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**CLAIMS FOR LIQUIDATED DAMAGES; AMENDED GUIDELINES
FOR THE ACCEPTANCE OF UNTIMELY PETITIONS AND
MITIGATION OF CLAIMS**

CBP Dec. 13-1

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) is amending its guidelines for cancellation and mitigation of claims for liquidated damages where petitioners are late in filing claims for relief. CBP considers petitions filed outside of the established regulatory time frames or after the expiration of any lawfully obtained extensions (see 19 CFR Part 172) to be “untimely” or “late.” This document also provides for a new calculation of mitigated amounts to be afforded in cases where petitions are filed late.

EFFECTIVE DATE: These guidelines are applicable to all liquidated damages claims for which a late petition is filed on or after January 9, 2013.

FOR FURTHER INFORMATION CONTACT: John Connors, Chief, Penalties Branch, Regulations and Rulings, Office of International Trade at (202) 325-0050.

SUPPLEMENTARY INFORMATION:

Background

In 1994, the mitigation guidelines governing the late or untimely (CBP uses the terms interchangeably) filing of petitions in liquidated damages claims were published in Treasury Decision (T.D.) 94-38 (see 28 Cust. B. & Dec. 428), and were updated and amended in 2002 by T.D. 02-20 (see 36 Cust. B. & Dec. 97). The late petition mitigation guidelines were promulgated to encourage settlement of liquidated damages claims prior to litigation by allowing the filing of petitions after regulatory time frames had expired but before legal collection action had begun. The most favorable mitigation terms would be offered to those who timely filed a petition for relief. Consideration or acceptance of late-filed petitions was at the discretion of the Fines, Penalties, and Forfeitures (FP&F) Officer at the port where the claim was issued and the petition was filed.

Over time, CBP has seen an increase in untimely filed petitions. Accordingly, CBP has decided to amend its mitigation guidelines to limit the time period and circumstances in which late petitions will be considered or accepted. CBP has also chosen to change the formula through which late petition mitigation is calculated. Through this Notice, CBP is providing notice to the public in accordance with section 623 of the Tariff Act of 1930, as amended (19 U.S.C. § 1623). The mitigation guidelines are applicable only to petitions for relief and do not apply to offers in compromise submitted pursuant to 19 U.S.C. § 1617 and 19 CFR 161.5.

Regulatory Deadlines for Timely Petitions

Under existing regulatory authority, in order to be considered timely, petitions for relief in response to claims for liquidated damages must be filed:

- a. By bond principals within 60 days from the date of mailing of the notice of liquidated damages (see 19 CFR 172.3(b)) or any lawful extension thereof;
or
- b. By sureties within 60 days of the demand for payment by CBP (see 19 CFR 172.4) or any lawful extension thereof.

When circumstances so warrant, extensions of the time period to file a petition may be granted by the FP&F Officer (FPFO) if such an extension of time is requested during the 60-day period available for timely filing a petition (see 19 CFR 172.3(c)).

Current Mitigation Guidelines Concerning Untimely Petitions

Under the current mitigation guidelines published by the above-noted Treasury Decisions, untimely petitions are accepted and reviewed at the discretion of the FPFO. No petitions are considered under the current mitigation guidelines on a claim that is filed after:

- a. The commencement of sanctioning action against the bond principal; or
- b. The issuance of a notice to show cause against the surety.

Under the current mitigation guidelines, if a petition is submitted late, the FPFO first considers the petition as though it had been filed on time and then determines the amount of mitigation that would have been afforded had the petition been filed timely. That determination then becomes the base amount. Once the base amount has been determined, the FPFO charges an additional amount in excess of the base amount. This

additional amount is calculated by determining the number of calendar days that the petition is late and adding an additional 0.1 percent (.001) to the base amount for each day the petitioner is late in filing for relief. As originally published in T.D. 94-38, no additional amount added onto the base amount for a late petition could be less than \$100. In T.D. 02-20, the \$100 minimum was raised to \$400.

New Mitigation Guidelines Concerning Untimely Petitions

CBP is announcing new guidelines with regard to acceptance and consideration of late petitions in an attempt to tighten requirements so as to encourage the timely filing of petitions for relief and to promote timely resolution of liquidated damages claims. These new guidelines, as set forth herein, shall supersede and replace, in pertinent part, the existing guidelines concerning untimely petitions originally published in T.D. 94-38 and most recently amended and published in T.D. 02-20.

Untimely petitions will be accepted or considered only if the petitioner is able to demonstrate the existence of extraordinary circumstances that prevented the petitioner from filing a timely petition or timely seeking a lawful extension of time in which to file a petition. Extraordinary circumstances may include some intervening event beyond the petitioner's control resulting in a justifiable inability to timely address or respond to the claim. The FPFO will exercise his or her discretion in determining whether circumstances existed so as to warrant CBP's consideration or acceptance of a late petition.

Subject to the exception noted below, no untimely petition will be accepted in any circumstance if it is filed:

- a. More than 180 days after the date of mailing of the notice of claim to the

bond principal, or in the case of a surety, the date of mailing of the first demand on surety;

- b. After the petitioner has previously submitted a petition in the same case and/or been offered mitigation in the same case, and such mitigation amount was not paid within the prescribed period;
- c. After the claim has been referred to Office of Chief Counsel for collection action;
- d. After the commencement of sanctioning action against the bond principal;
or
- e. After the issuance of a notice to show cause against a surety.

Exception: Irrespective of extraordinary circumstances, untimely petitions for relief of liquidated damages claims issued for: (1) the late filing of an entry summary; (2) the late payment of estimated duties (including late payment of duties under the periodic monthly statement test); (3) the late payment of passenger processing fees; or (4) late filing or late payment of reconciliation entries may be accepted without regard to the limitations expressed in paragraphs a and b above at any time prior to the circumstances described in paragraphs c through e above.

An untimely petition is not a supplemental petition described in 19 CFR 172.41. A supplemental petition, as described in 19 CFR 172.41, must be timely filed following a decision on an original petition filed in accordance with the established regulatory time frames. The rejection of an untimely petition does not constitute a “decision” for purposes of 19 CFR 172.41.

Petitions that are filed untimely and are not accepted for consideration will be

rejected. A party responsible for a liquidated damages claim may submit an offer in compromise to CBP pursuant to 19 U.S.C. § 1617 and 19 CFR 161.5.

New Calculation of Mitigated Amounts Pursuant to Late Petitions

In calculating the mitigated amount on a late petition, CBP will first determine the base amount (i.e., the amount of mitigation that would have been afforded on a timely petition or the previously available option one amount). CBP will then determine the “additional mitigation amount” by multiplying the full assessed amount of the claim by 0.1 percent (.001) and then multiply by the number of days the petition is late (i.e., .001 times the number of days late times the full assessed claim amount.) The product will be the additional amount which will be added to the base amount to produce the mitigated amount applied to the untimely filed petition. In no case will the additional mitigated amount to be added to the base amount be less than \$400. [Mitigated Amount = base amount + (full assessed amount of claim times .001 times number of days petition is late)]. For example, a \$100,000 liquidated damages claim for which a petition is filed 30 days late will be mitigated to the amount provided by the guidelines plus an additional amount calculated by the new formula (30 days late x .001 = .03 x 100,000 = \$3,000 added charge.)

Exception for certain violations. For untimely petitions submitted in response to a claim for liquidated damages for: (1) the late filing of an entry summary; (2) the late payment of estimated duties (including late payment of duties under the periodic monthly statement test); (3) late payment of passenger processing fees; or (4) late filing or late payment of reconciliation entries, the additional mitigated amount calculation will not use the actual liquidated damages assessed amount as described above. Rather the

calculation will be based upon an "assessed amount" (for mitigation purposes only) of double the duties, taxes and fees or \$1,000, whichever is greater. In all cases, the minimum additional mitigated amount will be no less than \$400.

CBP will determine the "additional mitigation amount" in mitigation of these claims by multiplying two times the duties, taxes and fees (or \$1,000) due in payment by 0.1 percent (.001) and then multiply by the number of days the petition is late (i.e., .001 times the number of days late times the "assessed amount," as referenced above.) For example, a late summary filing liquidated damages claim for which a petition is filed 30 days late and for which the summary had \$25,000 in estimated duties, taxes and fees will be mitigated to the amount provided by the guidelines plus an additional amount calculated by the new formula (30 days late x .001 = .03 x 50,000 [an amount equal to double the duties, taxes and fees] = \$1,500 added charge.)

Date: December 7, 2012



Deputy Commissioner
U.S. Customs and Border Protection

David V. Aguilar