

## § 158.0

## 19 CFR Ch. I (4-1-02 Edition)

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

- 158.21 Allowance in duties for casualty, loss, or theft while in Customs custody.
- 158.21a Time period.
- 158.22 Not applicable when allowances made under other provisions.
- 158.23 Filing of application and evidence by importer.
- 158.24 Place of filing.
- 158.25 Partial destruction or injury.
- 158.26 Loss or theft in public stores.
- 158.27 Accidental fire or other casualty.
- 158.28 Waiver of evidence.
- 158.29 Decision by port director.
- 158.30 Review of port director's decision.

### Subpart D—Destroyed, Abandoned, or Exported Merchandise

- 158.41 Destruction of prohibited merchandise.
- 158.42 Abandonment by importer within 30 days after entry.
- 158.43 Abandonment or destruction of merchandise in bond.
- 158.44 Disposition of abandoned merchandise.
- 158.45 Exportation of merchandise.

AUTHORITY: 19 U.S.C. 66, 1624, unless otherwise noted. Subpart C also issued under 19 U.S.C. 1563.

SOURCE: T.D. 72-258, 37 FR 20171, Sept. 27, 1972, unless otherwise noted.

#### § 158.0 Scope.

This part sets forth general rules for granting relief from duties on merchandise which is lost, damaged, abandoned, or exported.

### Subpart A—Lost or Missing Packages and Deficiencies in Contents of Packages

#### § 158.1 Definition of “permitted” merchandise.

For the purpose of this subpart, merchandise is “permitted” when Customs authorizes the carrier bringing the shipment to the port to make delivery to the consignee or the next carrier and:

- (a) These parties in interest, or their agents, make a joint determination of the quantities being delivered, or,
- (b) The carrier bringing the shipment to the port, at its option, independently declares the quantities available for delivery by filing with the port director, no later than the close of busi-

ness on the next working day after a determination of quantities is made, a signed statement that:

(1) An independent determination of quantities of merchandise available for delivery has been made, with the date of the determination shown;

(2) At least 4 days have elapsed since the consignee or his agent was notified that Customs has authorized delivery; and,

(3) The merchandise was and is available for delivery.

#### § 158.2 Shortages in packages released under immediate delivery or entry.

An importer may file an entry summary for consumption or an entry summary for warehouse for less than the invoiced and manifested number of packages in a shipment “permitted” and delivered to him or deposited in a bonded warehouse under the immediate delivery procedure in §142.21 of this chapter, or under the entry documentation in §142.3(a), if he files with the entry summary a Customs Form 5931 in triplicate. The Customs Form 5931 shall be completed by the importer with attached copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages.

[T.D. 85-159, 50 FR 38520, Sept. 23, 1985]

#### § 158.3 Allowance for lost or missing packages included in an entry summary.

Allowance shall be made in the assessment of duties for lost or missing packages of merchandise included in an entry summary whenever it is established to the satisfaction of the port director before the liquidation of the entry summary becomes final that the merchandise claimed to be lost or missing was not “permitted.” A claim for such allowance shall be made on Customs Form 5931, in triplicate, executed by the importer and the importing carrier or bonded carrier, as appropriate. When the importing or bonded carrier refuses to execute the Customs Form 5931, a claim may be allowed if the importer properly executes the Customs Form 5931 and attaches copies of the dock receipt or other document

evidencing nonreceipt of the lost or missing packages.

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

**§ 158.4 Liability of carrier for lost or missing packages.**

Upon a joint determination or independent determination of quantity as set forth in §158.1 (a) or (b) resulting in the merchandise being "permitted," the carrier shall be responsible only for any discrepancy between the manifested quantity and the "permitted" quantity. In the case of an importing carrier, when there is a difference between the quantity shown on the inward foreign manifest and the quantity "permitted," liquidated damages or duties shall be assessed under the provisions of the carrier's bond or under the provisions of section 448, Tariff Act of 1930, as amended (19 U.S.C. 1448), unless the carrier corrects his manifest (see §4.12 of this chapter). In the case of a bonded carrier, liquidated damages for lost or missing merchandise shall be assessed in accordance with §18.8 of this chapter.

**§ 158.5 Deficiencies in contents of packages—general.**

An allowance shall be made in the assessment of duties for deficiencies in the contents of packages when, before the liquidation of the entry becomes final, the importer files:

(a) In the case of a concealed shortage, a Customs Form 5931, in triplicate, executed by the importer alone, and the port director satisfies himself as to the validity of the claim; or,

(b) In the case of an unconcealed shortage, a Customs Form 5931, in triplicate, executed by both the importer and the importing or bonded carrier, as appropriate.

**§ 158.6 Deficiencies in contents of examination packages.**

Allowance for deficiency in the contents of any examination package reported to the port director by a Customs officer shall be made in the liquidation of the entry. No Customs officer except one making an examination contemplated by section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499),

shall report a supposed deficiency to the port director unless it is established to the satisfaction of the reporting officer that the merchandise was not imported.

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

**§ 158.7 Allowance for reduction or loss of merchandise by a natural force or by leakage.**

Merchandise subject to ad valorem, specific, or compound rates of duty found at the time of importation to be reduced or diminished by a natural force, such as evaporation, or by leakage, shall be appraised in its condition as imported, with an allowance made in the value, weight, quantity, or measure to the extent of the reduction or loss, except when forbidden by law or regulation.

(R.S. 251, as amended, sec. 499, sec. 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1499, 1624))

[T.D. 78-448, 43 FR 53713, Nov. 17, 1978]

**Subpart B—Damaged or Defective Merchandise**

**§ 158.11 Merchandise completely worthless at time of importation.**

(a) *Nonperishable merchandise.* When a shipment of nonperishable merchandise, or any portion thereof which shall have been segregated from the remainder of the shipment under Customs supervision at the expense of the importer, is found by the port director to be entirely without commercial value at the time of importation by reason of damage or deterioration, an allowance in duties on such merchandise on the ground of nonimportation shall be made in the liquidation of the entry.

(b) *Perishable merchandise.* In the case of perishable merchandise, an allowance in duties may be made under the following conditions:

(1) An application for such allowance shall be filed with the port director on Customs Form 4315 in duplicate, within 96 hours after the unloading of the merchandise and before any of the shipment involved has been removed from the pier (or other area permitted under §142.2(b)(2) of this chapter) pursuant to the entry permit.