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U.S. Customs Petition for Relief Primer

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Enforcement action by U.S. Customs and Border Protection (CBP) is not uncommon even for the most diligent of importers or service providers. CBP may issue a Notice of Penalty in circumstances where it believes a violation occurred and remedies available to the federal government include liquidated damages or civil penalties. Common examples of scenarios where Notices are issued include a bonded carrier's failure to close out its bond, an export forwarder's failure to enter a correct port code in AES, or an importer's technical violation of customs laws including the attempt to import goods that are otherwise unlawful. The party receiving a Notice generally has the opportunity to contest the facts and law, and argue for mitigation of the monetary exposure, by filing what is known as a petition for relief [19 CFR 172.2].

This simple primer provides background on what petitions for relief are and how the process can help to mitigate exposure for liquidated damages or civil penalties sought by CBP.

Who may file a petition for relief?

A CBP Fines, Penalties, and Forfeitures Officer ("CBP Officer") will send the written Notice to the allegedly offending party, which is often the customs bond's principal where the underlying obligation was secured by a bond [19 CFR 172.1]. In response, the party receiving a Notice may directly or through an attorney file a petition for relief (a "Petitioning Party") [19 CFR 171.1 (b)]. Corporations filing petitions on their own behalf must have an officer, supervisor, or employee sign the petition on its behalf [19 CFR 171.1 (b)].

What must be contained in a petition for relief?

Petitions for relief should be addressed to the CBP Officer who sent the notice of right to petition [19 CFR 171.2]. Petitions may be filed electronically or in paper form. However, those filed in paper form should include duplicate copies [19 CFR 171.2(d)]. CBP can require that the petition and supporting document be submitted in English or with an accompanied English translation [19 CFR 171.1 (c)]. The petition's contents must include:

- A description of the property (in the case of a seizure)
- Date and place of the violation or seizure
- Facts and circumstances justifying remission or mitigation
- Proof of a partitionable interest in the seized property (in the case of a seizure) [19 CFR 171.1 (c)]

In addition to filing petitions, oral representations are available where penalties are incurred for alleged fraud, gross negligence, negligence, or false drawback claims associated with paying tariffs [19 USC 1592; 19 USC 1593a; 19 CFR 171.3].

What is the review process for petitions?

The timeline for filing a petition for relief will depend on the reason for which relief is being sought. A petitioner seeking relief from seizures must file within thirty (30) days after the mailing of the Notice [19 CFR 171.2 (b)(1)]. Petitioners seeking relief from liquidated damages or penalties must generally file within sixty (60) days of the mailing of the Notice [19 CFR 171.2 (b)(2)]. Petitions for remission of forfeiture must be filed prior to the final disposition of the property is made [19 CFR 171.13 (b)]. However, the CBP officer may implement a stricter timeline for cases within one-hundred and eighty (180) days of the statute of limitations [19 CFR 171.2 (e)]. In those cases, the CBP Officer may require the petitioner to seek relief within a reasonable period of at least seven (7) working days [19 CFR 171.2 (e)]. While CBP tends to follow its timelines, we have had success in asking CBP officers to grant extensions of time where there are extenuating circumstances [19 CFR 171.2 (c)].

What are the possible results from a petition?

The reviewing CBP Officer may remit, mitigate, cancel, or remit without payment as he or she deems appropriate [19 USC 1618; 31 USC 5321(c); 19 CFR 171.11 (a)]. For example, the CBP Officer may cancel the claim of penalty or forfeiture upon concluding the acts or omissions forming the basis of the claim did not occur [19 CFR 171.11 (b)]. The CBP Officer will deny a petition for relief if he or she determines it is filed incorrectly, untimely, or without justification warranting remission, mitigation, or cancellation. The Petitioning Party must either pay the amount stated in the decision or dispute the decision within sixty (60) days unless a different time frame is prescribed [19 CFR 171.22]. A Petitioning Party that is unsatisfied with the decision following the original petition may file a supplemental petition [19 CFR 171.61]. Supplemental petitions may be filed regardless of whether the Petitioning Party has already paid a mitigated penalty or forfeiture remission designated by the decision to the original petition [19 CFR 171.61]. CBP may require the Petitioning Party to waive the statute of limitations prior to accepting the supplemental petition for cases with less than one (1) year before the end of the statute of limitations [19 CFR 171.64].

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