

C. Mitigating and Aggravating Factors.

1. Mitigating Factors

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

2. Aggravating Factors

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

D. Restricted or Prohibited Merchandise.

If Customs has reason to believe that the merchandise which was removed from the CFS without authorization 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.

XIII. Claims for Liquidated Damages Assessed Against a Bonded Party for Failure to Notify Customs of the Presence of Unentered Merchandise (T.D. 99-29)

A. Assessment.

Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party must notify Customs of any such merchandise or baggage for which entry has not been made. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages equal to \$1,000 per bill of lading for which notification is not given for violation of the provisions

of 19 C.F.R. 113.63(c)(4) and: 19 C.F.R. 4.37(b), if original arrival is by vessel; 19 C.F.R. 122.50(b), if original arrival is by air; or 19 C.F.R. 123.10(b), if original arrival is by land carrier.

B. Mitigation.

1. If notification of the presence of unentered merchandise is provided outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.
2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

XIV. Claims for Liquidated Damages Incurred by the Carrier or Other Party for Failure to Notify the Bonded Warehouse of the Presence of Unentered Merchandise (T.D. 99-29)

A. Assessment.

In addition to the notification to Customs, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) must provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system and must be provided within the 20-calendar day period. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of \$1,000 per bill of lading for which notification is not given. Liability of the arriving carrier would be under the provisions of 19 C.F.R. 113.64(b) and: 19 C.F.R. 4.37(c) if the original arrival was by vessel; 19 C.F.R. 122.50(c) if the original arrival was by air; or 19 C.F.R. 123.10(c) if the original arrival was by land carrier. Liability of the party to whom custody has been transferred by a Customs-authorized permit to transfer or in-bond entry would be under the provisions of 19 C.F.R. 113.63(b), 19 C.F.R. 113.63(c) and: 19 C.F.R. 4.37(c) if the original arrival

was by vessel; 19 C.F.R. 122.50(c) if the original arrival was by air; or 19 C.F.R. 123.10(c) if the original arrival was by land carrier.

B. Mitigation.

1. If notification of the presence of unentered merchandise is provided to the bonded warehouse outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.
2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

XV. Claims for Liquidated Damages Against a Bonded Warehouse for Failure to Collect Unentered Merchandise For Which Notification Has Been Received (T.D. 99-29)

A. Assessment.

If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages of \$1,000 per bill of lading remaining uncollected. Liability would be under 19 C.F.R. 113.63(a)(1) and: 19 C.F.R. 4.37(d) if the original arrival was by vessel; 19 C.F.R. 122.50(d) if the original arrival was by air; or 19 C.F.R. 123.10(d) if the original arrival was by land carrier.

B. Mitigation.

1. If the bonded warehouse operator takes possession of unentered merchandise outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.
2. If the bonded warehouse operator never takes possession of merchandise for which he has received appropriate notification, no mitigation will be afforded.