

# Drawback Currents Newsletter

## Volume 3: Issue 7: CBP to Issue Penalties for Export Reporting Violations

### WCBP Issues Penalties for Export Violations

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The On January 2, 2009, US Customs and Border Protection published notice in the Customs Bulletin (CBP Dec. 08-50) that penalties for violations of the Foreign Trade Regulations (FTR) will become effective February 1, 2009 for all violations occurring on or after that date. CBP Dec 08-50 also published the agency's guidelines for mitigation of such penalties.



The Foreign Trade Regulations are codified at 15 CFR Part 30. The FTR, which became effective September 30, 2008, set forth requirements for filing export declarations. The FTR requires pre-departure electronic filing of export information in the Automated Export System (AES) for all non-exempt shipments. Penalties for failure to file, or for late filing, are up to \$10,000 per violation. The FTR also imposes penalties of up to \$10,000 for violations of other FTR provisions. The CBP mitigation guidelines are divided into the following four categories:

1. Failure to file electronic export information any filing more than 10 days late will be treated as a failure to file.

2. Late filing of electronic export information

any filing made after notification from the government of the violation will be treated as a failure to file.

3. Other FTR violations, including the following: incorrect value, USPPPI, commodity description, port, consignee, end user, etc.; failure to identify routed export transactions; failure of an authorized agent (AES filer) to obtain a power of attorney; failure to provide carrier with proof of filing citation; failure to retain required records for 5 years.

4. Carrier Penalties, including: loading cargo without proof of filing; and, failure to report proof filing citation or exemption on manifest.

In Dec. 08-50, CBP states that "penalties may be assessed against any culpable parties with respect to the export transaction." This could include the US principal party in interest (the exporter), the forwarder, the carrier and/or the foreign consignee involved in a single violation. CBP also states that the absence of a systematic export compliance

program is an aggravating factor in disposition of penalty cases. Note that exporters and forwarders engaged in export transactions that also violate the Export Administration Regulations or OFAC regulations are subject to penalties of up to \$250,000 per violation, in addition to the CBP penalties under the FTR.

If you have questions regarding compliance responsibilities under the FTR or other export control laws, or have questions regarding CBP's mitigation guidelines, please feel free to contact me at [esmithweiss@gdlsk.com](mailto:esmithweiss@gdlsk.com).

**Ask the Expert:** How long until we receive a refund check?

During challenging economic times especially, companies seek to trim costs in order to enhance profitability or in some cases, to save jobs. A common question I am asked by potential claimants is, "How long until we receive a refund check?" This depends on a variety of factors including; the number and complexity of the import and export transactions; the availability of electronic records; the number of parties involved in the import and export transactions; and the motivation level of the company. Generally, the process takes between 4 and 8 months from start-up to receiving the first check.



Claimants can request **Accelerated Payment Privileges**, which expedites the payment of the claim once filed. Claimants filing under accelerated payment can typically expect a refund within 30 to 45 days from the date of filing. Without accelerated payment, a claimant could wait a year or longer. Your drawback specialist should prepare and file this application along with various other Customs applications needed to make the process more efficient.