

1/28/10 ISF Special

Update on ISF penalty phase

Yesterday, Customs somewhat revised their position on the ISF penalty phase. They will delay issuing MOST penalties on ISF's until "May or June", except for blatant or egregious compliance issues. Due to the heightened cargo security since the Christmas "underwear bomber", they will now begin to issue "Do Not Load" (DNL) messages at the foreign port of loading, and intensive exams/cargo holds once questionable cargo arrives in the U.S.

Customs said they would use the next 3 months to continue to collect ISF data. They will notify non-compliant importers in an effort to get them into compliance. At the end of this period, Customs will begin to issue penalties in addition to DNL's, intensive exams, and cargo holds.

We strongly urge all importers to continue to make every effort to have accurate, complete, and timely ISF's. This will show good faith if there is a problem when they do begin issuing penalties in about 3 months.

Customs' enforcement strategy is detailed below. Please contact us with any questions.

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Customs' enforcement strategy as of Jan 28, 2010:

- The strategy is to "gradually" escalate enforcement of ISF requirements
- CBP does not plan to focus on timeliness initially but considers an ISF filed a week late as unacceptable
- CBP will only look at new data in the next few months as a baseline for enforcement going forward
- The first quarter (3 months) of data will determine if liquidated damages will be issued in May or June

- CBP reserves the right to stop shipments for serious security risk even in the graduated enforcement mode
- Importers that fail to file ISF can expect to be warned by CBP
- Beginning in May, CBP will begin issuing liquidated damages and holds for shipments without ISF filing, and they will consider other avenues to mitigate security risks
- By the third quarter, CBP will issue liquidated damages, place holds on shipments, and take other enforcement measures on a regular basis, and begin evaluating the accuracy of ISF data
- Any claims for liquidated damages will originate in field offices; however, all claims will be processed and approved through CBP Headquarters (HQ) office for the first year to ensure uniformity across all ports of entry
- The normal protocol for processing liquidated damages claims will be employed
- Importers that filed ISFs in 2009 will have an advantage should liquidated damages be assessed as that record will be considered a mitigating factor