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Trade Alert

Late petitions to result in sharply higher claim payments as CBP issues amended guidelines for the acceptance of untimely petitions and mitigation of claims.

Based on Customs Decision 13-1 effective January 9, 2013, CBP has amended the guidelines for the acceptance of untimely petitions and mitigation of claims replacing the previous guidelines promulgated under Treasury Decision 94-38 in 1994 and Treasury Decision 02-20 in 2002. Since 2002, CBP has indicated there has been significant uptick in the number of petitions for relief filed untimely and has determined the current formula for mitigation of late filed petitions is outdated and does not provide sufficient monetary assessments to discourage or deter principals and other petitioners from routinely filing untimely petitions. Under the previous guidelines, CBP would accept late petitions for relief after the lapse of the original (60) day deadline established in the CF5955A Notice of Penalty or Liquidated Damage but prior to a notice of sanction or referral to the Office of the Assistant Chief Counsel for collection. However, since the petition was untimely, CBP would require an additional assessment of 0.1% of the base mitigated amount multiplied by the number of days the petition was late (but in no case shall the additional amount be less than \$400.00) to be added to the original mitigation if the petition was deemed accepted. Many late petitions were generally settled for an additional payment of \$400.00 on top of the original mitigation.

In an effort to promote more timely filing of petitions, the new guidelines established under CBP Dec. 13-1 substantially raises, in most cases, the additional amounts acceptable on untimely filed petitions. In summary, the additional mitigated amount for untimely petitions on Liquidated Damage Claims for violations other than the those involving the non filing of duties or certain fees and the late payment of estimated duties, periodic monthly statement or reconciliation entries will be calculated by multiplying the assessed amount of the claim by 0.1% and then by multiplying that amount by the number of days the petition is late but in no case will the additional mitigated amount be less than \$400.00. In liquidated damage cases relating to the non filing of duties or certain fees and the late payment of estimated duties, periodic monthly statement or reconciliation entries the additional mitigation amount will be calculated by multiplying two times the duty/fees due (or \$1,000.00 whichever is greater) by 0.1% and then multiplying that amount by the number of days the petition is late but in no case will the additional mitigated amount be less than \$400.00 (examples are outlined in the attached decision).

"Courtesy and Service"

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To further encourage timely filing of petitions, CBP will accept late petitions on Liquidated Damage Claims for violations other than the those involving the non filing of duties or certain fees and the late payment of estimated duties, periodic monthly statement or reconciliation entries 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. CBP will also not accept any untimely petition regardless of circumstance which is more than 180 days after the mailing date of the CF5955A Notice of Penalty or Liquidated Damage. A complete explanation of the new guidelines and mitigation formulas is outlined in the attached CBP Decision along with an FAQ published by CBP.

We urge you pass this information along to your bond clients to make them aware of these changes and to encourage prompt responses to all CBP claim notifications and surety claim notifications to avoid any unfavorable assessments by CBP for untimely filed petitions. Our staff is available to assist you with any questions you may have with respect to these changes.