

90 Day Postponement of Duty Deferral Q&A

On April 18th, President Donald Trump signed an executive order on National emergency authority to temporarily extend deadlines for certain estimated payments due to the threat that the COVID-19 poses to the Nation's healthcare. His orders, the Secretary of Treasury will consider taking appropriate action under section 1318(a) of title 19, United States code, to temporarily extend deadlines, for importers suffering significant financial hardship because of COVID-19. Below are FAQ that will assist to determine if an importer/entries/payment types qualifies.

1. What is the criteria for an importer to qualify for the 90-day postponement?

As outlined in the FRN and CSMS messages from CBP, an importer of record (based on the importer of record number obligated for entry/entries) must demonstrate financial hardship due to COVID-19. This means an eligible importer's operation must be fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID-19, and as a result of such suspension, the gross receipts of such importer for March or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019.

2. Is approval from CBP required for this postponement?

No, but the importer of record is responsible for maintaining records to evidence this hardship and provide authorization to the customs broker as well as to CBP upon request for audit purposes. We also recommend customs brokers obtain written authorization from their importer clients, and the NCBFAA has provided suggested wording.

3. What if the importer of record is submitting payment to the customs broker who is handling under a broker statement? Can these importers be taken off a customs broker's statement to postpone the payment of duty for up to 90 days?

Yes, the customs broker has up until midnight tonight, 4/20 to pull any entries off the statement due tomorrow on 4/21. Brokers have the option of changing the payment due date in ACE to reset when payment is due whether on daily statement and/or monthly statement for either broker or importer pay. Per CBP, ACE has been updated so importers and brokers can now remove entries from a statement even if made via Remote Location Filing (RLF). These entries won't need to be put on a single pay, you can move to the next statement or up until any statement when the 90 day period ends. For future statement dates, importers and customs brokers would need to be sure to update the day before payment is due to continue to take

advantage of the 90-day duty deferral through 7/29/2020 for single pay or August based on statement dates.

4. What if the customs broker has already authorized the statement for payment?

Yes, customs brokers still can remove entries from the statement today under these circumstances.

5. What if an entry was already removed from a Period Monthly Statement (PMS) and changed to Single Pay? Can this now be put back on PMS and changed to pay type 1, can this be put back on PMS to get the benefit of monthly deferral later?

Yes, the modifications made in ACE will allow you to do this. Please refer to the CSMS messages for the examples provided on the different statement dates and when they would be due with the 90-day postponement schedule

6. There are many importers that want to defer entries that are eligible before Midnight tonight. Will CBP consider a snow day to provide additional time?

CBP does not have authority to issue snow days under this pandemic and why the Presidential Executive Order and FRN had to be issued so no additional time can be provided.

7. What if the importer has regular duties, taxes, and fees as well as AD/CVD or Trade Remedies for Section 201, 232 or 301?

For the statement due on 4/21, there is not much customs brokers can do to pull these entries since they were already consolidated. If there is any AD/CVD entry type (03, 07, etc.) or Trade Remedies as part of the entry including Quota, the whole entry summary must be paid in its entirety. Going forward, CBP has provided authorization to submit separate entries, one entry for the regular duties, taxes and fees that can be postponed for 90 days and another entry for the AD/CVD and Trade Remedies that must be paid timely.

8. What about reconciliation entries that have been scheduled to be paid in March or April, can these be delayed?

No, since the entry dates occurred outside the dates of the pandemic. Any increased duty bills and/or supplemental bills and/or reconciliation payments are still due on time or will continue to accrue interest and will be subject to liquidated damages for late payment.

9. What about air passenger fees, can these be delayed beyond payment due on 4/30?

No, these are not entries and not eligible for the 90-day postponement since the fees were collected outside the March-April period that is covered by the FRN. Please see the FRN and CSMS messages for further details on this.

10. What about importers of record who are open on-line or had their suppliers shut down?

CBP indicated that if the importer of record could prove hardship of partial closure AND receipts being down from closure of supply chain in some way, they could be eligible. However, CBP is looking to clarify this more in an FAQ.

11. Does the importer of record apply at the 9-digit or 11-digit level when an importer has different trade names or divisions covered under the same bond?

CBP indicates they would like to handle this on an account basis at the 9-digit level, but is seeking guidance from legal counsel and will clarify this in an FAQ

12. How will other brokers or sureties know that an importer is postponing payment?

ACE will be updated with a new Payment Date that will be visible to any importer or customs broker on the entry transaction. Sureties are currently working with CBP to get this data in our Automated Surety Interface (ASI). If we are not able to obtain through our ASI data, we may need to reach out to the importer or customs broker for additional clarification, especially if we receive liquidated damages for late payment of duties that should not have been issued. We appreciate your patience since sureties have limited visibility to any line level data.

13. Do entries in which the broker acts as the Importer of Record (IOR) qualify for the 90-day postponed payment if the broker does not qualify for the significant financial hardship

No. The determination of who qualifies for the 90-day postponement is based on the party identified as the IOR on the entry. IORs who meet the criteria identified for significant financial hardship due to COVID-19, as outlined in the Temporary Final Rule [1] and CSMS 42423171 [2], and whose entries do not include AD/CVD or Trade Remedy duties, are eligible for the 90-day postponed payment. A broker acting as the IOR must meet the criteria for significant financial hardship in order to postpone payments under 19 C.F.R. § 24.1a.

14. Do entries imported by an IOR that meets the significant financial hardship criteria outlined in the Temporary Final Rule and paid on a broker monthly or daily statement qualify for the 90-day postponement?

Entries imported by an IOR that meets the significant financial hardship criteria and do not include AD, CVD or Trade Remedy duties are eligible for the 90-day postponement and may be removed from the broker statement.

15. Does an entry that has merchandise that was granted an exclusion from a Trade Remedy qualify for the 90-day postponement?

Merchandise granted an exclusion from Trade Remedy duties qualifies for the 90-day postponed payment. The exclusion must be in effect at the time of entry. Merchandise that benefits from the retroactive application of exclusions after the time of entry are not eligible for the 90-day duty postponement. Entries with any merchandise subject to AD/CVD, Section 201, 232 or 301 Trade Remedy duties are not eligible for the 90-day postponement.

16. If the IOR is a wholesaler who sells to retailers whose operations are suspended due to COVID19, will the IOR's entries be eligible for the 90-day postponement?

The wholesaler IOR must meet the significant financial hardship criteria in order to be eligible for the 90-day postponement. It is the IOR's responsibility to substantiate its own significant financial hardship.

17. Are entries filed in March that were scheduled for daily statement but not paid eligible for the 90-day postponement?

As a rule, CBP offices will exercise discretion and flexibility in working with importers in light of the COVID-19 impacts. This temporary postponement applies to formal entries of merchandise entered, or withdrawn from warehouse, for consumption (including entries for consumption from a Foreign Trade Zone) in March or April 2020 where estimated duties, taxes, and fees have not been paid. Entries in this scope that have not been paid due to significant financial hardship will qualify for the 90-day postponement if they satisfy all other requirements. Entries for which a payment was made but had insufficient funds are not eligible for the 90-day postponement.

18. The TFR reads (page 10, under the new wording in §24.1a(a)(1)) "This temporary postponement applies only to entries, or withdrawals from warehouse, for consumption, made on or after March 1, 2020..." (emphasis added). Can CBP confirm what the term 'made' c

The temporary postponement applies to merchandise entered, or withdrawn from warehouse or foreign trade zone, for consumption in March or April 2020. The time of entry, pursuant to 19 C.F.R. § 141.68, establishes when an entry for consumption is made.

19. I see nothing about the ability to file drawback claims against estimated duties during the deferral period. Claimants can claim drawback on estimated duties. If payment of the estimated duties is deferred, can you still claim drawback again

No, a drawback claim should not be filed. Drawback claims may be liquidated only after estimated duties are deposited with CBP in accordance with 19 C.F.R. § 190.81(a)(2) and (b). CBP is advising that filers delaying duty payment during the 90-day postponement period due to financial hardships, should not file drawback claim until payments have been properly made on the import entry(s). Drawback claims may be filed up to 5 years after the date of importation of the merchandise that is identified or designated as the basis for the drawback claim.

20. Does the 90-day postponement apply to the Cotton Fee assessed on all imports of cotton and cotton products?

Yes, the 90-day postponement applies to the Cotton Fee.

21. What is meant by “gross receipts” as part of the significant financial hardship qualifications?

CBP is adopting the definition of “gross receipts” used at 26 CFR 1.993-6.