

Importer Security Filing (“10+2”) – From Delayed Enforcement to Graduated Enforcement

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The one year period of delayed enforcement of the Importer Security Filing (ISF) will end on Jan. 26, 2010 and enforced compliance of the requirement will commence.

US Customs & Border Protection (CBP) has unveiled its strategy for graduated enforcement of the ISF. Enforcement will be tightened up in phases during the year. Each 3-month quarter of 2010 will mark a new phase of ISF enforcement.

During the first quarter of 2010, CBP will monitor the ISF filings, noting the importers that are filing and those who are not. The agency will also monitor the completeness and accuracy of the ISF filings. CBP will notify companies that are not filing or that have errors or discrepancies in their filings and work with them to bring their ocean imports into compliance. Importers not filing ISFs may also anticipate that their imports will be subject to further scrutiny, with CBP calling for document reviews, non-intrusive inspection or intensive examination of the cargo.

In the second and third quarters of 2010 CBP will ramp up enforcement of the ISF requirement. Importers not filing ISFs or having serious errors or discrepancies in their ISF filings can anticipate having their ocean imports delayed and held for examinations.

CBP does not intend to issue penalties or liquidated damages assessments for ISF violations occurring during the first three quarters of 2010 or for transactions occurring prior to the Jan. 26 enforcement date. An exception to this would be for fraud, smuggling, or terrorism connected with ocean imports or egregious violations of the ISF requirement.

CBP is clear, though, in saying that they really want the data and not penalties. CBP also says they do not want to disrupt the flow of legitimate cargo into the US. The primary intent is to use an informed compliance approach to bring importers into compliance with ISF filing requirements.

Starting in the fourth quarter of 2010 (Oct. 1, 2010), CBP will begin issuing liquidated damages (penalties) for ISF violations. Proposed assessments of liquidated damages will be initiated at the ports of entry. The proposed assessments will first be routed to CBP Headquarters for review. The intent is to ensure that ISF liquidated damages assessments will be handled in a uniform manner across the country. CBP Headquarters will approve the assessment or make other recommendations for disposition of the matter and send the proposed assessments back to the originating ports. If approved by Headquarters, the ports will then issue the ISF liquidated damages notices to the importers. Importers will deal with the ports of entry for payment or

mitigation of the ISF liquidated damages. This approach will be used for at least the first year, after which it could be extended or full responsibility for ISF liquidated damages assessment transferred back to the ports of entry.

Finally, the Final Rule on ISF has not been published. It is not known at this time when that will occur or whether CBP will solicit further comments on the ISF regulations. In drafting the Final Rule, CBP may take into account its experience with the ISF during the delayed enforcement period and the first parts of graduated enforcement.