

## **GUIDELINES FOR THE CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES AND MITIGATION OF PENALTIES RELATING TO THE WOOD PACKAGING MATERIAL REGULATIONS**

The regulations on wood packaging material (“WPM”) set forth in Title 7 of the U.S. Code of Federal Regulations (“C.F.R.”) are intended to protect U.S. agricultural resources from the introduction of potentially injurious wood-boring pests. Failure to comply with those regulations poses significant pest risks to U.S. agriculture. U.S. Customs and Border Protection (“CBP”) enforces the WPM regulations by assessing liquidated damages against those who do not comply with the action specified on an Emergency Action Notification (“EAN”) issued by the U.S. Department of Agriculture and by penalizing those documented importers, carriers, or bonded custodians who attempt to enter violative WPM or who attempt to conceal a WPM violation.

The provisions and procedures of Section I are applicable when CBP issues a claim for liquidated damages for an entity’s failure to take required action on an EAN issued by the U.S. Department of Agriculture, Animal Plant Health Inspection Service, Plant Protection and Quarantine (“APHIS/PPQ”) relating to the wood packaging material regulations at 7 C.F.R. 319.40-3. The provisions and procedures of Section II are applicable when CBP issues a penalty pursuant to section 1595a(b) of Title 19, United States Code (19 U.S.C. § 1595a(b)) for an entity’s violation of 7 C.F.R. 319.40-3.

Although CBP is not required to grant relief in any specific case, CBP may reference these guidelines when deciding whether to grant relief in a specific case and, if CBP deems that relief is appropriate, to determine the mitigation, remission, or cancellation amount. CBP reviews the specific facts and circumstances of each case individually and may deviate from these guidelines if CBP determines that such deviation is appropriate. Pursuant to 19 U.S.C. §§ 1618 and 1623, as well as other applicable regulatory authorities, duly authorized CBP officials are entitled to grant relief under such terms and conditions as they deem appropriate, sufficient, reasonable and/or just.

### **I. Cancellation of Claims for Liquidated Damages for Failure to Take Action on an Emergency Action Notification**

#### **A. Assessment**

In cases where an entity does not take action required under an EAN issued by the APHIS/PPQ, CBP may issue a claim for liquidated damages against the entity (an importer, carrier, or bonded custodian) for breach of its bond conditions.

#### **B. Mitigation**

Relief will generally only be provided if the petitioner establishes one of the following extraordinary circumstances:

1. Action required under the EAN was eventually taken, although it occurred after the specified deadline. In this situation, the claim for liquidated damages may be cancelled at an amount between \$500 and \$5,000 depending on the specific circumstances of the case.
2. The petitioner was unable to take action required under the EAN due to circumstances beyond its control, or due to APHIS/PPQ or CBP error. In this situation, the claim for liquidated damages should be cancelled.

## **II. Mitigation of Penalties Assessed for Violations of the Wood Packaging Material Regulations**

### **A. Assessment**

Effective November 1, 2017, CBP's Agriculture Programs and Trade Liaison ("APTL") of the Office of Field Operations revised policy so that CBP may issue a penalty, under 19 U.S.C. § 1595a(b), to an entity for a single violation of 7 C.F.R. 319.40-3. There are 3 categories of violations of 7 C.F.R. § 319.40-3: (1) unmarked WPM, (2) inappropriately marked WPM, and (3) infested WPM. A penalty under 19 U.S.C. § 1595a(b) may be assessed at the value of the article or articles introduced or attempted to be introduced, which includes the article or articles and the wood packaging material.

### **B. Mitigation**

For all three categories of violations described above, the following applies:

1. **First Violation**  
Penalties assessed for first violations may be mitigated to an amount between 1 to 10% of the value of the assessed penalty depending on the presence of mitigating and aggravating factors.
2. **Second Violation:**  
Penalties assessed for second violations may be mitigated to an amount between 10 to 25% of the value of the assessed penalty depending on the presence of mitigating and aggravating factors.
3. **Third or Subsequent Violations:**  
Penalties assessed for third or subsequent violations may be mitigated to an amount not lower than 25% of the assessed penalty depending on the presence of mitigating and aggravating factors.

Mitigation will generally not be provided if the violator has a continuing documented pattern of WPM violations.

- C. Examples of **Mitigating Factors** include, but are not limited to:
1. Clear documentary evidence of immediate remedial action taken to prevent further WPM violations.
  2. An established record of compliance relating to WPM requirements.
  3. Exceptional cooperation with CBP and APHIS (required action taken under EAN and other exceptional cooperation to aid in the resolution of the case).
  4. A small number of WPM violations in relation to the number of transactions engaged in.
  5. The WPM was actually properly treated (although unmarked or inappropriately marked).
  6. A small percentage of the shipment involved in the violation is noncompliant.
  7. WPM was marked, but marking was illegible.
  8. Violator's lack of importing experience.
  9. Violator informed CBP or APHIS/PPQ about the noncompliance or possibility of noncompliance.
  10. Contributory CBP or APHIS/PPQ error.
  11. Violator is a governmental entity or charitable institution.
  12. Violations in close temporal proximity.
- D. Examples of **Aggravating Factors** include, but are not limited to:
1. Lack of Cooperation with CBP or APHIS.
  2. Falsely marked WPM or submission of false information or documentation.
  3. Attempt to conceal or cover-up WPM violation.
  4. Failure to take immediate remedial action to prevent further WPM violations.