

CBP Seizures, Penalties, and Liquidated Damages: Getting Your Merchandise Back and Penalties Mitigated

NCBFAA

June 4, 2013

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TUESDAY, JUNE 12, 2012

New CBP Regulation for Suspected Counterfeit Merchandise



Peter Quinter

Finally, after years of debate, on April 24, 2012, CBP amended its regulations regarding the detention and seizure of suspected imported counterfeit merchandise. In my opinion, it provides a good balance between the rights of legitimate importers, and the need for CBP to examine, detain, and seize merchandise that violates the trademark rights of companies that have registered their trademarks with the U.S. Patent and Trademark Office and then recorded those trademarks with CBP. The interim rule is entitled "Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border," and amends 19 CFR Parts 133 and 151.

In summary, here are the important changes:

1. Merchandise may be detained by CBP for up to 30 days from the date the merchandise is presented for examination to CBP.
2. The U.S. importer will receive written notification from CBP within 5 days of the detention of the merchandise by CBP.
3. The U.S. importer then has 7 days to establish to CBP's satisfaction that the detained merchandise is not counterfeit.
4. CBP may provide to the trademark owner, at any time, written notice of the date

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**September 11, 2001
Act of Terrorism
World Trade Center
New York City**

How a Typical Seizure Case Commences with U.S. Customs and Border Protection:

- U.S. Customs formally detains the merchandise

No. 305085

DEPARTMENT OF HOMELAND SECURITY
Bureau of Customs and Border Protection
Detention Notice and Custody Receipt for Detained Property
Revised 12/08/07

1. Held for other agency? Yes No

2. Name of Office: _____

3. Investigative Case No.: _____

4. Material Order No.: _____

5. Executive Command Center Notified:
 Yes No

6. Port of Origin: _____ 7. Date of Detention: 07/31/2010 8. Time (Day to Month): 7:00 9. Month/Year: 07/2010

10. District Office: _____ 11. Seal of Office (Date): _____

Name: _____ 12. Address: _____
Address: _____ 13. Remarks: _____
Telephone No.: _____ 14. CBP No. (Use Only One Date): _____

15. Point of Contact Information - Send all correspondence to:
Telephone No.: 602/295-0057 Fax No.: _____
16. Address: _____
17. Reason for Detention: * ARREST FOR DEPORTATION *
18. Address: _____
19. Name of Property to be Seized: _____

10. PROPERTY (By Line Item Above CBP Form 4472)

a. Line Item No.	b. Description	c. Package Number	d. Quantity	e. Unit	f. Tariff Code	g. Ex. Value	h. Sample Sent to the CBP Lab	i. Date
001	GENERATORS	CT			S	Yes	No	/ /
					S	Yes	No	/ /
					S	Yes	No	/ /
					S	Yes	No	/ /

20. Detaining Officer Name: M. Keat M. Keat P. 31/10

11. ACCEPTANCE/CLARIFICATION OF CUSTODY

a. Line Item No.	b. Description	c. Title	d. Signature	e. Date

Property may be detained for up to 90 days, unless statutory authority or interagency agreement mandates that a longer period of time is required, or the importer/consignee/subject requests a longer detention period through the Port Director.

CBP-0051A (Continuation Sheet Attached?) Yes No CBP Form 6051D (8-09)

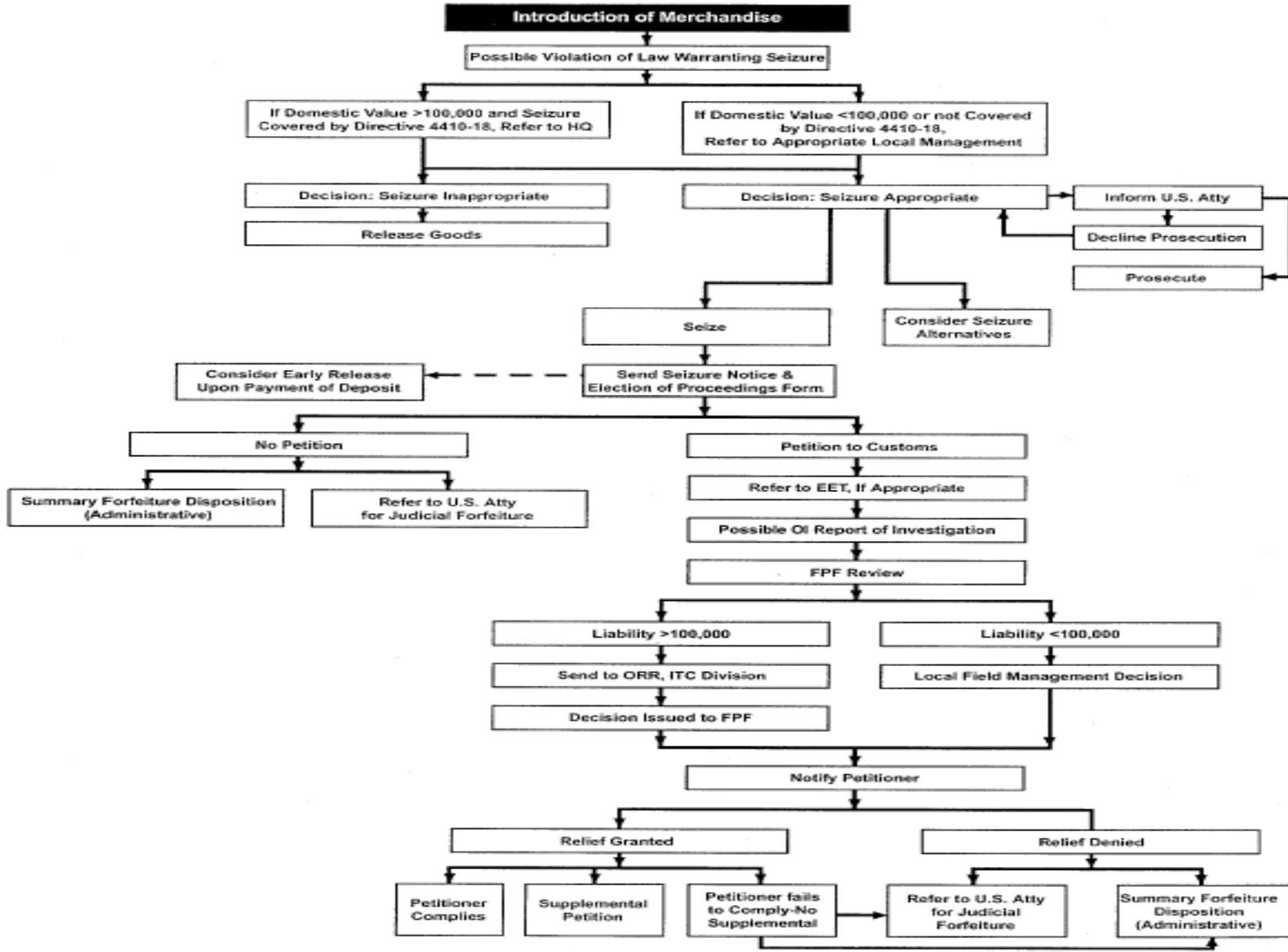
CBP Detention Notice

- 19 C.F.R. 151.16
 - (e) “A final determination with respect to admissibility of detained merchandise will be made within 30 days from the date the merchandise is presented for Customs examination”
 - (f) “*Effect of failure to make a determination.* The failure by Customs to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for Customs examination, or such longer period if specifically authorized by law, **shall be treated as a decision by Customs to exclude the merchandise** for purposes of section 514(a)(4)”

What Should Be Done Upon Receipt of a Detention Notice?

- During the detention process, establishing proof of compliance with U.S. law avoids seizure of the merchandise, administrative delays, and related costs.
- Interaction with Import Specialist Branch
 - **TEAM 472:** Footwear, Headgear, Handbags, Plastics
 - **TEAM 473:** Stone, Cement, Ceramics, Metals, Glass, Furniture
 - **TEAM 474:** Machinery, Electrical Equipment, Electronics, Chemicals, Pharmaceuticals, Perfumes
 - **TEAM 483: Cut Flowers, Live Animals, Food Products**

Administrative Process: Seizures



How a Typical Seizure Case Commences with U.S. Customs and Border Protection:

- U.S. Customs finds a violation, and places the merchandise on hold for “intensive examination”.



Seizure Authority

- **U.S. Customs Statutory authority for seizure & forfeiture:**
 - Title 19 U.S.C. § 1595a(c)
 - Merchandise introduced contrary to U.S. law.

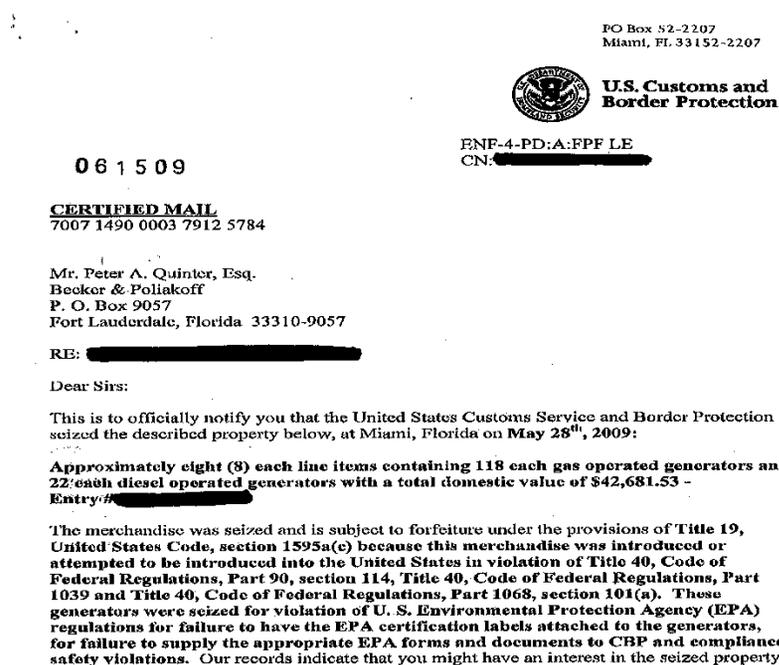


What Type of Merchandise is Subject to Seizure?

- Prohibited Merchandise (Counterfeit, Controlled substances)
- Restricted Merchandise (CPSC, FDA, Quota)
- Undeclared, unreported or smuggled merchandise (non-reporting of currency over 10,000)
- Goods which aid or facilitate the illegal importation of merchandise

How a Typical Seizure Case Commences with U.S. Customs and Border Protection:

- U.S. Customs (Fines, Penalties & Forfeitures Office) issues a Seizure Notice



What should be done upon receipt of a Seizure Notice

- Establishing proof of compliance with U.S. law and obtain assistance to:
 - Draft a Petition to U.S. Customs

ation d'éoliennes
habité pour l'ensemble de

Considérant que le paysage agricole fait partie de notre patrimoine culture
Considérant que ce projet divise et suscite entre les individus des tensions,
des divisions pouvant se traduire pour certains par de l'intimidation;

Je suis tout à fait en désaccord
projet car les sites envisagés so
doivent être protégés. N'est-ce p
penser implanter une série d'olé
notre environne

Par conséquent :
Je m'oppose fermement à l'implantation d'oléennes industrielles en
milieu habité par l'ensemble du territoire de ma MRC.

De plus, ont été menées par des chercheurs de
différents pays et de différentes disciplines
démontrant que l'implantation de cette énergie
constitue un réel danger pour la santé de la
population vivant à proximité de ces parcs.

Par conséquent, je m'oppose fermement à la
réalisation d'un tel projet.

Messieurs les conseillers,
Compte tenu qu'aucune mesure démocratique
disposition par ma MRC ou ma municipalité
manifeste mon désaccord concernant le
d'éoliennes, je vous fait parvenir ma répo

PETITIONS

FP&F Seizure Process

- If merchandise is seized, case is transferred to the Fines, Penalties & Forfeitures (FP&F) Office
- Case assigned to Paralegal Specialist at FP&F
- Paralegal Specialist issues Seizure Notice
- FP&F Officer is empowered to remit or mitigate on such terms and conditions as, under the law and factual circumstances, he or she deems appropriate.

FP&F Seizure Process

- Petition must be filed within 30 days (of date of Seizure Notice), establishing merchandise entered or exported consistent with U.S. law (factual & legal arguments)
- Oral argument often requested and granted by FP&F
- Supplemental Petition may be filed within 60 days of adverse decision based upon presentation of new facts or law

FP&F Refers certain cases to CBP's Headquarters

- **Cases are sent to Chief, Penalties Branch, Regulations & Rulings, Office of International Trade**
- Value of the merchandise is over \$100,000.
- Novel or complex issues concerning a Ruling, policy or procedure.
- HQ Recommendation sent to FP&F and Final Decision issued by FP&F.



Currency Seizures

CERTIFIED - RETURN RECEIPT REQUESTED

Gray Robinson, Attorneys At Law
Peter A. Quinter, Esq.
401 East Las Olas Boulevard, Suite 1850
Fort Lauderdale, Florida 33301



U.S. Customs and
Border Protection

NOV 21 2012

Re: Case Number 2013- [REDACTED]

Dear Sir/Madam:

This is to officially notify you that U.S. Customs and Border Protection (CBP) seized the property described below from your client, [REDACTED], at JFK Airport on November 11, 2012. The particular instruments seized are described as follows: \$55,837.00 in U.S. currency. At the time of seizure, \$1,837.00 was returned to your client for humanitarian reasons. The property was seized and is subject to forfeiture under the provisions of Title 31, United States Code, Section 5317 because it was not properly reported as required by Title 31, United States Code, Section 5316 and/or pursuant to the provisions of Title 31, United States Code, Section 5332 because it was knowingly concealed with the intent to evade the reporting requirement set forth in Title 31, United States Code, Section 5316.

The facts available to CBP indicate that your client might have an interest in the seized property. The purpose of this letter is to advise you of the options available to your client concerning this seizure. Important documents are attached to this letter. Please do not ignore them. Those documents are an "Election of Proceedings" form and a "Seized Asset Claim Form." You should choose one of the options outlined below, indicate your choice on the Election of Proceedings form, and return it, and any other necessary documents, to CBP within the allotted time frame (see each option below). If you check Box 3 on the Election of Proceedings form, you will need to complete the Seized Asset Claim Form or otherwise file a complete claim for judicial forfeiture. Even if you are abandoning the property, you should complete the Election of Proceedings Form and return it to CBP.

JFK Airport
Jamaica, N

Peter Quinter, Esq.
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Gray Robinson, Attorneys at Law
Peter Quinter, Esq.
1221 Brickell Avenue, Suite 1600
Miami, Florida 33131-0014



U.S. Customs and
Border Protection

FEB 25 2013

Re: 2013- [REDACTED]

Dear Mr. Quinter:

This communication is in response to the petition you submitted to this office in reference to the above-cited seizure. In that letter, relief was requested from the forfeiture of \$55,837.00 in U.S. currency, which was seized from your client, [REDACTED] at JFK Airport on November 11, 2012. The seizure was made pursuant to the provisions of Title 31, United States Code, Section(s) 5316, 5317 and 5332. At the time of seizure \$1,837.00 in U.S. currency was returned to your client for humanitarian reasons.

Upon review of the statements made in your petition and the documentation submitted, it is the decision of this office to remit the forfeiture of the seized currency upon payment of \$5,000.00 and submission of one (1) duly signed and notarized Hold Harmless Release Agreement executed by your client, [REDACTED]. Your client can choose to have the remission amount deducted from the currency under seizure or you can submit a certified check in the aforementioned amount. Please state which method your client chooses on a separate letter when you mail back the Hold Harmless Release Agreement. Please have your client sign and date the Hold Harmless Release Agreement and submit the notarized original to this office. Please note, whichever method your client chooses it will take approximately four to six weeks for you to receive your client's refund check. Any payment made in compliance with a mitigation decision will act as an accord and satisfaction where the paying party has elected to resolve the case through the administrative process and has waived the right to sue for a refund. **You must notify this office of your client's decision in writing within thirty days from the date of this communication and return the requested form.** Failure to respond timely will result in the commencement of administrative forfeiture proceedings.

All correspondence and/or your certified check must include the above referenced case number and should be sent to the following address: U.S. Customs and Border Protection, Fines, Penalties and Forfeitures, Building 77, JFK Airport, Jamaica, New York 11430. If you have any questions you may contact Paralegal Specialist Maurice McElligott at (718) 487-5228.

Sincerely,

Karen J. Dugan-Rivera
Director
Fines, Penalties & Forfeitures
JFK Airport
Enclosures

Typical Mitigating Factors:

- ✓ First offense,
- ✓ Inexperience in importing, and/or
- ✓ Cooperation with Customs' investigation.



CBP FP&F Guidelines with Mitigating Factors:

- **1. First Offense**
 - No aggravating factors – remission upon payment of:
 - 10-30% of the dutiable value of the seized goods
- **2. Second Offense**
 - No aggravating factors – remission upon payment of:
 - 30 –50% of the dutiable value of the seized goods
- **3. Third or Subsequent Offense**
 - Remission upon payment of 50 - 80% of the dutiable value of the seized goods

Typical Aggravating Factors:

- Criminal conviction relating to transaction;
- Repetitive violation of the same import restriction; and/or
- Evidence of intentional importation contrary to U.S. law.



CBP FP&F Guidelines with Aggravating Factors:

- **1. First Offense**
 - Aggravating factors – remission upon payment of:
 - 30 – 50% of the dutiable value of the goods
- **2. Second Offense (and subsequent offenses)**
 - Aggravating factors – remission upon payment of:
 - 50 – 80% of the dutiable value of the seized goods



Petition for Relief is Granted:

- Decision providing for remittance is valid for **30 days**.
- Execution and submission of **Hold Harmless Agreement** by Petitioner.
- Payment of assessed **penalty**, if any.
- Provide contact name and information of designated authorized agent to retrieve goods.
- Payment of **storage fees**.



CBP Notice of Penalty Language

- Demand is hereby made for payment of \$10,000 representing penalties assessed against you for violation of law or regulation, or breach of bond, as set forth below:
 - On [date], [MAWB#, HAWB# or B/L#] generated by [filer], noted the AES indicator as "NO EEI 30.37(A)". Commercial invoice obtained by CBP declared the value of the shipment at [\$ amount]. Penalty assessed for no electronic export information filed prior to documents being presented for export.
 - Failure to file electronic export information in the AES.
 - LAW OR REGULATION VIOLATED
 - 15 CFR 30.2, 19 U.S.C. 1595a(d), and 22 U.S.C. 401

CBP Penalties

<u>Type of Penalty</u>	Fraud	Gross Negligence	Negligence
<u>1592(c) – Maximum Penalties</u>	Domestic Value of the Merchandise	4 times loss of revenue (duties, taxes and fees) to CBP	2 times loss of revenue (duties, taxes and fees) to CBP

Penalty Authority

- **U.S. Customs Statutory authority to issue penalties is from Title 19 U.S.C. § 1592 for:**
 - Fraud
 - Gross Negligence
 - Negligence
- 19 CFR Part 171
 - Appendix B
 - Offer in Compromise



Broker Penalties

<u>Type of Penalty</u>	Broker
<u>19 U.S.C. 1641</u> <u>Maximum</u> <u>Penalties</u>	Not to exceed \$30,000

Liquidated Damages

- Customs Bonds
- Entry Violations
- Warehouse Violations
- Manifest and Cargo Delivery Violations
 - 10+2

Liquidated Damages Claim

- In accordance with 19 C.F.R. 141.113
- Redelivery Notice (date)
- Redelivery Required (date)
- “Described merchandise not redelivered into Customs custody after refused admission by the FDA”
- “Failure to comply with a demand for redelivery ... will result in the assessment of liquidated damages equal to three times the value of the merchandise...”



Typical Liquidated Damages Claim: Failure to Redeliver

- Failure to Redeliver Merchandise for Export or Destruction is a very common Liquidated Damages claim issued by CBP.

DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION

CASE NUMBER F02
2013 [REDACTED]

NOTICE OF PENALTY OR
LIQUIDATED DAMAGES INCURRED
AND DEMAND FOR PAYMENT

PORT CODE AND NAME
5201 MIAMI SEAPORT

19 USC 1618, 19 USC 1623

INVESTIGATION FILE NO.
ID: [REDACTED]

TEAM NUMBER: 488

DEMAND IS HEREBY MADE FOR PAYMENT OF \$107,325.00, REPRESENTING LIQUIDATED DAMAGES ASSESSED AGAINST YOU FOR VIOLATION OF LAW OR REGULATION, OR BREACH OF BOND, AS SET FORTH BELOW:
REDELIVERY NOTICE(CF4647) ISSUED: 07/20/2012 REDELIVERY REQUIRED: 10/18/2012
ENTRY # [REDACTED]
ACCESSORIES FOR CARDIOPULMONARY EXERCISE TESTING/6 NO.
FAILURE TO EXPORT UNDER U.S. CUSTOMS & BORDER PROTECTION SUPERVISION OR DESTROY UNDER FDA SUPERVISION
LIQUIDATED DAMAGES INCURRED FOR FAILURE TO EXPORT OR DESTROY SUBJECT MERCHANDISE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE IMPORTATION AND ENTRY BOND.
AGREEMENT TO REDELIVER SUBJECT MERCHANDISE FOR DESTRUCTION UNDER FDA SUPERVISION OR FOR EXPORTATION UNDER U.S. CUSTOMS & BORDER PROTECTION SUPERVISION, ON DEMAND, AS PRESCRIBED UNDER 19 CFR 113.62(D), WAS BREACHED. SUBJECT MERCHANDISE WAS REFUSED ADMISSION MISBRANDING.
DESCRIBED MERCHANDISE NOT REDELIVERED INTO CUSTOMS CUSTODY AFTER REFUSED ADMISSION BY THE FOOD AND DRUG ADMINISTRATION.

LAW OR REGULATION VIOLATED 19CFR141.113 21USC381		BOND BREACHED BOND TYPE: 9 BOND#: [REDACTED]	
DESCRIPTION OF BOND: SINGLE TRANSACTION	FORM NUMBER: [REDACTED]	AMOUNT: \$108,000.00	DATE: 11/22/2011
NAME AND ADDRESS OF PRINCIPAL ON BOND [REDACTED]			
NAME AND ADDRESS OF SURETY ON BOND 1475 E WOODFIELD RD, SCHAUMBURG, IL 60173		AMERICAN ALTERNATIVE INSUR	SURETY NO. 036
IF YOU FEEL THERE ARE EXTENUATING CIRCUMSTANCES, YOU HAVE THE RIGHT TO OBJECT TO THE ABOVE ACTION. YOUR PETITION SHOULD EXPLAIN WHY YOU SHOULD NOT BE PENALIZED FOR THE CITED VIOLATION. WRITE THE PETITION AS A LETTER OR IN LEGAL FORM; SUBMIT IN (DUPLICATE) ADDRESSED TO THE COMMISSIONER OF CUSTOMS AND BORDER PROTECTION, AND FORWARD TO THE FP&F OFFICER AT: U.S. CBP FP&F OFFICE, P.O. BOX 52-2207, MIAMI, FL 33152			
UNLESS THE AMOUNT HEREIN DEMANDED IS PAID OR A PETITION FOR RELIEF IS FILED			



U.S. Customs and
Border Protection

ENF-4-PD:A:FPF tcl
2013- [REDACTED]

MAY 17 2013

Mr. Peter Quinter
Gray Robinson Attorneys At Law
401 East Las Olas Blvd., Suite 1850
Ft. Lauderdale, FL 33301

Re: FP&F Case No. 2013- [REDACTED]

Dear Mr. Quinter:

This is in response to your petition received in FP&P on April 12, 2013, for the above-identified case. A \$107,325.00 claim for liquidated damages was assessed due to [REDACTED] failure to redeliver accessories for cardiopulmonary exercise testing/ 6 No., under entry number [REDACTED], into the custody of U.S. Customs and Border Protection after being refused by the U.S. Food and Drug Administration (FDA). This is a violation incurred under the provisions of *Title 21, United States Code, section 381 and Title 19, Code of Federal Regulations, section 141.113.*

Upon review of your petition along with the facts and circumstances surrounding this case, it has been determined that a violation did in fact occur. Although the merchandise covered under entry number [REDACTED] was timely exported under CBP supervision, the procedures outlined on the FDA Notice of Refusal were not followed. The FDA Notice of Refusal dated July 20, 2012, issued to the above referenced entry, clearly states that after completion of the exportation or destruction of the FDA refused merchandise, the original signed CF-7512 or CBPF3499, along with a copy of the notice, must be forward to the joint FDA/CBP Team 488. This did not occur in this case. However, since you were able to provide documentation supporting the supervised destruction of merchandise, relief shall be **granted**.

Our records show that [REDACTED] has no recent prior violations of this type; therefore, relief shall be granted in the amount of **\$1,788.75**. You have 30 days from the date of this letter to comply with the decision, or, in accordance with 19 C.F.R. §172.41, to file a supplemental petition for relief. If payment in the amount of \$1,788.75 or a supplemental petition is not received in this office within the specified time, this claim shall be forwarded for judicial collection.



CBP Seizures, Penalties, and Liquidated Damages: Getting Your Merchandise Back and Penalties Mitigated

NCBFAA

June 4, 2013

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