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Importer Security Filing (ISF) Enforcement

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Preamble: On January 26, 2009, the new rule titled *Importer Security Filing and Additional Carrier Requirements (commonly known as "10+2")* went into effect. This rule applies to import cargo arriving to the United States by vessel. Failure to comply with the rule could ultimately result in monetary penalties, increased inspections and delay of cargo.

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A. Definitions

1. ISF – Importer Security Filing otherwise known as 10+2
2. DNL – Do Not Load
3. CBP – Customs and Border Protection
4. C-TPAT – Customs Trade Partnership Against Terrorism

B. Information

The existing liquidated damages provisions effective with ISFs required to be filed on/after July 9, 2013 will apply. Customs and Border Protection stressed that every liquidated damages enforcement action instituted by a port will be reviewed by CBP headquarters personnel before issuance.

Liquidated damages are proscribed in CBP 2010 ISF Publication. The relevant parts are reprinted below:

“As CBP’s enforcement regime matures, non-compliance importers will continue to see increases in the amount of manifest holds and examinations, and will be subject to the greater use of stricter enforcement measures such as Liquidated damages and Do Not Load (DNL) holds. For C-TPAT companies that remain non-compliant, CBP will consider suspending, reducing and even revoking their C-TPAT status.”

CBP Headquarters will evaluate instance of non-compliance on a case-by-case basis and will consider factors surrounding violations before applying Liquidated damages.



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C. Liquidated Damages

CBP will assess Liquidated Damages in accordance with the relevant mitigation guidelines which were published in the CBP Bulletin on July 17, 2009 (excerpted below). While there may be multiple errors on an ISF transmission, in accordance with the guidelines, CBP may assess a claim for Liquidated Damages as follows: **\$5,000 USD** per late ISF, **\$5,000 USD** per inaccurate ISF, and **\$5,000 USD** for the first inaccurate ISF update.

1. Assessment of Liquidated Damages Claims for ISF Violations

Late filing. If an ISF Importer submits a late ISF, Port Directors may assess a claim for liquidated damages against the party in the amount of **\$5,000 USD** per late ISF under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2.

Inaccurate Filing. If an ISF Importer submits an inaccurate ISF, Port Directors may assess a claim for liquidated damages against the party in the amount of **\$5,000 USD** per inaccurate ISF under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2. 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, prior to lading, or 24 hours prior to arrival, whichever is applicable.

Updates. If an ISF Importer submits an inaccurate ISF update pursuant to 19 CFR 149.2(d), Port Directors may assess a claim for liquidated damages against the party for the first inaccurate ISF update in the amount of **\$5,000 USD** under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2 .

Withdrawals. If an ISF Importer fails to withdraw an ISF as required by 19 CFR 149.2(e), Port Directors may assess a claim for liquidated damages against the party in the amount of **\$5,000 USD** under 19 CFR 113.62(j), 113.63(g), 113.64(e), or 113.73(c) for violation of 19 CFR 149.2.

- a. First violation between **\$1,000** and **\$2,000 USD**, depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.
- b. Subsequent violations not less than **\$2,500 USD** if CBP determines that law enforcement goals were not compromised by the violation.
- c. No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.

2. Cancellation of Liquidated Damages Claims for ISF Violations

- a. First violation – If an ISF Importer incurs a liquidated damage 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 USD,



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depending on the presence of mitigating or aggravating factors, if CBP determines that law enforcement goals were not compromised by the violation.

- b. 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 USD if CBP determines that law enforcement goals were not compromised by the violation.
- c. No relief will be granted if CBP determines that law enforcement goals were compromised by the violation.

These guidelines were published in the Customs Bulletin on July, 17, 2009 and are available through the link below.

<http://www.cbp.gov/border-security/ports-entry/cargo-security/importer-security-filing-102>

