

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)**

A. Assessment.

Merchandise not delivered to or retained at a Centralized Examination Station (CES) by the CES operator shall be the subject of a claim for liquidated damages for violation of the provisions of 19 C.F.R. 151.15(b)(3) and 19 C.F.R. 113.63(b)(2) 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 deliver merchandise to the CES or removal or delivery of merchandise from the CES without authorization.

1. If the CES operator 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 CES operator 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 delivered to the CES or removed or delivered from the CES without authorization 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. If the CES operator comes forward and discloses the violation to Customs, 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 \$50.
5. By its very nature, merchandise not delivered to a CES or removed or delivered from a CES without authorization is designated for Customs examination. If the CES operator 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.

6. If the merchandise was not delivered to a CES or was removed or delivered from a CES without authorization, and the CES operator 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.
7. If the CES operator has a history of receipting for merchandise which has not been delivered to the CES or allowing merchandise to be removed or delivered from the CES without authorization, 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 shall be sought to determine appropriate mitigation.
8. Theft of bonded merchandise. Merchandise which is stolen from the CES shall be treated as having been removed without authorization. The CES operator 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 a CES. 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. CES operator inexperienced in the handling of cargo.
  - b. CES operator has a general good performance and low error rate in the handling of cargo.
  - c. CES operator demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

- a. CES operator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
- b. CES 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 not delivered to a CES or was removed from the CES 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.

E. Failure to maintain records as required by regulation.

1. If a CES operator fails to maintain records as required by Customs, claims for liquidated damages not involving merchandise for violation of 19 C.F.R. 113.63(a)(3) and 19 C.F.R. 118.4 shall result.
2. If the breach resulted from clerical error, the claim may be canceled without payment.
3. If the breach resulted from negligence, the claim may be canceled upon payment of an amount between \$100 and \$250 per default, depending on the presence of aggravating or mitigating factors.
4. If the breach was intentional, no relief shall be granted.

**XII. Guidelines for Cancellation of Claims Arising from the Removal of Merchandise Without Authorization From a Container Freight Station (CFS) (19 C.F.R. 19.40 ET.SEQ.) (19 C.F.R. 113.63(b)) (T.D. 99-29)**

A. Assessment.

Merchandise not retained at a Container Freight Station (CFS) by the CFS operator shall be the subject of a claim for liquidated damages for violation of the provisions of 19 C.F.R. 113.63(b)(2) 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.