

*The International
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March 2010

Importer Security Filing (ISF) – Assessment and Mitigation of Penalties *(part 2 of 2)*

The ISF Importer, or its agent, must submit an ISF before cargo is laden at a foreign port for all non-bulk cargo destined to arrive in the United States by vessel. An ISF is required for each shipment, including elements at the lowest bill of lading level (*i.e., at the house bill level, if applicable*). Of the ten data elements required in the ISF, two of the elements – the Container stuffing location and Consolidator (stuffer) – are subject to flexibility as to timing. These two elements must be submitted as early as possible (no later than 24 hours prior to arrival in a U.S. port). The other eight elements must be submitted no later than 24 hours prior to lading.

The party who filed the ISF must update the ISF if, after the filing and before the goods arrive within the limits of a port in the United States, there are changes to the information filed or more accurate information becomes available.

U.S. Customs and Border Protection (CBP) considers a violation to be: a late filing, an inaccurate filing, a failure to update a filing, or a failure to withdraw a filing that was already made. In the latter instance, an ISF importer filed promptly but, for whatever reason, the shipment was delayed or cancelled. CBP expects that the initial ISF will be withdrawn and filed anew when the shipment is actually going to occur.

In situations where an ISF importer fails to file, CBP will withhold the release or transfer of the cargo until the required ISF information is received and has had the opportunity to review the documentation and conduct any necessary examination. CBP also reserves the right to not permit unloading of merchandise for which no ISF has been filed, and, if such cargo is discharged without permission, it may be subject to seizure.

If an ISF is late, CBP may assess a claim for liquidated damages against the party in the amount of \$5,000 per late ISF. If an ISF is inaccurate, CBP may assess a claim for liquidated damages in the amount of \$5,000. With regard to liquidated damages claims assessed for an inaccurate ISF, CBP will consider the transmission closest in time to, but prior to, 24 hours prior to lading or 24 hours prior to arrival, whichever is applicable.

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Importer Security Filing (ISF) – Assessment and Mitigation of Penalties (Cont.)

If an ISF Importer submits an inaccurate ISF update pursuant to 19 CFR 149.2(d), a claim for liquidated damages may be assessed for the first inaccurate ISF update in the amount of \$5,000. If an Importer fails to withdraw an ISF as required by 19 CFR 149.2(e), CBP may assess liquidated damages in the amount of \$5,000.

Liquidated damages for ISF violations may be cancelled or reduced in the following circumstances:

1. **First violation.** If an ISF Importer incurs a liquidated damages claim for filing a late or inaccurate ISF *or* an inaccurate ISF update, the liquidated damages claim may be cancelled upon payment of an amount between \$1,000 and \$2,000, depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.
2. **Subsequent Violations.** If an ISF Importer incurs a subsequent liquidated damages claim for filing a late or inaccurate ISF or an inaccurate ISF update, the liquidated damages claim may be cancelled upon payment of an amount not less than \$2,500 if CBP determines that law enforcement goals were not compromised by the violation.
3. No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.

CBP will consider all available information in a petition for relief from liquidated damages, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed claim for liquidated damages or penalties.

1. **Mitigating Factors** (these are not exhaustive):
 - a. Evidence of progress in the implementation of the ISF requirement during the flexible enforcement period (*i.e.*, January 26, 2009 through January 26, 2010).

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- b. Small number of violations compared to the number of shipments for which ISFs were required.
- c. An ISF Importer who is a certified Tier 2 or Tier 3 C-TPAT member may receive additional mitigation of up to 50% of the normal mitigation amount, depending upon tier of C-TPAT participation.
- d. Demonstrated remedial action has taken to prevent future violations.
- e. ISF information was filed late because of vessel diversion due to factors outside of the ISF Importer's control (*e.g., due to weather*).
- f. Regarding an inaccurate filing, the presenting party acquired the information from another party in accordance with ordinary commercial practices, and can demonstrate that it reasonably believed the information to be true, and it was not reasonably able to verify the information. This is an extraordinary mitigating factor that may warrant cancellation of a claim without payment.

2. Aggravating factors:

- a. Lack of cooperation with CBP.
- b. Evidence of smuggling or attempt to introduce merchandise contrary to law. This may be considered an extraordinary aggravating factor.
- c. Multiple errors on the ISF.
- d. There is a rising error rate which is indicative of deteriorating performance in the transmission of ISF information.