

Fines, Penalties, and Forfeitures Officer that the information was not required or that the violation occurred solely as a result of Customs error the claim shall be canceled without payment.

XVIII. Guidelines for Cancellation of Claims for Failure to File Reconciliations Timely (REF: 64 FR 73121, dated December 29, 1999; 66 FR 14619, dated March 13, 2001)

The filing of NAFTA Reconciliations is now optional. Accordingly, the liquidated damages provisions in this section apply only to value, classification, and 9802 Reconciliations. They do not apply to NAFTA Reconciliations.

A. Requirements

As described above and in the Federal Register notice of February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation within the allotted time, covering the flagged issue(s) on that entry summary. This notice removes the obligation to reconcile NAFTA eligibility for entry summaries flagged for that issue. Each entry summary flagged for value, classification, and/or 9802 issues must be covered by a Reconciliation filed prior to the due date, 15 months from the earliest entry summary date of the underlying entry summaries. Up to 9,999 underlying entry summaries may be covered by a single Reconciliation. If any one of the underlying entry summaries' due dates has passed prior to Reconciliation filing, the entire Reconciliation is considered late. However, the importer and filer have discretion to determine which and how many entry summaries are grouped on a Reconciliation, regardless of the flagging method and timing involved in the original flagging of those entry summaries.

B. Liquidated Damages for Non-Filed and Late-Filed Reconciliations

The obligation to file Reconciliations created by the flagging of entry summaries carries liquidated damages implications for failure to do so timely. Each flagged entry summary remains an independent entity until reconciled. Customs has no way of knowing which entry summaries will be covered by a single Reconciliation until one is actually filed. Once the Reconciliation has been filed, the universe of entry summaries covered by it is established. Moreover, the Reconciliation is an entry in its own right and has the same legal status as other Customs entries. For these reasons, late-filing and non-filing of Reconciliations will be dealt with using different mechanisms.

C. Liquidated Damages Mechanisms

1. "No File" Liquidated Damages

Periodically, Customs will perform research to identify flagged entries that were not reconciled timely (within 15 months of their date). In cases where flagged entry summaries are found to have not been covered by a Reconciliation, Customs will issue a single "No File" liquidated damages claim against the importer of record for all unreconciled flagged entries past their due dates for the calendar month. Subsequent filing of Reconciliations to cover entries on this monthly consolidated liquidated damages report will result in mitigation of the initial liquidated damages claim.

2. "Late File" Liquidated Damages

In cases where flagged entry summaries are found to have been covered by a Reconciliation that was filed late, Customs will issue a single "Late File" liquidated damages claim against the Reconciliation entry itself (as opposed to a claim against the importer that covers the calendar month, as in the case of "No File" liquidated damages claims). This mechanism applies also to reconciliations, filed timely or not, where payment of additional monies (duties, taxes, fees, and interest) due is made late or not at all.

3. Where Liquidated Damages Claims Are Processed

Each importer participating in the ACS Reconciliation Prototype is assigned to a particular reconciliation processing port. Liquidated damages claims involving Reconciliation will always be processed by the Reconciliation processing port. This is true regardless of the port(s) where the underlying entry summaries were filed.

D. Summary of Liquidated Damages Claims

There are five different types of liquidated damages violations under the ACS Reconciliation Prototype. The descriptions, assessed liquidated damages amounts, and "option 1" amounts are shown below. "Option 1" refers to the option where importers may agree to pay a reduced amount, but waive rights to mitigate the claim below that amount. The term "money" in this listing refers to the additional duties, taxes, fees, and interest due upon Reconciliation.

1. Reconciliation No File

Description: Entry summaries flagged but no Reconciliation filed. Customs will issue a single consolidated liquidated damages claim for all entries fitting this description for a given importer, per month, per surety.

- a. Assessed Liquidated Damages Amount: Total entered value of the underlying entry(ies).
- b. Option 1 Amount: The filing of the Reconciliation entry (or entries) covering the flagged entry summaries listed on the consolidated liquidated damages claim (CF 5955A), with all applicable duties, taxes, fees, and interest owed, will be treated as a petition for relief. Payment of the Option 1 amount will be authorized only upon the proper filing of this Reconciliation, with duties, taxes, fees, and interest. For a consolidated monthly liquidated damages claim covering five or more flagged entry summaries, the Option 1 amount is \$500. For consolidated monthly claims involving four or fewer flagged entry summaries, the Option 1 amount is \$100 per entry.

2. Reconciliation Money No File

Description: Reconciliation filed timely but without payment of additional duties, taxes, fees, and interest due.

- a. Assessed Liquidated Damages Amount: \$1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.
- b. Option 1 Amount: Payment of the Option 1 amount will be authorized only after all duties, taxes, fees, and interest due are paid. For claims involving five or more flagged entry summaries, the amount is \$500. For claims involving four or fewer flagged entry summaries, the amount is \$100 per entry.

3. Reconciliation Late File

- a. Description: Reconciliation filed and paid after the 15-month deadline.
- b. Assessed Amount: \$1,000 or double the duties, taxes, fees, and interest, if applicable, due on the Reconciliation, whichever is greater.
- c. Option 1 Amount: For claims involving five or more flagged entry summaries, the amount is \$500. For claims involving four or fewer flagged entry summaries, the amount is \$100 per entry.

4. Reconciliation Money Late File

- a. Description: Reconciliation filed timely but payment of additional duties, taxes, fees, and interest due submitted late.

- b. Assessed Amount: \$1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.
- c. Option 1 Amount: For claims involving five or more flagged entry summaries, the amount is \$500. For claims involving four or fewer flagged entry summaries, the amount is \$100 per entry.

5. Reconciliation Late File with Money No File

- a. Description: Reconciliation filed late, without payment of duties, taxes, fees, and interest due.
- b. Assessed Amount: \$1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.
- c. Option 1 Amount: Payment of Option 1 amount will be authorized only after duties, taxes, fees, and interest due are paid. For claims involving five or more flagged entry summaries, the amount is \$500. For claims involving four or fewer flagged entry summaries, the amount is \$100 per entry.

E. Surety Issues

The liquidated damages claims that result from failure to file Reconciliations or filing them untimely may be for substantial amounts. Failure to resolve these claims could saturate the importer's continuous bond. Thus, in certain circumstances, importers may be required to submit single entry bonds for further entry summaries or make live entry with payment to secure release of merchandise.

XIX. Guidelines for Cancellation of Claims for Failure to Redeliver Export Merchandise (19 C.F.R. 113.64(f)(1) and (f)(2)) (T.D. 02-20)

A. Assessment

Claims for failure to redeliver merchandise exported in violation of the export laws result in the assessment of liquidated damages equal to 3 times the value of that merchandise.

B. Mitigation

- 1. There will be no mitigation of the claim for liquidated damages in the event that a significant enforcement objective is involved with respect to the reason for the redelivery order. For example, if goods