depending on the presence of aggravating or mitigating factors. For example, if a document is filed 100 days late, Customs, by policy, will generally limit the

assessment to \$10,000. Mitigation will be based on the \$10,000 actual assessment and not relate to the \$100,000 potential assessment.

5. Intentional violation. If the breach was intentional, no relief shall be granted.

**IX. Guidelines for Cancellation of Claims Arising From Violation of Airport Security Regulations (19 C.F.R. 122.181 ET.SEQ.) (T.D. 94-38)**

A. Assessment of claims for liquidated damages; Modified CF 5955A. Notices of liquidated damages incurred may be issued on a modified CF-5955A if the violation is of a type that warrants mitigation. The modified form shall specify two options from which the petitioner may choose to resolve the demand. The modified form should not be offered in any situation where the district director anticipates that substantial factual or legal issues may be raised.

1. Option 1. He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his 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.
2. Option 2. Petition for relief. Pursuant to the provisions of 19 C.F.R. 172.2 and 172.4, 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 FP&F 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 FP&F Officer may cancel the claim upon payment of an amount no less than \$100 greater than the Option 1 amount.

B. Mitigation Guidelines.

1. Failure to conduct a background investigation or failure to retain background investigation records:
  - a. No mitigation unless extraordinary mitigating circumstances exist.