

filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 25, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ any additional formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 5, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 15, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW, Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CKR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis

(SEA) will issue an environmental assessment (EA) by March 31, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CKR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CKR's filing of a notice of consummation by March 26, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 19, 1999.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99-7330 Filed 3-25-99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99-29]

Guidelines for the Cancellation of Claims for Liquidated Damages and Mitigation of Penalties for Failure To Provide General Order Notifications or Failure To Take Possession of General Order Merchandise; Guidelines for Mitigation of Penalties for Delivery of Cargo Without Customs Authorization; Guidelines for Cancellation of Claims for Liquidated Damages for Failing To Deliver In-Bond Merchandise; Guidelines for Cancellation of Claims for Removal of Merchandise From Centralized Examination Stations, Container Freight Stations or Places of Examination

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Under the Omnibus Trade and Competitiveness Act of 1988, the Secretary of the Treasury is required to publish guidelines for the cancellation

of bond charges. In Treasury Decision 98-74 (T.D. 98-74), the Secretary published amendments to the Customs Regulations regarding the obligation of carriers and certain related parties to provide notice to Customs and to a bonded warehouse of the presence of merchandise or baggage that has remained at the place of arrival or unloading beyond the time period provided by regulation without entry having been completed. The notice to the bonded warehouse proprietor initiates his obligation to arrange for transportation and storage of the unentered merchandise or baggage at the risk and expense of the consignee. The new regulations provide for the assessment of penalties or liquidated damages for failure to provide the required notice to Customs or to a bonded warehouse proprietor of the presence of unentered merchandise or baggage and for liquidated damages against the warehouse operator who fails to take required possession of the merchandise or baggage for which notification has been received.

This document publishes guidelines for the mitigation of penalties incurred by carriers for failing to provide appropriate notifications. It also publishes bond cancellation standards to be applied to claims for liquidated damages incurred by bonded carriers, custodians or warehouse operators who fail to comply with obligations to provide notification of the presence of unentered merchandise or to collect that merchandise about which notification has been received.

In addition, this document publishes new mitigation guidelines for penalties assessed against carriers and other parties for the delivery of cargo from the place of unloading without Customs authorization or delivery of cargo without examination. Inasmuch as these penalties are very similar to claims for liquidated damages assessed against in-bond carriers for nondelivery, shortage or delivery directly to the consignee, the bond cancellation standards for 19 CFR 18.8 in-bond violations which were published in T.D. 94-38 are revised by this document to be consistent with guidelines for the mitigation of the penalties assessed for delivery of cargo without Customs authorization. Additionally, this document amends T.D. 94-38 to revise bond cancellation standards for claims for liquidated damages arising from breach of the Basic Custodial Bond when cargo is removed from a Centralized Examination Station (CES) without authorization and standards for claims arising from breach of the Basic Importation Bond when merchandise is

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1002.2(f)(25).

not delivered to or is not held at the place of examination. Finally, the document provides for bond cancellation standards for claims for liquidated damages arising from the removal of merchandise from a Container Freight Station (CFS) without authorization.

EFFECTIVE DATE: These guidelines will take effect upon March 26, 1999 and shall be applicable to all cases which are currently open at the petition or supplemental petition stage. No second supplemental petitions will be accepted solely to gain the benefit of a less harsh guideline.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 927-2344.

SUPPLEMENTARY INFORMATION:

Background

Section 1904 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) amended section 623 of the Tariff Act of 1930 (19 U.S.C. 1623) by adding the following sentence at the end of section 623(c) of the Tariff Act of 1930 (19 U.S.C. 1623(c)):

"In order to assure uniform, reasonable and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder."

In T.D. 94-38, dated April 11, 1994, the text of current guidelines for cancellation of claims for liquidated damages was published.

In a document published as Treasury Decision 98-74 (T.D. 98-74) in the **Federal Register** (63 FR 51283) on September 25, 1998, Customs promulgated amendments to its regulations which implemented section 656 of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, providing for penalties against the owner or master of any vessel or vehicle or the agent thereof for failure to notify Customs of any merchandise or baggage unladen for which entry is not made within the time period prescribed by law or regulation. The new regulations extend such liability to owners or pilots of aircraft or the agent thereof.

The new regulations require the owner, master, operator or pilot, or the agent thereof, of the arriving carrier, or any subsequent in-bond carrier or party who accepts custody under a Customs-

authorized permit to transfer, to provide notice of the unentered merchandise or baggage to a bonded warehouse. The notice to the bonded warehouse proprietor initiates his obligation to arrange for transportation and storage of the unentered merchandise or baggage at the risk and expense of the consignee. The new regulations provide for penalties under 19 U.S.C. 1448 or liquidated damages under the International Carrier Bond (19 CFR 113.64) against the owner, master, operator or pilot of any conveyance, or agent thereof, for failure to provide the required notice to Customs or to a bonded warehouse proprietor. The new regulations provide for the assessment of liquidated damages under the Basic Custodial Bond (19 CFR 113.63) against any subsequent in-bond carrier or other party who accepts custody of the merchandise or baggage under a Customs-authorized permit to transfer who fails to notify Customs and a bonded warehouse of the presence of such unentered merchandise or baggage. Finally, the new regulations provide for liquidated damages under the Basic Custodial Bond (19 CFR 113.63) against the warehouse operator who fails to take required possession of the merchandise or baggage after receipt of notification.

This document publishes guidelines for the mitigation of those penalties incurred by carriers for failing to provide appropriate notifications. It also publishes bond cancellation standards to be applied to claims for liquidated damages incurred by arriving carriers, bonded carriers, custodians or warehouse operators who fail to comply with obligations to provide notification of the presence of unentered merchandise or to collect that merchandise about which notification has been received.

In addition to new guidelines required for these G.O. notification and merchandise collection violations, this document publishes new mitigation guidelines for penalties established against carriers and other parties for violation of 19 U.S.C. 1595a(b) for facilitating an importation contrary to law, specifically 19 U.S.C. 1448 for delivery of merchandise from the place of unloading without Customs authorization, and 19 U.S.C. 1499 for delivery of cargo without a requested Customs examination. Customs has found that the current guidelines for mitigation of these penalties do not

provide a sufficient deterrent for parties who violate these provisions of law.

Additionally, these penalties are very similar to claims for liquidated damages assessed against in-bond carriers for failing to deliver, short delivery or delivery directly to the consignee of in-bond merchandise. In Customs view, both types of violations should be mitigated or canceled under the same standards. Accordingly, the bond cancellation standards for 19 CFR 18.8 in-bond violations which were published in T.D. 94-38, Section III., are revised and replaced by this document to be consistent with guidelines for the mitigation of the penalties assessed for delivery of cargo without Customs authorization.

This document also updates bond cancellation standards for claims for liquidated damages arising from breach of the Basic Custodial Bond when cargo is removed from a Centralized Examination Station (CES) without authorization. The bond cancellation standards for violations arising for removal of merchandise from a CES without authorization which were published in T.D. 94-38, Section XI., are revised and replaced by this document to be consistent with guidelines for the mitigation of the penalties assessed for delivery of cargo without Customs authorization.

The bond cancellation standards articulated in T.D. 94-38 did not include standards for removal of merchandise from a Container Freight Station (CFS). This document publishes standards for the removal of merchandise from a CFS.

Finally, this document updates bond cancellation standards for claims for liquidated damages arising from breach of the Basic Importation Bond when merchandise is not delivered to or is not held at the place of examination (19 CFR 113.62(f)). The cancellation standards which were published in T.D. 94-38, Section X., are revised and replaced by this document to be consistent with guidelines for the mitigation of the penalties assessed for delivery of cargo without Customs authorization.

The text of the guidelines is set forth below.

Dated: March 23, 1999.

Raymond W. Kelly,
Commissioner of Customs.

Guidelines for Cancellation of Claims for Liquidated Damages and Mitigation of Penalties for Failure To Provide General Order Notifications or Failure to Take Possession of General Order Merchandise; Guidelines for Mitigation of Penalties for Delivery of Cargo Without Customs Authorization; Guidelines for Cancellation of Claims for Liquidated Damages for Failing To Deliver In-Bond Merchandise; Guidelines for Cancellation of Claims for Removal of Merchandise from Centralized Examination Stations, Contained Freight Stations or Places of Examination

I. Penalties Against Carrier for Failure To Notify Customs of Presence of Unentered Merchandise

A. Assessment

Any merchandise or baggage regularly landed but not covered by a permit for its release will be allowed to remain at the place of unloading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the master, pilot, operator or owner of the conveyance or the agent thereof must notify Customs of any such merchandise or baggage for which entry has not been made. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to \$1,000 per bill of lading against the master, pilot, operator or owner of the conveyance or the agent thereof for violation of the provisions of title 19, United States Code, section 1448 (19 U.S.C. 1448). If the value of the merchandise on the bill is less than \$1,000, the penalty will be equal to the value of such merchandise.

B. Mitigation

1. If notification of the presence of unentered merchandise is provided outside the time period allowed by law or regulation, the penalty may be mitigated to an amount between 10 and 50 percent of the assessment, but not less than \$100 or the value of the merchandise (whichever is lower), depending on the presence of aggravating or mitigating circumstances.

2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

II. Claims for Liquidated Damages Assessed Against a Bonded Party for Failure To Notify Customs of the Presence of Unentered Merchandise

A. Assessment

Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party must notify Customs of any such merchandise or baggage for which entry has not been made. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages equal to \$1,000 per bill of lading for which notification is not given for violation of the provisions of 19 CFR 113.63(c)(4) and: 19 CFR 4.37(b), if original arrival is by vessel; 19 CFR 122.50(b), if original arrival is by air; or 19 CFR 123.10(b), if original arrival is by land carrier.

B. Mitigation

1. If notification of the presence of unentered merchandise is provided outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

III. Claims for Liquidated Damages Incurred by the Carrier or Other Party for Failure To Notify the Bonded Warehouse of the Presence of Unentered Merchandise

A. Assessment

In addition to the notification to Customs, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) must provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port

director as qualified to receive general order merchandise. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system and must be provided within the 20-calendar day period. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of \$1,000 per bill of lading for which notification is not given. Liability of the arriving carrier would be under the provisions of 19 CFR 113.64(b) and: 19 CFR 4.37(c) if the original arrival was by vessel; 19 CFR 122.50(c) if the original arrival was by air; or 19 CFR 123.10(c) if the original arrival was by land carrier. Liability of the party to whom custody has been transferred by a Customs-authorized permit to transfer or in-bond entry would be under the provisions of 19 CFR 113.63(b), 19 CFR 113.63(c) and: 19 CFR 4.37(c) if the original arrival was by vessel; 19 CFR 122.50(c) if the original arrival was by air; or 19 CFR 123.10(c) if the original arrival was by land carrier.

B. Mitigation

1. If notification of the presence of unentered merchandise is provided to the bonded warehouse outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

IV. Claims for Liquidated Damages Against a Bonded Warehouse for Failure To Collect Unentered Merchandise for Which Notification Has Been Received

A. Assessment

If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages of \$1,000 per bill of lading remaining uncollected. Liability would be under

19 CFR 113.63(a)(1) and: 19 CFR 4.37(d) if the original arrival was by vessel; 19 CFR 122.50(d) if the original arrival was by air; or 19 CFR 123.10(d) if the original arrival was by land carrier.

B. Mitigation

1. If the bonded warehouse operator takes possession of unentered merchandise outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If the bonded warehouse operator never takes possession of merchandise for which he has received appropriate notification, no mitigation will be afforded.

V. Delivery of Cargo Without Customs Authorization

A. Assessment

Penalties for removal of merchandise from the place of unlading without authorization will be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of the provisions of 19 U.S.C. 1448 or penalties for delivery of merchandise without Customs examination will be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1499.

1. These penalties may be assessed against any party who is deemed to be responsible for the unauthorized removal or delivery.

2. Penalties are assessed in an amount equal to the domestic value of the merchandise removed or delivered without authorization.

3. Penalties of these types assessed against holders of international carrier bonds are secured by the terms and conditions of the bond up to the limit of the bond. Penalties may be collected in full from the violator. Collection from a surety is limited to the amount of the bond.

4. Double penalties should not be assessed, i.e., while the same misdelivery may be without Customs authorization and may involve avoidance of examination, only one assessment equal to the value of the merchandise should be made. If multiple assessments from the same transaction occur, mitigation should reflect the policy that only a single penalty should have been assessed.

B. Penalty Mitigation

1. If the violator can show that the violation occurred solely as a result of Customs error, the penalty should be canceled.

2. If the violator can show that the merchandise was never received or landed, the penalty should be mitigated without payment.

3. If the merchandise which was removed without authorization or delivered without examination could have been the subject of an informal entry, the penalty may be mitigated 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 an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.

4. If the violator comes forward and discloses the violation to Customs prior to Customs discovery of the violation, the penalty may be mitigated 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.

5. If the merchandise which was removed without authorization was not designated for Customs examination and the violator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the penalty may be mitigated upon payment of an amount between \$250 and \$2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was removed without authorization was not designated for Customs examination and the violator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the penalty may be mitigated 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 an amount between \$300 and \$2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise which was removed without authorization or delivered without examination was designated for Customs examination and the violator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the penalty may be mitigated upon payment of an amount between \$2,500 and \$20,000 depending on the presence of aggravating or mitigating factors. In no case shall the mitigated amount be lower than any costs chargeable to the importer which are incident to such examination. Conversely, the mitigated amount can never exceed the value of the shipment.

8. If the merchandise which was removed without authorization or delivered without examination was

designated for Customs examination and the violator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the penalty may be mitigated 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 an amount between \$3,000 and \$25,000 depending on the presence of aggravating or mitigating factors. In no case shall the mitigated amount be lower than any costs chargeable to the importer which are incident to such Customs examination. Conversely, the mitigated amount can never exceed the value of the shipment.

9. If the violator has a history of removal of merchandise from the place of unlading without Customs authorization or delivery without Customs examination or particularly aggravating circumstances exist with regard to a violation, the Fines, Penalties and Forfeitures Officer may mitigate the penalty upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch will be sought to determine appropriate mitigation.

10. Theft of merchandise from Customs custody. Merchandise which is stolen from the carrier prior to having been released by Customs shall be treated as having been delivered without Customs authorization. The carrier will be liable for penalties and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 USC 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from Customs custody. In those instances, no mitigation will be afforded to the person or persons primarily responsible for the illegal act. Aiders and abettors may receive mitigation to 25–50 percent of the penalty, depending upon the degree of complicity.

C. Mitigating and Aggravating Factors

1. Mitigating Factors

a. Violator inexperienced in the handling of cargo.

b. Violator has a general good performance and low error rate in the handling of cargo.

c. Violator demonstrates remedial action has been taken to prevent future violations.

2. Aggravating Factors

a. Violator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. Violator has a rising error rate which is indicative of deteriorating performance in the handling of cargo.

D. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was removed from the place of unlading without authorization or which was delivered without examination may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

VI. Guidelines for Cancellation of Claims for Shortage, Irregular Delivery, Non-Delivery or Delivery Directly to the Consignee of In-Bond Merchandise (19 CFR 18.8)

A. Assessment

All claims for liquidated damages assessed for breach of the provisions of 19 CFR 18.8 for shortage, irregular delivery, nondelivery or delivery directly to the consignee of in-bond merchandise will be assessed for the value of the merchandise or three times the value of the merchandise if the merchandise is restricted or is alcoholic beverages.

B. Documents Filed Late or Merchandise Delivered Late

1. Modified CF 5955A. Notices of liquidated damages incurred for documents filed late or merchandise delivered late this violation may be issued on a modified CF-5955A. If a modified form is issued, it shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* The bond principal or surety may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, the principal or surety waives the 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.* 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 Fines, Penalties and Forfeitures Officer will grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the

Fines, Penalties and Forfeitures Officer may cancel the claim upon payment of an amount no less than \$100 greater than the Option 1 amount.

2. If merchandise is delivered untimely to the port of destination or exportation (not within 15 days if transported by air, 30 days if transported by vehicle, or 60 days if transported by vessel) but is otherwise intact, the Fines, Penalties and Forfeitures Officer may cancel the claim upon payment of an amount between \$100 or \$500, depending on the presence of aggravating or mitigating factors.

3. If merchandise is delivered timely but the documentation is not filed with Customs within 2 days of arrival in the port of delivery, the Fines, Penalties and Forfeitures Officer may cancel the claim upon payment of an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.

4. If the bonded carrier consistently fails to deliver paperwork timely and Customs business is impeded by these repeated failures, the Fines, Penalties and Forfeitures Officer may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.

C. Failure To Deliver, Shortage or Delivery Directly to the Consignee

1. If the in-bond carrier can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the in-bond carrier can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not delivered, delivered short or delivered directly to the consignee could have been the subject of an informal entry, the claim for liquidated damages may be canceled 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 an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.

4. If the in-bond carrier comes forward and discloses the violation to Customs prior to Customs discovery of the violation, the claim for liquidated damages may be canceled 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.

5. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was not designated for Customs examination and the in-bond carrier can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between \$250 and \$2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was not designated for Customs examination and the in-bond carrier cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled 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 an amount between \$300 and \$2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was designated for Customs examination and the in-bond carrier can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between \$2,500 and \$20,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

8. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was designated for Customs examination and the in-bond carrier cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled 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 an amount between \$3,000 and \$25,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs

examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

9. If the in-bond carrier has a history of not delivering, delivering short or delivering directly to the consignee, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch must be sought to determine appropriate mitigation.

10. Theft of in-bond merchandise. In-bond merchandise which is stolen from the carrier prior to having been delivered to Customs at the port of destination or exportation will be treated as having been not been delivered. The carrier will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from the bonded carrier. Claims assessed for theft of merchandise in those instances will be administered in accordance with guidelines articulated in Section V.B.10. above.

D. Mitigating and Aggravating Factors

1. Mitigating Factors

- a. Carrier inexperienced in the handling of in-bond cargo.
- b. Carrier has a general good performance and low error rate in the handling of in-bond cargo.
- c. Carrier demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

- a. Carrier refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.
- b. Carrier has a rising error rate which is indicative of deteriorating performance in the delivery of in-bond cargo.

E. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was not delivered, delivered short or delivered directly to the consignee may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

VII. Guidelines for Cancellation of Claims Arising From the Failure of a Centralized Examination Station (CES) Operator To Deliver Merchandise To or Retain Merchandise at the CES (19 CFR 151.15, 19 CFR 113.63)

A. Assessment

Merchandise not delivered to or retained at a Centralized Examination Station (CES) by the CES operator will be the subject of a claim for liquidated damages for violation of the provisions of 19 CFR 151.15(b)(3) and 19 CFR 113.63(b)(2) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of Claims Arising for Failure To Deliver Merchandise to the CES or Removal or Delivery of Merchandise From the CES Without Authorization

1. If the CES operator can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the CES operator can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not delivered to the CES or removed or delivered from the CES without authorization could have been the subject of an informal entry, the claim for liquidated damages may be canceled 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 an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.

4. If the CES operator comes forward and discloses the violation to Customs prior to Customs discovery of the violation, the claim for liquidated damages may be canceled 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.

5. By its very nature, merchandise not delivered to a CES or removed or delivered from a CES without authorization is designated for Customs examination. If the CES operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between \$2,500 and \$20,000 depending on the presence of aggravating or mitigating factors. In

no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

6. If the merchandise was not delivered to a CES or was removed or delivered from a CES without authorization, and the CES operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled 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 an amount between \$3,000 and \$25,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

7. If the CES operator has a history of receipting for merchandise which has not been delivered to the CES or allowing merchandise to be removed or delivered from the CES without authorization, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch must be sought to determine appropriate mitigation.

8. Theft of bonded merchandise. Merchandise which is stolen from the CES shall be treated as having been removed without authorization. The CES operator will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 USC 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from a CES. Claims for theft of merchandise in those instances will be administered in accordance with guidelines articulated in Section V.B.10. above.

C. Mitigating and Aggravating Factors

1. Mitigating Factors

a. CES operator is inexperienced in the handling of cargo.

b. CES operator has a general good performance and low error rate in the handling of cargo.

c. CES operator demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. CES operator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. CES operator has a rising error rate which is indicative of deteriorating performance in the handling and safekeeping of cargo.

D. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was not delivered to a CES or was removed from the CES without authorization may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

E. Failure To Maintain Records as Required by Regulation

1. If a CES operator fails to maintain records as required by Customs, claims for liquidated damages not involving merchandise for violation of 19 CFR 113.63(a)(3) and 19 CFR 118.4 will result.

2. If the breach resulted from clerical error, the claim may be canceled without payment.

3. If the breach resulted from negligence, the claim may be canceled upon payment of an amount between \$100 and \$250 per default, depending on the presence of aggravating or mitigating factors.

4. If the breach was intentional, no relief shall be granted.

VIII. Guidelines for Cancellation of Claims Arising From the Removal of Merchandise Without Authorization From a Container Freight Station (CFS) (19 CFR 113.63(b))

A. Assessment

Merchandise not retained at a Container Freight Station (CFS) by the CFS operator shall be the subject of a claim for liquidated damages for violation of the provisions of 19 CFR 113.63(b)(2) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of Claims Arising from Removal or Delivery of Merchandise From the CFS Without Authorization

1. If the CFS operator can show that the violation occurred solely as a result

of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the CFS operator can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was removed or delivered from the CFS without authorization could have been the subject of an informal entry, the claim for liquidated damages may be canceled 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 an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.

4. If the CFS operator comes forward and discloses the violation to Customs prior to discovery of the violation by Customs, the claim for liquidated damages may be canceled 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.

5. If the merchandise which was removed or delivered from the CFS without authorization was not designated for Customs examination and the CFS operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between \$250 and \$2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was removed or delivered from the CFS without authorization was not designated for Customs examination and the CFS operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled 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 an amount between \$300 and \$2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise removed or delivered from a CFS without authorization was designated for Customs examination and the CFS operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between \$2,500 and \$20,000 depending on the

presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

8. If the merchandise which was removed or delivered from a CFS without authorization and was designated for Customs examination and the CFS operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled 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 an amount between \$3,000 and \$25,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

9. If the CFS operator has a history of receipting for merchandise which has been removed or delivered from the CFS without authorization or allowing merchandise to be removed from the CFS without authorization, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch must be sought to determine appropriate mitigation.

10. Theft of merchandise from the CFS. Merchandise which is stolen from the CFS shall be treated as having been removed without authorization. The CFS operator will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 USC 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from a CFS. Claims for theft of merchandise in those instances will be administered in accordance with guidelines articulated in Section V.B.10. above.

C. Mitigating and Aggravating Factors

1. Mitigating Factors

a. CFS operator is inexperienced in the handling of cargo.

b. CFS operator has a general good performance and a low error rate in the handling of cargo.

c. CFS operator demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. CFS operator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. CFS operator has a rising error rate which is indicative of deteriorating performance in the handling and safekeeping of cargo.

D. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was removed from the CFS without authorization may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

IX. Guidelines for Cancellation of Claims Arising From the Failure To Hold Merchandise at the Place of Examination (19 CFR 113.62(f))*A. Assessment*

The importer of record (or Customs broker if the broker is acting as importer of record) may seek and obtain permission from Customs to have merchandise examined at a place other than at a wharf or other place in the charge of a Customs officer. The importer obligates the provisions of its basic importation bond guaranteeing to deliver the merchandise to the place of examination and hold it there until examination occurs. If merchandise which is to be held at the place of examination or delivered to the place of examination as obligated by the importer of record under the terms and conditions of the basic importation bond is not so held or delivered, a claim for liquidated damages arises for violation of the provisions of 19 CFR 113.62(f) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of Claims Arising from Failure To Hold Merchandise at or Deliver Merchandise to the Place of Examination Pursuant to the Provisions of the Basic Importation Bond

1. If the importer of record can show that the violation occurred solely as a result of Customs error, the claim for

liquidated damages should be canceled without payment.

2. If the importer of record can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not held at or delivered to the place of examination could have been the subject of an informal entry, the claim for liquidated damages may be canceled 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 an amount between \$100 and \$500, depending on the presence of aggravating or mitigating factors.

4. By its very nature, merchandise not held at or delivered to the place of examination is considered to be designated for Customs examination. If the importer of record can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between \$2,500 and \$20,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

5. If the merchandise was not held at or delivered to the place of examination and the importer of record cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled 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 an amount between \$3,000 and \$25,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

6. If the importer of record has a history of not holding merchandise at or not delivering merchandise to the place of examination, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that

authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch will be sought to determine appropriate mitigation.

7. Theft of merchandise from the place of examination or while being delivered to the place of examination. Merchandise which is stolen from the custody of the importer of record at or on its way to the place of examination will be treated as having been removed without authorization. The importer of record will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 USC 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from the importer of record. Claims for theft of merchandise in those instances will be administered in accordance with guidelines articulated in Section V.B.10. above.

C. Mitigating and Aggravating Factors

1. Mitigating Factors

a. The importer of record is inexperienced in the handling of cargo.

b. The importer of record has a general good performance and a low error rate in the delivery and safekeeping of cargo.

c. The importer of record demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. The importer of record refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. The importer of record has a rising error rate which is indicative of deteriorating performance in the delivery and safekeeping of cargo.

D. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was not held at the place of examination or was not delivered to the place of examination may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

E. Failure to Keep Customs Seal or Cording Intact

The importer of record also agrees to keep any Customs seals or cording intact until the merchandise is examined. For a violation which involves the failure to keep any Customs seal or cording intact until the

merchandise is examined, the claim will be canceled upon payment of an amount between \$100 and \$500 if there is no evidence to indicate the merchandise in the sealed or corded shipment was tampered with. If there is evidence of tampering, the claim will be canceled upon payment of an amount equal to the value of any missing merchandise. Tampering with seals also may result in criminal sanctions under 18 U.S.C. 549.

[FR Doc. 99-7410 Filed 3-26-99; 8:45 am]

BILLING CODE 4820-02-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Amendment Determinations: "Gustave Moreau: 1826-1898"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: On January 14, 1999, notice was published at page 2536 of the **Federal Register** Vol. 64, No. 9 by the United States Information Agency pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), to Pub. L. 89-249 relating to the exhibit "Gustave Moreau: 1826-1898." I hereby determine that five additional works of art to be included in the exhibit (see list) and imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of these works of art as part of the exhibit at the Metropolitan

Museum of Art, New York, New York, on or about May 24, 1999, to on or about August 22, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of imported exhibit objects or for further information, contact Carol B. Epstein, Assistant General Counsel, Office of the General Counsel, 202/619-6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547-0001.

Dated: March 22, 1999.

Les Jin,

General Counsel.

[FR Doc. 99-7411 Filed 3-25-99; 8:45 am]

BILLING CODE 8230-01-M