

UK P&I CLUB



LP Bulletin

Friday 26th October 2012

Bulletin 851 - 10/12 - Enhanced scrutiny of APIS reporting - USA

The United States Customs and Border Patrol have tightened their scrutiny of the Advanced Passenger Information System. Members should be aware of potential fines emanating for inaccurate or untimely submissions.

In October 2007 the US Customs and Border Protection (CBP) announced the Advanced Passenger Information System (APIS) was created to provide Customs officials with pre-arrival and departure manifest data on all passengers and crew members. APIS requires transmitting passenger and crew manifests accurately and timely. Fines for transmitting inaccurate information are US 5,000 for the first offense and 10,000 thereafter. Although these fines were in effect since 2007, Customs has not been enforcing the fines until recently.

The Club has learned that US Customs Border Protection are strictly enforcing the APIS regulations and issuing fines for non-compliance. Minor errors such as misspelled names and transposed dates are generating fines starting at US 5,000. Fines escalate to 10,000 for additional infractions. We strongly urge vessel owners to ensure complete accuracy in the information that is submitted to Customs via the APIS on line system to avoid any fines being issued.

The most recent APIS factsheet as published by the CBP is reproduced overleaf for your guidance.

QUOTE

APIS Penalty Fact Sheet

When APIS discrepancies are noted, Port Directors will immediately contact the carrier's port APIS Coordinator in person or by telephone. For scheduled airlines, the notification will not be made to the pilot. For non-scheduled carriers, the notification may be given to the pilot.

Penalty cases can involve highly complex facts and issues. Port Directors are responsible for establishing the facts in support of a violation and for timely and accurate penalty case initiation. A penalty notice (CF 5955A) should be mailed within 30 days of discovery of a violation to the carrier's address or to the pilot in-care-of the carrier's address. Fines Penalties and Forfeitures (FP&F) is responsible for verifying case sufficiency and processing the penalty to completion.

Customs authority to assess penalties is established by statute. Advance Passenger Information System (APIS) penalties are assessed under two statutes—19 USC 1436, which covers failure to transmit passenger and crew APIS manifests and 19 USC 1644a, which covers transmitting incomplete or inaccurate passenger and crew APIS manifests (details are below under APIS Penalty Laws). The statute of limitations for APIS penalties is five years from the date of the discovery. The regulatory authority for APIS is 19 CFR 122.49a.

19 CFR 171.2(b)(2) provides a 60-day period to petition in response to a penalty. All the options available to violators are as follows:

- Full payment within 60 days of the date of the penalty notice.
- Request for extension within 60 days of the date of the penalty notice—The extension request must be in writing and may be approved at the discretion of the FP&F Officer (19 CFR 171.2(c)).
- Petition within 60 days of the date of the penalty notice. To be considered timely, petitions must be filed within 60 days of the date of the mailing of the penalty notice, unless extensions are granted. Petitions must be in writing and addressed to the FP&F Officer designated in the penalty notice. Electronic signatures are acceptable. Petitions and supporting documents should be in English.
- If a violator is dissatisfied with Customs decision in response to the original petition for relief, a supplemental petition may be filed. Supplemental petitions should, but are not required to, contain new information or evidence not previously considered or presented in the initial petition. Supplemental petitions must be filed within 60 days of the date of notice to the petitioner of the decision from which further relief is requested.
- No response—If the violator fails to respond in a penalty case, the collection process will continue by one of the following options: demand against the surety or, if no bond, billing of the violator in anticipation of filing suit.

APIS Penalty Laws

Conveyance Arrival/Departure (19 USC 1436)

19 USC 1436 provides for penalties involving the arrival, reporting, entry, and clearance of vessels or aircraft and the arrival, reporting and entry of vehicles established in 19 USC 1433, 1434, and 46 USC App. 91. Penalties are also applicable for the filing of any false manifest, data, or information with Customs. While seizure of the conveyance is provided for under 19 USC 1436, the conveyance generally will not be seized for a first-time violation.

- 1) **Violator** - The penalty is issued to the pilot of the aircraft, master of the vessel, or operator of the vehicle for failure to report arrival and/or present documentation required by regulation. If the pilot, master, or operator is an employee of a bonded international carrier, the penalty will be issued against the individual pilot, master or operator in care of the carrier.
- 2) **Penalty Amount** - A first-time violator is subject to a \$5,000 penalty. A second or subsequent violation subjects the violator to a \$10,000 penalty. Note: The case-initiating officer must clearly document prior violations by the master, pilot, or person in charge if assessing a penalty for a second or subsequent violation. An additional penalty equal to the value of cargo on an unreported or improperly entered conveyance may be assessed if the facts and circumstances so warrant pursuant to 19 USC 1436(d).

Penalties for Violation of Aircraft Regulations (19 USC 1644a)

Any person who violates any of the regulations that apply to aircraft per 19 CFR 122.2 (and are found in 19 CFR Part 122) may be subject to a monetary penalty of \$5,000 for violation of that regulation per 19 USC 1644a. This penalty will not be assessed if the Part 122 regulation violated already specifically provides for a monetary penalty under 19 USC 1436, 1584 or other enumerated statute (see 19 CFR 122.161).

www.cbp.gov/xp/cgov/travel/inspections_carriers_facilities/apis/

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