

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 Breach. If the breach was intentional, no relief shall be granted.
 6. Violator disclosing violation before Customs discovery. If the violator comes forward and discloses the violation to Customs prior to Customs discovery of the violation, whether or not the violation is a continuing one, the claim for liquidated damages may be cancelled, at the discretion of the appropriate Customs officer, upon payment of the amount of \$50.
- E. Cancellation of claims for late payment of the annual fee.
1. If the late payment resulted from clerical error or mistake, the claim may be canceled upon payment of the amount due but not paid.
 2. If the late payment resulted from negligence, cancel upon payment of the amount due but not paid plus the following percent of that amount for each day payment is in arrears:
 - a. First seven calendar days - not less than one-third of one percent nor more than three-fourths of one percent per day.
 - b. Second seven calendar days - not less than one and one-third percent nor more than one and three-fourths percent per day.
 - c. After the fourteenth calendar day - not less than two and one-third nor more than two and three-fourths percent per day.
 3. If the late payment was intentional, no relief shall be granted.

XVII. Guidelines for Cancellation of Claims for Late Filing or Failure to File Softwood Lumber Information (19 C.F.R. 12.140, 19 C.F.R. 113.62(k), 19 C.F.R. 113.62(l)(5)) (T.D. 98-53)

- A. The provisions of 19 C.F.R. 12.140 set forth special entry requirements for softwood lumber. The importer of record is obligated to obtain and provide to Customs information regarding the issuance of a Canadian export permit. The export permit information must be provided to Customs within 20 working days of release of the merchandise.
- B. Late presentation of export permit information. Claims for liquidated damages for late presentation of export permit information 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.
 - 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 Fines, Penalties, and Forfeitures Officer shall grant full relief when the petitioner demonstrates that the violation did not occur or occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or 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. Cancellation of claims for late presentation of export permit information. Liquidated damages incurred for late presentation of the necessary information may be canceled upon payment of an amount between 25 and 50 percent of the claim but not less than \$500 and not more than \$3,000. Such amount may be afforded as an Option 1 amount. Mitigation shall be based upon the experience of the importer and the number of violations incurred compared with the number of importations made. No relief shall be granted from any claim issued for \$500 or less.
- C. Failure to present export permit information. If the importer fails to present the appropriate export permit information, no relief from the claim for liquidated damages will be granted unless the importer can show that the information was not required or that the violation occurred solely as a result of Customs error. Upon presentation of proof which satisfies the

Fines, Penalties, and Forfeitures Officer that the information was not required or that the violation occurred solely as a result of Customs error the claim shall be canceled without payment.

XVIII. Guidelines for Cancellation of Claims for Failure to File Reconciliations Timely (REF: 64 FR 73121, dated December 29, 1999; 66 FR 14619, dated March 13, 2001)

The filing of NAFTA Reconciliations is now optional. Accordingly, the liquidated damages provisions in this section apply only to value, classification, and 9802 Reconciliations. They do not apply to NAFTA Reconciliations.

A. Requirements

As described above and in the Federal Register notice of February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation within the allotted time, covering the flagged issue(s) on that entry summary. This notice removes the obligation to reconcile NAFTA eligibility for entry summaries flagged for that issue. Each entry summary flagged for value, classification, and/or 9802 issues must be covered by a Reconciliation filed prior to the due date, 15 months from the earliest entry summary date of the underlying entry summaries. Up to 9,999 underlying entry summaries may be covered by a single Reconciliation. If any one of the underlying entry summaries' due dates has passed prior to Reconciliation filing, the entire Reconciliation is considered late. However, the importer and filer have discretion to determine which and how many entry summaries are grouped on a Reconciliation, regardless of the flagging method and timing involved in the original flagging of those entry summaries.

B. Liquidated Damages for Non-Filed and Late-Filed Reconciliations

The obligation to file Reconciliations created by the flagging of entry summaries carries liquidated damages implications for failure to do so timely. Each flagged entry summary remains an independent entity until reconciled. Customs has no way of knowing which entry summaries will be covered by a single Reconciliation until one is actually filed. Once the Reconciliation has been filed, the universe of entry summaries covered by it is established. Moreover, the Reconciliation is an entry in its own right and has the same legal status as other Customs entries. For these reasons, late-filing and non-filing of Reconciliations will be dealt with using different mechanisms.

C. Liquidated Damages Mechanisms

1. "No File" Liquidated Damages