

LIBERTY INTERNATIONAL, INC.



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To: Our Valued Clients

Date: July 24, 2009

10 + 2 (ISF) Mitigation Guidelines Issued by CBP



On July 17, 2009, US Customs and Border Protection (CBP) issued mitigation guidelines for liquidated damage claims resulting from a failure to comply with the requirements the Importer Security Filing Interim Final Rule (10 + 2) under 19 CFR Part 149.

Of particular interest is CBP's willingness to take into consideration the accused party's "evidence of progress in the implementation" of their ISF submission process during the flexible enforcement period between January 26, 2009 and January 26, 2010. Those parties who have actively participated in the ISF program will benefit from their participation if faced with a liquidated damage claim after the end of the flexible enforcement period on January 26, 2010.

Overview of the Mitigation Guidelines:

ISF Importer – Violation:

- Failure to submit an ISF when one is required;
- Submitting a late ISF;
- Submitting an inaccurate ISF transmission.

ISF Importer – Assessment of Liquidated Damage Claims for Violation:

- Failure to submit – CBP will withhold release or transfer of cargo until CBP receives ISF information, reviews documentation and conducts any examination. CBP can also withhold unloading of cargo from vessel and if unladen without permission, cargo can be seized.
- Late filing of ISF – Liquidated damage claim of \$5,000;
- Inaccurate Filing of ISF – Liquidated damage claim of \$5,000 per inaccurate ISF filing;
- Updates – Liquidated damage claim of \$5,000 for inaccurate updates;
- Failure to Withdraw ISF – Liquidated damage claim of \$5,000.



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Cancellation of Liquidated Damage Claims

- Liquidated damage claims can be cancelled upon payment of any amount between \$1,000 and \$2,000 depending on the presence of mitigating or aggravating factors.
- Mitigating Factors include:
 - Evidence of progress in implementation of ISF requirements during flexible enforcement period;
 - Small number of violations compared to number of shipments requiring ISF;
 - ISF Importer is certified Tier 2 or 3 C-TPAT member;
 - Demonstrated remedial action;
 - ISF information was filed late because of vessel diversion due to factors outside of the ISF Importer's control;
 - Presenting party acquired the information from another party in accordance with ordinary commercial practices and can demonstrate it reasonably believed the information to be true.
- Aggravating Factors Include:
 - Lack of cooperation with CBP;
 - Evidence of smuggling;
 - Multiple Errors on ISF;
 - Rising error rate on transmission of ISF information.

For those who are not yet participating in the ISF program, we strongly recommend that consideration be given to the benefits that will result from active participation during the flexible enforcement period.

Please feel free to contact your Liberty Account Representative with any questions, concerns or for any reason at all.



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