

§ 158.14

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of weight or gauge has been received by the port director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or gauge has been accepted by the Customs inspector or other Customs officer.

(b) *Allowance by port director.* If the port director is satisfied after any necessary investigation that the merchandise contains moisture or impurities as described in paragraph (a) of this section, he shall make allowance for the amount thereof in the liquidation of the entry.

[T.D. 90-78, 55 FR 40167, Oct. 2, 1990]

§ 158.14 Perishable merchandise condemned.

(a) *Application by importer.* When fruit or other perishable merchandise has been condemned by health officers or other legally constituted authorities within 10 days after landing, an importer who desires allowance in duties under section 506(2), Tariff Act of 1930, as amended (19 U.S.C. 1506(2)), shall within 5 days after such condemnation file with the port director written notice of the condemnation. The date of landing in the case of merchandise forwarded under an entry for immediate transportation is the date of arrival at the port of destination.

(b) *Allowance in duties.* If the port director is satisfied after any necessary investigation that the claim is valid, allowance in duties shall be made in the liquidation of the entry. Such allowance shall be limited to perishable goods condemned by the health officers or authorities in the original package, unless segregation of the merchandise was under constant Customs supervision at the importer's expense.

(Sec. 506(2), 46 Stat. 732, as amended; 19 U.S.C. 1506(2))

Subpart C—Casualty, Loss, or Theft While in Customs Custody

§ 158.21 Allowance in duties for casualty, loss, or theft while in Customs custody.

Section 563(a), Tariff Act of 1930, as amended (19 U.S.C. 1563(a)), provides for allowance in duties upon satisfactory proof of the loss or theft of any

merchandise while in the public stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the public stores, or while in transportation under bond, or while in Customs custody although not in bond, or while within the limits of any port of entry and before having been landed under Customs supervision. Such allowance is subject to the conditions set forth in this subpart.

§ 158.21a Time period.

An abatement or refund of duties shall be made in the case of injury to, or destruction of, merchandise in a bonded warehouse as a result of accidental fire or other casualty only if the fire or casualty occurs within 3 years from the date of importation.

[T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 158.22 Not applicable when allowances made under other provisions.

The procedures in this subpart do not apply in cases where allowances in duties are made under subpart A or subpart B of this part, or §18.6 of this chapter.

§ 158.23 Filing of application and evidence by importer.

Within 30 days from the date of his discovery of the loss, theft, injury, or destruction, the importer shall file an application in duplicate on Customs Form 4315, and within 90 days from the date of discovery shall file any evidence required by §158.26 or §158.27.

§ 158.24 Place of filing.

The application and evidence shall be filed with the director of the port where the loss, theft, injury, or destruction occurred. In the case of total loss of merchandise by fire or other casualty while in transportation under bond, the application and evidence shall be filed with the director of the port at which the transportation entry was made. In the case of partial destruction of or injury to such merchandise, the application and evidence shall be filed with the director of the port of destination, except that if the merchandise is returned to the port at which the transportation entry was

made, the application shall be filed at that port.

§ 158.25 Partial destruction or injury.

In the case of partial destruction or injury, no application shall be entertained unless the port director shall have had an opportunity to examine the merchandise or the remainder thereof for the purpose of fixing the percentage of injury or destruction. Whether the duty involved is ad valorem, specific, or compound, the percentage of injury for the purpose of the allowance shall be determined by comparing the market value of comparable sound merchandise with the net salvage value of the injured merchandise computed on the basis of the market value of comparable injured merchandise, such comparison to be made as of the time and place of examination.

§ 158.26 Loss or theft in public stores.

In the case of alleged loss or theft while the merchandise is in the public stores, there shall be filed a declaration of the importer, owner, or ultimate consignee that he did not receive the merchandise and that to the best of his knowledge and belief it was lost or stolen as alleged in the application. If the alleged loss or theft consisted of only a part of an examination package and was discovered after the release of the package from Customs custody, the following evidence shall be submitted:

(a) A declaration of each cartman, lighterman, or other carrier handling the package between the public stores and the place of delivery, setting forth the condition of the package at the time of receipt and delivery by him and whether or not there was an abstraction of the merchandise while the package was in his possession.

(b) A declaration of the person who first received the package for the importer, owner, or ultimate consignee as to whether or not he examined the package at the time of receipt, and, if so, as to its condition at that time.

(c) A declaration of the person who opened the package after release from Customs custody that the alleged missing merchandise was not found by him in the package or elsewhere.

§ 158.27 Accidental fire or other casualty.

In the case of injury or destruction by accidental fire or other casualty, the following evidence shall be submitted:

(a) A declaration of the master of the vessel, the conductor or driver of the vehicle, the proprietor of the warehouse, or other person (except a Customs officer) having charge of the merchandise at the time of casualty, stating:

(1) The time, place, and nature of such casualty;

(2) That the merchandise was on board the vessel or vehicle, in the warehouse, or otherwise in his charge, as the case may be, at the time of the casualty; and

(3) That it was totally destroyed and there is no probability of recovering or saving any part thereof, or that it was injured as the result of the casualty.

(b) The bill of lading, the entry summary (where appropriate) and the invoice covering the merchandise, or certified copies of the foregoing, unless such documents are already in the possession of the director of the port where the claim is filed.

(c) A copy of the insurance appraiser's report, if any.

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 158.28 Waiver of evidence.

The port director may waive the production of any of the evidence required by this subpart if the validity of the claim is otherwise established to his satisfaction.

§ 158.29 Decision by port director.

When the application and evidence have been received and examined by the port director, he shall determine whether the desired abatement or refund of duty shall be made and notify the importer of his decision.

§ 158.30 Review of port director's decision.

(a) *Filing of petition.* The importer may file with the port director a petition addressed to the Commissioner of