

- 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.

4. By its very nature, merchandise not held at or delivered to the place of examination is considered to be designated for Customs examination. If the importer of record can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, 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.
5. If the merchandise was not held at or delivered to the place of examination and the importer of record cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, 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.
6. If the importer of record has a history of not holding merchandise at or not delivering merchandise to the place of examination, 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 will be sought to determine appropriate mitigation.
7. Theft of merchandise from the place of examination or while being delivered to the place of examination. Merchandise which is stolen from the custody of the importer of record at or on its way to the place of examination will be treated as having been removed without authorization. The importer of record 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 importer of record. 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.

C. Mitigating and Aggravating Factors.

1. Mitigating Factors

- a. The importer of record is inexperienced in the handling of cargo.
- b. The importer of record has a general good performance and a low error rate in the delivery and safekeeping of cargo.
- c. The importer of record demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

- a. The importer of record refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
- b. The importer of record has a rising error rate which is indicative of deteriorating performance in the delivery and safekeeping of cargo.

D. Restricted or Prohibited Merchandise.

If Customs has reason to believe that the merchandise which was not held at the place of examination or was not delivered to the place of examination 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.

E. Failure to Keep Customs Seal or Cording Intact.

The importer of record also agrees to keep any Customs seals or cording intact until the merchandise is examined. For a violation which involves the failure to keep any Customs seal or cording intact until the merchandise is examined, the claim will be canceled upon payment of an amount between \$100 and \$500 if there is no evidence to indicate the merchandise in the sealed or corded shipment was tampered with. If there is evidence of tampering, the claim will be canceled upon payment of an amount equal to the value of any missing merchandise.

XI. Guidelines for Cancellation of Claims Arising From the Failure of a Centralized Examination Station (CES) Operator to Deliver Merchandise to or Retain Merchandise at the CES (19 C.F.R. 151.15, 19 C.F.R. 113.63) (T.D. 99-29)