

FAQ: Updated Importer Security Filing (ISF) Enforcement Strategy

What are the key points behind the new strategy?

- CBP has implemented a revised enforcement strategy which provides for local discretion at the port level based on infrastructure and staffing resources (i.e., holding freight vs. issuing liquidated damage claims).
- The strategy further provides for a standardized approach which will permit CBP HQ to conduct analysis into non-compliant ISF filings with the intent to conduct focused outreach.
- The tenets of the strategy include at least three warnings (informed compliance outreach) to each violating importer before CBP will pursue a liquidated damage claim against that importer's bond.
 - The informed compliance outreach may be by e-mail, telephone, or letter.
 - This approach allows CBP to have greater visibility into who are the repeat violators, and it exposes any geographic areas that may require more focused ISF outreach.
- The 12-month HQ review period that began on July 9, 2013 has also been changed as part of the revised enforcement strategy. The current enforcement review will conclude on May 13, 2015. HQ will be conducting analysis of the informed compliance records, effectively reviewing each record of violation to ensure that the violation aligns with the intent of the enforcement strategy.
- Liquidated damages claims should be expected within 6 months of the violation; however, this policy does not preclude CBP's six-year statute of limitations for liquidated damages claims.
- Ports have been advised to focus enforcement actions on the most severe violations (i.e., significantly late, or missing ISFs).
 - "Significantly late" will be defined by the individual ports, and is intended to only apply to those shipments where the ISF filing (or lack thereof) negatively impacted CBP's ability to effectively assess risk and hold cargo.
 - ISF filings after arrival are always late and exposed to both liquidated damages claims and ISF holds.

What is affected by the new strategy?

- The initiation of liquidated damages claims for ISF violations.
- The port directors retain the discretion to enforce ISF by using the cargo holds that were introduced on July 9, 2013.

How will CBP track the violations?

- CBP will use an internal database to keep track of the violations. The database is visible nationwide, so officers on the west coast will be able to see actions taken by officers on the east coast against specific importers.
- CBP HQ will perform analysis of the data with the intent of identifying locations or importers where enhanced compliance outreach is required.

Is the enforcement only for ISF-10?

- Yes. Enforcement actions (including liquidated damages) for ISF-5 violations are not currently enforced, pending changes to the regulation.

Isn't this policy unfair to high-volume importers?

- No. The law has been in place since January 26, 2009, and CBP believes ample time has been provided for adjustment to the requirements of the law. Conversely, an enforcement approach that considered percentage based on volume is certainly unfair to less experienced importers.

What is CBP going to do about the liquidated damages claims that were requested prior to May 13, 2014?

- Unless in cases of fraud or criminal activity, CBP HQ will not be approving liquidated damages claims prior to May 13, 2014.