

§ 172.0 Scope.

This part contains provisions relating to the giving of notice of liquidated damages incurred under the terms of any bond posted with Customs, the filing of petitions for relief from liquidated damages incurred, and the consideration of such petitions.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970]

Subpart A—General Provisions**§ 172.1 Notice of liquidated damages incurred and right to petition for relief.**

(a) *Notice of liquidated damages incurred.* When there is a failure to meet the conditions of any bond posted with Customs, the principal shall be notified in writing of any liability for liquidated damages incurred by him and a demand shall be made for payment. The sureties on such bond shall also be advised in writing, at the same time as the principal, of the liability for liquidated damages incurred by the principal.

(b) *Notice of right to petition for relief.* The notice shall also inform the principal and his sureties on the bond that application may be made for relief from payment of liquidated damages under section 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), or any other applicable statute authorizing the cancellation of any bond or of any bond charge that may have been made against such bond.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970]

§ 172.2 Failure to petition for relief.

(a) *Referral of claim to Department of Justice.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 30 days from the date of mailing of the notice of the liquidated damages incurred, as provided in § 172.1 (except for sureties who are provided a separate petitioning period under § 172.12(b)), or within such additional time as may have been granted, the Fines, Penalties, and Forfeitures Officer shall promptly refer the claim to the Department of Justice.

(b) *Absence from the U.S.* If it appears that the parties liable for liquidated

damages are absent from the U.S. or were absent for more than 20 days during the 30-day period referred to in paragraph (a) of this section, the Fines, Penalties, and Forfeitures Officer may withhold such referral for a reasonable time unless other action is expressly authorized by the Commissioner of Customs.

[T.D. 87-51, 52 FR 12151, Apr. 15, 1987, as amended by T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

Subpart B—Application for Relief**§ 172.11 Petition for relief.**

(a) *To whom addressed.* Petitions for relief shall be addressed to the Commissioner of Customs.

(b) *Form.* A petition for relief need not be in any particular form. Such petition shall set forth the facts relied upon by the petitioner to justify cancellation of the claim for liquidated damages, and shall be signed by the petitioner, his attorney at law, or a customhouse broker representing the petitioner. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, an attorney at law, or a customhouse broker representing the corporation.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 73-141, 38 FR 13556, May 23, 1973]

§ 172.12 Filing of petition for relief.

(a) *Where filed.* A petition for relief shall be filed with the Fines, Penalties, and Forfeitures Officer for the port where the liability for liquidated damage is incurred.

(b) When filed.

(1) Except with respect to sureties, a petition for relief shall be filed within 60 days from the date of mailing of the notice of the liability for liquidated damages incurred unless an extension of such period has been granted by the Fines, Penalties, and Forfeitures Officer.

(2) The surety will receive notice to pay the liquidated damages if the principal fails to either timely file a petition or to pay or make arrangements to pay the liquidated damages. The notice will be sent to the surety within 10

days after the expiration of the principal's 60-day petitioning period or as soon thereafter as possible. The surety will then have an additional 60 days from the date of this notification to file its own petition for relief.

(c) *Number of copies.* The petition shall be filed in duplicate.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 87-51, 52 FR 12152, Apr. 15, 1987; T.D. 92-84, 57 FR 40607, Sept. 4, 1992; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

Subpart C—Action on Petitions

§ 172.21 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

The Fines, Penalties, and Forfeitures Officer may cancel any claim for liquidated damages incurred on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate when the claim is \$100,000 or less.

[T.D. 85-25, 50 FR 7336, Feb. 22, 1985, as amended by T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

§ 172.22 Special cases acted on by Fines, Penalties and Forfeitures Officer.

(a) *Nonproduction of documents in general.* Fines, Penalties, and Forfeitures Officers are hereby authorized to treat any bond charge for the production of a missing document as satisfied upon payment by the principal or surety of the sum of \$25 as liquidated damages for each missing declaration of the consignee or other document, except shippers' export declarations and special Customs and commercial invoices, not produced within the time prescribed by law or regulations or any lawful extension of such time.

(b) *Nonproduction of commercial invoices.* If a required commercial invoice is not produced (1) on the date the entry or entry summary is filed, (2) within 120 days after the date the entry or entry summary is required to be filed, or (3) if the invoice is needed for statistical purposes, within 50 days after the date the entry or entry summary is required to be filed, then unless the production is waived under the provisions of § 141.92 of this chapter, the bond charge for the production thereof may be canceled by the Fines,

Penalties, and Forfeitures Officer upon the payment of \$25 as liquidated damages, if:

(i) The party who made the entry submits an application for relief explaining in detail why the commercial invoice could not be produced within the prescribed period; and

(ii) The Fines, Penalties, and Forfeitures Officer is satisfied by such application or otherwise that the failure to produce the invoice within the prescribed period was due to causes wholly beyond the control of the party making the entry and not to any purpose of the foreign seller or shipper to withhold information required by law, regulation, or special instruction to be shown on the invoice.

(c) *Nonproduction of free-entry or reduced-duty documents.* When free entry or the application of a reduced rate of duty is dependent upon the production of a document which the importer fails to produce, or when a conditionally free or reduced duty provision claimed on entry is held to be inapplicable, the claim for free entry or reduced rate of duty shall be treated by the port director as abandoned upon the assessment and payment of duty and the bond (or, in the case of a continuous bond, the charge against the bond) given for the production of the free-entry or reduced-duty document may be cancelled without the collection of liquidated damages.

(d) *Failure to file timely entry summary after release under entry or immediate delivery permit.* (1) If an entry summary for merchandise not subject to quota has not been timely filed after release under an entry or under a special permit for immediate delivery, the port director shall issue a demand for liquidated damages in accordance with § 142.15 or § 142.27 of this chapter, and in accordance with guidelines published by the authority of the Commissioner of Customs. The demand shall be cancelled in accordance with guidelines published by the authority of the Commissioner of Customs.

(2) If the Fines, Penalties, and Forfeitures Officer is satisfied that the violation occurred solely because of a delay in the return by Customs to the importer or broker of documents necessary to file the entry summary, he