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### **CBP to Phase in 10+2 Enforcement - Additional info**

During recent NCBFAA webinars and a media conference call, U.S. Customs and Border Protection officials discussed the graduated, escalated enforcement approach CBP will take beginning January 26th, when it "fully enforces" the 10+2 interim final rule that requires Security Filing information from importers and additional information from carriers for vessel (maritime) cargo before it is brought into the U.S. (The interim final rule was effective on January 26, 2009; however, it provided a one year delayed enforcement period (until January 26, 2010) to allow the trade to work through various problems and to come into compliance with the requirements.)

#### **CBP Will Not Use Data Collected During Delayed Enforcement Against Trade**

CBP officials state that they will not use the data collected during the one-year delayed enforcement period against the trade, as it was given in "good faith." However, for those that did file during this period, it will remain a mitigating factor.

#### **CBP to Look at Data from an Enforcement Perspective Starting January 26th**

CBP will be doing an analysis of the Importer Security Filing data generated or lack of data submitted beginning on January 26, 2010 and will be looking at it from an enforcement perspective. Therefore, lack of filing or inaccurate filings after this date can be held against the filer when CBP moves towards stricter enforcement of the ISF requirements.

#### **No Liq Damages for 1st Quarter; CBP to Issue Warning Letters, Work with Filers**

CBP states that it will not be issuing any liquidated damages for ISF issues during the first quarter beginning January 26, 2010. CBP intends to use the first quarter to identify importers that are not filing and filers that are having issues with their ISFs. During the first quarter, CBP will be issuing warning letters and/or calling the importers (and filers if separate) to communicate with them about what they are lacking or issues with their ISFs. This will put the trade on notice that their data has been reviewed in an "enforcement light".

If there are issues involved that require CBP to take specific actions for reasons other than ISF, such as smuggling or national security, CBP will move against those entities with the full penalty tools that it has in place. This includes placing shipments on hold, issuing do not loads (DNLs), non-intrusive inspections (NIIIs), and conducting physical examinations. However, ISF stand-alone issues will not cause CBP to take such actions. (CBP officials noted that the attempted terrorist attack that occurred on December 25, 2009 will have ramifications in both the passenger and cargo environments.)

#### **Those Not Filing Will See Holds on Shipments in 2nd and 3rd Quarters**

Moving into the second and third quarters, those that do not file will see holds on shipment, NIIIs, document reviews, and/or physical examinations.

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### **Liquidated Damages to Start in Third and Fourth Quarters**

During the third and fourth quarters, CBP will take a much stronger enforcement approach. By the third and fourth quarter, the ISF data generated will be used and CBP will begin to issue liquidated damages claims. There will also probably be more frequent holds on shipments that should have an ISF but do not. In addition, during these quarters CBP will begin to look at data accuracy as a key point and make sure that filers have bonded their ISF submissions appropriately.

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