

Importer Security Filing Enforcement Progresses

Starting with Importer Security Filings (ISF) due on or after July 9, 2013, US Customs and Border Protection (CBP) will begin to use liquidated damages as an enforcement tool for compliance. For over 3 years, CBP relied on outreach, education, and port examinations for non-compliant ISF Importers.

The information in this notice is based on the [CBP ISF Regulations](http://www.gpo.gov/fdsys/pkg/CFR-2013-title19-vol2/pdf/CFR-2013-title19-vol2-part149.pdf) <http://www.gpo.gov/fdsys/pkg/CFR-2013-title19-vol2/pdf/CFR-2013-title19-vol2-part149.pdf>, [CBP ISF FAQ's](http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/10_2faq.ctt/10_2faq.doc) http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/10_2faq.ctt/10_2faq.doc and public statements CBP has made to media outlets and to trade groups.

ISF liquidated damages arise from the bond contract. Any ISF Importer with certain continuous bonds on file (Activity Codes 1, 2, 3, 4 or 16) automatically agrees to comply with all ISF requirements. Breaches of those requirements results in a claim for liquidated damages of \$5,000, subject to \$10,000 in total per ISF transaction number. (Caution: the cap is a policy decision by CBP, which can be easily changed without formally rewriting the regulations or statute.)

Ports will be responsible for identifying the ISF violations, and for a while, CBP HQ will review all violations before the port will issue a CBP Form 5955a. A proper ISF is complete, accurate, and timely. Some ports may focus more attention on missing ISFs, while others may see most problems with late or inaccurate ISFs. Any violation of the ISF regulations can result in liquidated damages.

It is CBP's policy to identify ISF violations promptly (within a month of the occurrence). However, workload fluctuations and HQ review may delay the issuance of the CBP Form 5955a. Additionally, CBP is not waiving any of its rights, including the right to pursue violations at any time up to 6 years after the breach of the regulations occurred.

ISF ENFORCEMENT HINTS

The NCBFAA ISF Committee had a recent call with CBP about the ISF enforcement that will go into effect on July 9, 2013. We have highlighted a number of answers to several questions we asked. There are still a few unanswered questions that CBP is reviewing for the committee and we will share those once we have the replies from CBP.

- Importer Security Filing enforcement begins on July 9, 2013. ISF's filed on or after that day, must be complete, timely and accurate.
- For practical purposes, CBP will measure timeliness from 24 hours prior to the ship's departure.
- CBP has no message about the timeliness of the ISF. The ISF filing and acceptance are in the ISF history when a filer transmits and receives the acceptance.
- An ISF is not an entry and does not liquidate. There is no closing of an ISF transaction. The statutory limitation for liquidated damages is 6 years.
- For ISF's using a single transaction bond, the liquidation of the entry does not close the ISF.
- An ISF that is timely filed, but does not immediately match the manifest is not in violation. The filer must correct the information on the ISF to match the carrier manifest before the arrival of the vessel to avoid liquidated damages. CBP will still send out non-match warnings as they do now.
- CBP has informally told the trade that they will take a measured approach and focus the highest priority on negligent importers that have not filed and on importers that had been filing and then stopped. However all violations are subject to enforcement and CBP could issue penalties where they think it is necessary.
- All potential ISF liquidated damages cases will be sent to CBP Headquarters for review. This will be in effect for at least the first 12 months.
- CBP will most probably not issue a claim for shipments that are a little bit late or missed by an importer that has consistently been compliant. **PAST PERFORMANCE** will be a part of the review and a good record will count.
- CBP will not allow an entry if an ISF has not been filed. (Remember the term "ISF Jail"?).
- CBP will watch for abuse of the use of an ISF without a bond for commercial shipments.
- A deleted ISF is not a non-file. There may be legitimate reasons to delete an ISF and replace it.
- There could be multiple reasons for liquidated damages penalties on a particular ISF. However, CBP has set a cap of a maximum of \$10,000.00 against any one ISF.
- There will be no comparison between the ISF and the entry. The ISF is for targeting. If there are differences between the manifest and the ISF or if there is an exam that shows that the ISF was incorrect, then the ISF could be subject to liquidated damages.
- CBP will not generally consider small generic discrepancies as a violation of accuracy, for example shirts vs. blouses.
- CBP will take systematic problems into consideration in reviewing the cases.

CBP has the expectation that importers must be 100% compliant. If not 100% compliant, importers could be exposed to liquidated damages cases.