

GUIDELINES FOR CANCELLATION OF LIQUIDATED DAMAGES CLAIMS REF: T.D. 94-38, T.D. 98-53, T.D. 99-29, T.D. 01-41 AND T.D. 02-20

I. Guidelines for Cancellation of Claims for Liquidated Damages for Failure to File Entry Summaries Timely (19 C.F.R. 142.15 and 113.62(b)), Failure to Pay Estimated Duties Timely (19 C.F.R. 113.62(a)(1)(i) and 113.62(l)(4)), and Failure to Remit Passenger Processing Fees Timely (19 C.F.R. 113.64(a)) (T.D. 94-38)

A. Failure to file entry summaries timely.

Claims for liquidated damages for failure to file entry summaries timely shall be issued and mitigated as follows:

1. Notification of liquidated damages incurred; modified CF-5955A. Notices of liquidated damages incurred shall 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. 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.
2. Calculation of mitigated amount; entry summary filed late. The amounts to be set forth under Option 1 on the CF 5955A shall be calculated as follows:

- a. Dutiable entry summary filed late. The bond principal or surety shall be charged an administrative fee of \$100 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary.
- b. Duty-free entry filed late. The bond principal or surety shall be charged an administrative fee of \$100 plus interest on any withheld fees and taxes calculated at the rate of 0.1 percent (.001) per calendar day that the entry summary was late.
- c. Dutiable entry rejected and re-filed late with no withheld duty, fees and taxes. The bond principal or surety shall be charged \$100.
- d. Dutiable entry filed timely but rejected, re-filed late with additional duties, fees and taxes owed. The bond principal or surety shall be charged an administrative fee of \$100 plus interest calculated on withheld duties, fees and taxes only, calculated at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late.

3. Entry summary not filed.

- a. If at the time the demand for liquidated damages is issued the entry summary has not been filed, a claim for liquidated damages for non-filing of the entry summary shall be issued. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must file the entry summary and pay estimated duties, fees and taxes or the surety must deposit estimated duties, fees and taxes.
- b. Once the estimated duties, fees and taxes have been paid, a notice of claim for liquidated damages shall be issued for late filing of the entry summary, replacing the earlier notice of claim for non-filing of the entry summary. The late filing claim issued as a result of a non-filing situation shall be canceled in accordance with the following guidelines once the estimated duties, fees and taxes have been deposited.

- i. The bond principal shall be charged an administrative fee of \$200 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the entry summary was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the duty amount shall be rounded down to the next dollar.
 - ii. When the surety deposits estimated duties, fees and taxes, the surety shall be charged an administrative fee of \$200 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of the estimated duties, fees and taxes.
- c. If no response from the principal is received within 60 days from the date of issuance of the non-filing claim, a claim for liquidated damages for the non-filing shall be issued to both the principal and surety, but no Option 1 mitigation shall be offered.

4. Late filing of statement summaries.

- a. If a Customs broker files an entry statement including multiple entry summaries for processing in an untimely manner, the FP&F Officer may, in his or her discretion, cancel all claims for liquidated damages arising because of the late filing in accordance with the following standard:

The broker shall be charged, as an Option 1 amount, an administrative fee of \$500 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary. A broker who is responsible for late submission of a statement summary shall be afforded this mitigation with regard to any first violation. This mitigation may be afforded with regard to a subsequent violation, based upon the discretion of the district director.

b. Petition for relief.

- i. If the broker files a petition for relief which demonstrates that the violation did not occur or occurred as a result of Customs error, all claims arising from the late filing should be canceled without payment.
- ii. If the broker files a petition for relief which fails to demonstrate that the violation did not occur or occurred as a result of Customs error, the claim shall be canceled upon payment of \$700 plus interest on any withheld fees and taxes calculated at the rate of 0.1 percent (.001) per calendar day that the entry statement was late.

c. Failure to pay Option 1 amount or petition for relief.

If a broker fails to pay the Option 1 amount or fails to petition for relief, Customs shall issue appropriate claims for liquidated damages against all bond principals and sureties and the mitigation guidelines enumerated in paragraph B. above shall be followed. In no case shall the \$500 plus interest Option 1 amount afforded to brokers in these cases be afforded to principals or sureties.

5. Suspension of immediate release privileges. If an importer fails to meet his obligations with regard to claims for liquidated damages for late filing of entry summaries, the FP&F Officer is always empowered to recommend to the port director suspension of immediate release privileges of the importer. Alternatively, the FP&F Officer may choose to assess liquidated damages but not offer an Option 1 alternative.

B. Late or non-payment of estimated duties.

Claims for liquidated damages for late or non-payment of estimated duties shall be issued in an amount equal to double the late-paid estimated duties, fees, taxes and charges or \$1,000 (whichever is greater) and mitigated as follows:

1. Notification of liquidated damages incurred; estimated duties not paid. If at the time the demand for liquidated damages is issued the estimated duties, fees and taxes have not been paid, the claim shall be issued on a CF-5955A citing 19 C.F.R. 113.62(a)(1)(i) and 19 C.F.R. 113.62(l)(4) as the bond conditions violated. No

mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must pay estimated duties, fees and taxes or the surety must deposit estimated duties, fees and taxes.

2. Notification of liquidated damages incurred; estimated duties paid late; modified CF 5955A. If at the time of issuance of the demand for liquidated damages, estimated duties, fees and taxes have been paid, the Notices of Claim for Liquidated Damages incurred shall 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. 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 or financial institution error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs or financial institution error, the FP&F Officer may cancel the claim upon payment of an amount no less than \$100 greater than the Option 1 amount.
3. Calculation of Option 1 amounts.
 - a. If estimated duties, taxes and charges are paid untimely, but payment is made before Customs is required to issue a Notice of Claim as described in Subparagraph B(1) above, the bond principal or surety shall be charged an administrative fee of \$100 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation

guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary.

- b. If estimated duties, taxes, fees and charges are paid untimely by the bond principal after Customs has issued a claim for liquidated damages for non-payment of estimated duties in accordance with Subparagraph B(1) above, the bond principal shall be charged an administrative fee of \$200 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the payment was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the duty amount shall be rounded down to the next dollar.
- c. When the surety deposits estimated duties, fees and taxes, in response to a demand made in accordance with Subparagraph B(1) above, the surety shall be charged an administrative fee of \$200 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of the estimated duties, fees and taxes.

C. Failure to remit collected passenger processing fees.

Claims for liquidated damages for untimely payment to Customs of collected passenger processing fees shall be issued in an amount equal to two times the passenger processing fees which have been collected but not timely paid to Customs and mitigated as follows:

1. Notification of liquidated damages incurred; passenger processing fees not remitted. If at the time the demand for liquidated damages is issued the collected fees have not been remitted to Customs, the claim shall be issued on a CF-5955A citing 19 C.F.R. 113.64(a) and 19 C.F.R. 24.22(g) as the bond condition and regulations violated. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must remit the collected fees or the surety must deposit an amount equal to those unremitted fees.
2. Notification of liquidated damages incurred; passenger processing fees paid late; modified CF 5955A. If at the time of issuance of the demand for liquidated damages, the collected fees have been remitted, the Notices of Claim for Liquidated Damages incurred shall 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. 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.

3. Calculation of Option 1 amounts.

- a. If the collected passenger processing fees are remitted untimely, but are remitted so that Customs is not required to issue a Notice of Claim as described in Subparagraph C(1) above, the bond principal or surety shall be charged an administrative fee of \$200 plus interest on the unremitted fees at the rate of 0.1 percent (.001) per calendar day that the fees were late. The interest amount shall be rounded up to the next dollar.
- b. If the collected but unremitted fees are remitted untimely by the bond principal after Customs has issued a claim for liquidated damages for failure to remit those fees in accordance with Subparagraph C(1) above, the bond principal shall be charged an administrative fee of \$1,000 plus interest on the unremitted fee at the rate of 0.1 percent (.001) per calendar day that the payment was late. The interest amount shall be rounded up to the next dollar.
- c. When the surety deposits an amount equal to the collected but unremitted fees, in response to a demand made in

accordance with Subparagraph C(1) above, the surety shall be charged an administrative fee of \$1,000 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of an amount equal to the collected but unremitted fees.

D. Referral of petitions to Headquarters.

The FP&F Officer may always refer a petition for relief to Customs Headquarters, Penalties Branch, for advice or guidance. This referral is at the discretion of the FP&F Officer and shall not be allowed to a petitioner as a matter of right.

II. Guidelines for Cancellation of Claims for Liquidated Damages for Violation of Temporary Importation Bonds (19 C.F.R. 10.39) (T.D. 94-38)

- A. Claims are assessed for two times the duties plus merchandise processing fees or 110 percent of the duties plus merchandise processing fees.

NOTE: Do not include harbor maintenance fees in this calculation, as they are paid on TIB entries) unless such different amount has been authorized in accordance with the provisions of 19 C.F.R. 10.31(f).

- B. Cancel the claim without payment if the breach was for the benefit of the United States.
- C. Cancel the claim upon payment of an amount equal to the merchandise processing fee that would have been due on the merchandise had an entry for consumption been filed (but not less than \$100) if:
1. The breach was due wholly to circumstances beyond the importer's control and which could not have been reasonably anticipated i.e. destruction by accidental fire, documented theft
 2. Merchandise which was the subject of the entry would have been entitled to free entry as domestic products exported and returned or under any other duty-free provision.
- D. If the merchandise was exported or destroyed timely but Customs was not notified in a timely manner so as to cancel the bond, cancel the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the claim (depending on aggravating or mitigating factors present), but not less than \$100.