

may cancel such liquidated damages without payment.

(3) If collection of an amount greater than that established in accordance with this section appears warranted, the case shall be forwarded to the Commissioner of Customs for disposition.

(4) In the case of an entry summary which has not been filed, the Fines, Penalties, and Forfeitures Officer may not grant relief from a demand for liquidated damages until the entry summary has been filed.

(e) *Failure to timely deliver merchandise traveling in-bond.* (1) If merchandise traveling under bond is not delivered to the port of destination or exportation within time limits established by §§ 18.2(c)(2), 122.119(b) or 122.120(c) of this chapter and liquidated damages are assessed for violation of the provisions of § 18.8(b) of this chapter, notwithstanding other delegations of authority, the demand shall be cancelled by the port director in accordance with guidelines issued by the Commissioner of Customs.

(2) If the in-bond manifest is not delivered to the port director as required by § 18.2(d) or § 18.7(a) of this chapter and liquidated damages are assessed for violation of the provisions of § 18.8(b) of this chapter, notwithstanding any other delegation of authority, the demand shall be cancelled by the port director in accordance with guidelines issued by the Commissioner of Customs.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 75-229, 40 FR 43026, Sept. 18, 1975; T.D. 77-27, 42 FR 3162, Jan. 17, 1977; T.D. 79-221, 44 FR 46830, Aug. 9, 1979; T.D. 84-209, 49 FR 39050, Oct. 3, 1984; T.D. 84-213, 49 FR 41186, Oct. 19, 1984; T.D. 85-39, 50 FR 9612, Mar. 11, 1985; T.D. 85-167, 50 FR 40363, Oct. 3, 1985; T.D. 91-71, 56 FR 40780, Aug. 16, 1991; 56 FR 48823, Sept. 26, 1991; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

§ 172.23 Limitations on consideration of petitions.

No action looking to relief from the payment of full liquidated damages shall be taken on any petition, irrespective of the amount involved, if the claim has been referred to the Depart-

ment of Justice for collection as provided in § 172.2.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 87-51, 52 FR 12152, Apr. 15, 1987]

Subpart D—Disposition of Petitions

§ 172.31 Act or omission did not occur.

(a) *Definite.* If it is definitely determined that the act or omission forming the basis for a claim for liquidated damages did not in fact occur, the claim shall be cancelled by the Fines, Penalties, and Forfeitures Officer. If the liquidated damages have already been paid, they shall be refunded by Customs, and an appropriate notation shall be made on Customs Form 5955-A, if the transaction has already been recorded thereon.

(b) *Dependent upon a construction of law.* When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling decisive of the issue.

(c) *Doubtful cases.* Approval of the Commissioner of Customs shall be requested in all doubtful cases.

[T.D. 74-227, 39 FR 32023, Sept. 4, 1974, as amended by T.D. 99-27, 64 FR 13677, Mar. 22, 1999]

§ 172.32 Limitation on time decision effective.

A decision to cancel a claim for liquidated damages on condition that a stated amount be paid shall be effective for not more than 60 days from the date of notice to the parties of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full claim for liquidated damages shall be deemed applicable and, after required collection action, shall

be promptly referred to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 79-160, 44 FR 31962, June 4, 1979]

§ 172.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the interested parties are not satisfied with a decision of the Fines, Penalties, and Forfeitures Officer or the Commissioner of Customs, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer by the interested parties. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision; or

(2) Within the time prescribed in the decision from which further relief as requested as the effective period of the decision.

(b) *Consideration—(1) Decisions of the Fines, Penalties, and Forfeitures Officer.* Where a supplemental petition requests further relief from a decision of the Fines, Penalties, and Forfeitures Officer, he may grant additional relief, if he believes it is warranted, in cases in which he has the authority to grant relief in accordance with the provisions of § 172.21. Supplemental petitions for further relief in cases initially decided by the Fines, Penalties, and Forfeitures Officer in accordance with the provisions of § 172.21, together with all pertinent documents, shall be forwarded to the designated Headquarters official if:

(i) There has been a specific request by the petitioner for review by the designated Headquarters official; or

(ii) The Fines, Penalties, and Forfeitures Officer believes no additional relief is warranted.

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner of Customs shall be filed, together with all pertinent documents, with the Fines, Penalties, and Forfeitures Officer who initiated the case for trans-

mittal to the Commissioner of Customs for reconsideration.

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all liquidated damages determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the Fines, Penalties, and Forfeitures Officer who initiated the case.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 30 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 75-36; 40 FR 5146, Feb. 4, 1975; T.D. 84-18, 49 FR 1680, Jan. 13, 1984; T.D. 86-118, 51 FR 22516, June 20, 1986; T.D. 87-51, 52 FR 12152, Apr. 15, 1987; T.D. 91-71, 56 FR 40780, Aug. 16, 1991; T.D. 99-27, 64 FR 13677, Mar. 22, 1999]

**PART 173—ADMINISTRATIVE
REVIEW IN GENERAL**

Sec.

173.0 Scope.

173.1 Authority to review for error.

173.2 Transactions which may be reviewed and corrected.

173.3 Voluntary reliquidation.

173.4 Correction of clerical error, mistake of fact, or inadvertence.

173.4a Correction of clerical error prior to liquidation.