



# The American Companies

## "News Flash"

July 17, 2009

### **CBP JUST RELEASED:**

### **Importer Security Filing Liquidated Damages and Mitigation Guidelines**

CBP has announced that in general, liquidated damages may be assessed for the failure of an arriving carrier or Importer Security Filing (ISF) Importer to provide the required advance electronic cargo information in the time period and manner prescribed by the regulations in Title 19, CFR. In addition, said failure may also result in the issuance of a do not load (DNL) hold, the delay or denial of a vessel carrier's preliminary entry-permit/special license to unlade and/or the assessment of any other applicable statutory penalty. CBP may also withhold the release or transfer of the cargo until CBP receives the required information and has had the opportunity to review the documentation and conduct any necessary examination. CBP further states that:

- If an ISF Importer submits a late ISF, Port Directors may assess a claim for liquidated damages against the party in the amount of \$5,000 per late ISF under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2.
- Inaccurate filing. If an ISF Importer submits an inaccurate ISF, Port Directors may assess a claim for liquidated damages against the party in the amount of \$5,000 per inaccurate ISF under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2. With regard to liquidated damages claims assessed for an inaccurate ISF, CBP will consider the transmission closest in time to, but prior to, 24 hours prior to lading, prior to lading, or 24 hours prior to arrival, whichever is applicable.
- Updates. If an ISF Importer submits an inaccurate ISF update pursuant to 19 CFR 149.2(d), Port Directors may assess a claim for liquidated damages against the party for the first inaccurate ISF update in the amount of \$5,000 under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2.
- Withdrawals. If an ISF Importer fails to withdraw an ISF as required by 19 CFR 149.2(e), Port Directors may assess a claim for liquidated damages against the party in the amount of \$5,000 under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2. H. Additional Statutory Penalties.

A penalty may be assessed under the provisions of 19 U.S.C. 1595a(b), or any other applicable statutory authority, with CBP Headquarters approval for serious or repetitive violations.

A few Highlights of the Mitigation Guidelines:

#### **Cancellation of Liquidated Damages Claims for ISF Violations**

1. First violation. If an ISF Importer incurs a liquidated damages claim for filing a late or inaccurate ISF or an inaccurate ISF update, the liquidated damages claim may be cancelled upon payment of an amount between \$1,000 and \$2,000, depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.
2. Subsequent Violations. If an ISF Importer incurs a subsequent liquidated damages claim for filing a late or inaccurate ISF or an inaccurate ISF update, the liquidated damages claim may be cancelled upon payment of an amount not less than \$2,500 if CBP determines that law enforcement goals were not compromised by the violation.
3. No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.

**Mitigating and Aggravating Factors.** CBP will consider all available information in a petition, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed claim for liquidated damages or penalties.

For a full copy of the **Guidelines for the Assessment and Cancellation of Claims for Liquidated Damages for Failure to Comply with the Importer Security Filing Requirements** please download your copy by clicking:

[http://www.shipamerican.com/ISF\\_Liquidated\\_Damages\\_and\\_Mitigation\\_Guidelines.pdf](http://www.shipamerican.com/ISF_Liquidated_Damages_and_Mitigation_Guidelines.pdf)

If you have any question, or require further assistance please contact your TAC representative or submit your inquiry to [10plus2@shipamerican.com](mailto:10plus2@shipamerican.com)

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