

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.

- b. An example of an extraordinary mitigating circumstance would be destruction of records by accidental fire or act of God.
2. Unauthorized entry in secured area, failure to openly display or possess identification card, strip or seal or failure to surrender identification upon demand by an authorized Customs officer, cancel the claim upon payment of an amount between \$250 and \$500.
3. Failure to return, failure to report loss or theft of identification card, strip or seal or failure to notify port director that employee no longer requires access to a secured area:
 - a. First violation - cancel upon payment of \$500.
 - b. Second or subsequent violation - grant no relief.
4. Presentation of an identification card, strip or seal by a person other than to whom it was issued:
 - a. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor used the card, strip or seal in an improper manner and it had given warnings about such conduct to all its employees, agents or contractors.
 - b. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in (B)(4)(a) above, cancel the claim upon payment of \$200.
 - c. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.
5. Refusal of an employee, agent or contractor to obey any proper order of a Customs officer or any Customs order, rule or regulation.
 - a. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor had acted contrary to proper order, rule or regulation and it had given warnings about such conduct to all its employees, agents and contractors.
 - b. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in subparagraph (B)(5)(a) above, cancel upon payment of between \$200 and \$500.

- c. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

X. Guidelines for Cancellation of Claims Arising From the Failure to Hold Merchandise at the Place of Examination (19 C.F.R. 113.62(f)) (T.D. 99-29)

A. Assessment.

The importer of record (including a Customs broker when acting as importer of record) may seek and obtain permission from Customs to have merchandise examined at a place other than at a wharf or other place in the charge of a Customs officer. The importer obligates the provisions of its basic importation bond guaranteeing to deliver the merchandise to the place of examination and hold it there until examination occurs. If merchandise which is to be held at the place of examination or delivered to the place of examination as obligated by the importer of record under the terms and conditions of the basic importation bond is not so held or delivered, a claim for liquidated damages arises for violation of the provisions of 19 C.F.R. 113.62(f) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of claims arising for failure to hold merchandise at or deliver merchandise to the place of examination pursuant to the provisions of the Basic Importation Bond.

1. If the importer of record 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 importer of record 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 held at or delivered to the place of examination 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.