

XVI. Guidelines for Cancellation of Claims Arising From Violation of Foreign Trade Zone Regulations (19 C.F.R. Part 146, 19 C.F.R. 113.73) (T.D. 01-41)

- A. Defaults Involving Merchandise. Defaults involving merchandise include those violations relating to merchandise which:
1. Cannot be located or accounted for in the activated area of a foreign trade zone;
 2. Has been removed from the activated area of the zone without a proper Customs permit; or
 3. Has been admitted, manipulated, manufactured, exhibited, or destroyed in the activated area of a zone:
 - a. Without proper Customs permit; or
 - b. Not in accordance with the description of the activity in the Customs permit.
- B. Defaults Not Involving Merchandise. Default not involving merchandise means any instance of failure, other than one involving merchandise or late payment of the annual fee, to comply with the laws or regulations governing foreign trade zones. A default involving one zone lot or unique identifier may not be combined with a default under another lot or unique identifier.
- C. Defaults Involving Merchandise; Petitions. Claims arising from defaults involving merchandise should be processed in accordance with the following:
1. If the breach resulted from clerical error or mistake (a non-negligent inadvertent error), the claim should be canceled without payment.
 2. If the breach resulted from negligence but no threat to the revenue occurred (e.g., the merchandise was not manipulated in accordance with the permit to manipulate) the claim should be canceled upon payment of an amount between one and 15 percent of the value of the merchandise involved in the breach, but not less than \$100 nor more than \$10,000. If the merchandise involved in the breach is restricted merchandise, that shall be considered an aggravating factor which shall result in mitigation on the higher end of the range. If the merchandise involved in the breach is domestic status merchandise, that shall be considered a mitigating factor which shall result in mitigation on the lower end of the range.

3. If the breach resulted from negligence and a potential loss of revenue resulted (e.g., merchandise cannot be located in the zone, merchandise is removed from the zone without a permit), the claim shall be canceled upon payment of an amount between one and three times the loss of revenue (loss of revenue to include duties, fees and taxes). If the merchandise involved in the breach is restricted merchandise, the claim shall be canceled upon payment of an amount between three and five times the loss revenue but in no case less than 10 percent of the value of such merchandise.
4. If the breach is intentional (e.g., the foreign trade zone operator conspires to remove merchandise from the warehouse zone without proper entry being made), there will be no relief granted from liquidated damages.
5. Aggravating factors.
 - a. Principal's failure or refusal to cooperate with Customs.
 - b. Large number of violations compared to number of transactions handled.
 - c. Experience of principal.
 - d. Principal's carelessness or willful disregard toward its responsibilities.
6. Mitigating factors.
 - a. Contributory error by Customs.
 - b. Small number of violations compared to number of transactions handled.
 - c. Remedial action taken by principal.
 - d. Cooperation with Customs.
 - e. Lack of experience of principal.
 - f. Merchandise which cannot be located or which has been removed without permit is returned to Customs custody.
 - g. The merchandise involved in the breach is domestic status merchandise.
7. If the violator comes forward and informs Customs of a violation, prior to Customs discovery of the violation, the claim for liquidated damages may be cancelled, at the discretion of the appropriate Customs officer, 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.
8. If the violator comes forward and informs Customs of a violation, prior to Customs discovery of the violation, and the violation

involves restricted merchandise, then the claim for liquidated damages may be cancelled, at the discretion of the appropriate Customs officer, 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 5 percent of the value of the merchandise, but not less than \$500. The kind and character of the restriction will be considered before relief under this provision is allowed.

- D. Defaults Not Involving Merchandise; Modified CF 5955A. Defaults not involving merchandise 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. 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. 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. If the petitioner fails to demonstrate that the violation did not occur, the FP&F Officer may cancel the claim upon payment of an amount no less than \$100 greater than the Option 1 amount.
 2. Maximum Assessments. In cases involving violations which do not involve merchandise which are assessed at \$1,000 for each business day that the violation continues, a maximum of \$10,000 shall be assessed for any one such continuing violation unless the FP&F Officer can articulate a legitimate enforcement purpose for exceeding said limit. These claims shall be canceled in conformance with the terms of these guidelines.
 3. Clerical Error. If the breach resulted from clerical error, the claim may be canceled without payment.

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)