

## § 172.12

amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur.

### § 172.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and claims for liquidated damages which are outside of his or her delegated authority the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered, notwithstanding any other law or regulation, to mitigate penalties or cancel bond claims on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate.

### § 172.13 Limitations on consideration of petitions.

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Delinquent sureties.* No action will be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to the provisions of § 113.38(c)(3) of this chapter.

### § 172.14 Headquarters advice.

The advice of the Director, Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade, CBP Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a CBP action(s) or potential CBP action(s) relating to penalties secured by bonds (including

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penalty-based determinations of duty except as provided in this section), claims for liquidated damages or mitigating any claim. This section does not apply to actual duty loss tenders determined by CBP pursuant to § 162.74(c) of this chapter relating to prior disclosure. The request for advice may be initiated by the bond principal, surety or any CBP officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

## Subpart C—Disposition of Petitions

### § 172.21 Decisions effective for limited time.

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages will be deemed applicable and will be enforced by promptly transmitting the matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this chapter.

### § 172.22 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment