



**JAMES J. BOYLE & CO.**  
**JJB LINK / JJB INLAND / JJB GLOBAL**

# The Current

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## 10+2 Importer Security Filing

### **ISF Liquidated Damages (Penalty) Enforcement Expected by End of Summer 2011**

Dear Valued Customer:

As you may know, the effective date for the Importer Security Filing (ISF, commonly known as “10+2”) was January 26, 2009 and full enforcement began on January 26, 2010 after a one-year flexible enforcement period. During the period since January 26 to present, CBP has stated that it has been applying a “measured, common sense approach” to enforcement, which includes exercising the least punitive measures necessary to obtain full compliance, evaluating noncompliance on a case-by-case basis, and continuing to provide outreach and guidance to trade industry entities.

**WARNING:** *U.S. Customs and Border Protection (CBP) has just recently announced that it will begin issuing liquidated damages (penalties of \$5,000 for each violation; up to \$10,000 per shipment) for non-compliant ISF filings sometime before the end of summer 2011.*

James J. Boyle & Co. (JJB) wishes to inform its customers of the need to proactively prepare for compliance.

#### **WHAT ARE COMMON PROBLEMS AND POTENTIAL PENALTIES I CAN RECEIVE AS IMPORTER?**

Under the ISF Rule, CBP could assess penalties up to **\$10,000 per ISF** for one or more of the following violations:

**LATE ISF:** \$5,000 penalty if the ISF is not filed at least 24 hours prior to lading aboard a vessel destined to the USA. This includes untimely filing of an ISF update and/or flexible ISF filing.

- **In 2009, nearly 50% of all ISF filings were filed late** by the Trade and are often caused by late ISF data/documentation from the Importer or their supplier. Therefore, if you use JJB as your ISF filing agent, it is important for you to submit ISF data and documentation to JJB well in advance of vessel departure to avoid delays to ISF filing and exposure to penalties.

Customs  
 Brokerage

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Cargo  
 Insurance

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- JJB’s policy requires that the importer or their foreign supplier provide complete and accurate ISF data/documentation to us at least **72 business hours prior to lading aboard a vessel destined to the USA**. This allows ample time for JJB to validate accuracy and completeness, research corrections, as well as to process and file the ISF. Please communicate this requirement to all overseas suppliers as necessary.
- If documentation and/or data are provided to JJB USA less than 72 business hours prior to lading, JJB cannot guarantee timely filing of ISF 24 hours prior to loading at the foreign port.
- If ISF documentation/data are provided to JJB AFTER sailing date of the vessel, this is considered a “*Known Violation*”. If the Importer has no Customs bond on file, CBP will require the purchase of a Single Transaction Bond (STB) to cover ISF liabilities before the shipment will be released. In this case, the Surety Company may not approve the STB for a *Known Violation* without the posting of collateral by the Importer in the form of cash or letter of credit (L/C) equal to the maximum liquidated damages liability amount of \$10,000 per ISF, and collateral could be held until the statutory period (6 years) has expired.

**INACCURATE ISF:** \$5,000 per inaccurate and/or incomplete ISF filing. This includes missing and/or incorrect AMS bill of lading number representing the lowest level (e.g., HB/L).

- Incomplete or inaccurate **AMS bill of lading** with SCAC code at the **lowest bill level** (AMS house bill) is a very common problem. Please ensure that the bill of lading number provided by your Carrier or Freight Forwarder is the **correct and complete number that was transmitted to CBP in AMS to avoid a mismatch**.
- Incorrect/incomplete names and/or addresses of the parties or other required data can also lead to penalties.

**AMENDMENTS:** \$5,000 for inaccurate or late ISF updates including an incorrect update to a flexible ISF filing.

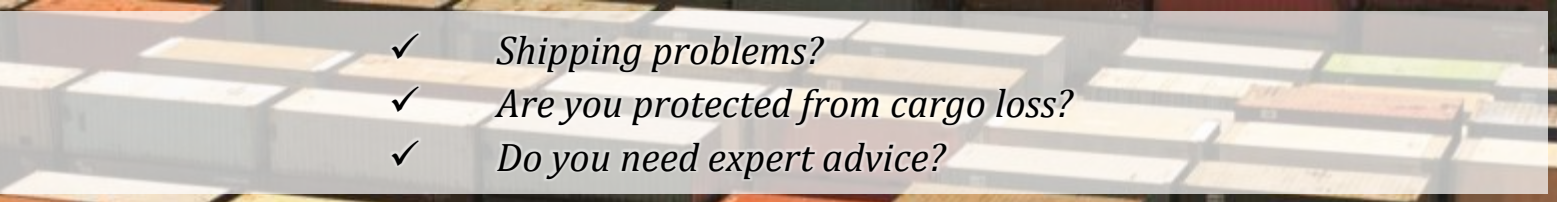
- Inaccurate or incomplete data requires the filing of an ISF amendment to CBP upon discovery. Importers must promptly forward any change in data or documentation to JJB that requires an amendment to the original ISF filing. Failure to amend an incorrect ISF filing is subject to penalty.
- Certain “flexible” data elements used due to unknown facts at the time of filing must be corrected and transmitted to CBP no later than 24 hours prior to arrival in the USA, or is subject to penalty.

**WHO IS RESPONSIBLE FOR PENALTIES?**

Under the ISF final rule, ultimate responsibility for ISF and correctness of the data rests with you as the importer of record to accurately and completely submit ten (10) data elements electronically to CBP no later than 24 hours prior to lading (loading) at the foreign port of lading aboard a vessel destined to the U.S.A. As a business decision, an importer may designate an agent to file ISF on their behalf, but this does not relieve the importer of liability. An importer that designates JJB as their ISF filing agent agrees to JJB’s [terms and conditions of service](#).

**WHAT ARE MY ISF BONDING OBLIGATIONS?**

All ocean importers are required to obtain a bond to guarantee ISF compliance. The importer is fully responsible for liquidated damages for an ISF as the bond principal. If you currently possess a **Continuous Import Bond**, it will be sufficient to cover **both** your ISF and Customs entry filings. If you do not currently possess a **Continuous Import Bond**, you will be required to purchase **both** (1) a **Single Transaction Bond** to secure your ISF filings as well as (2) a **Single Entry Bond** to secure your Customs entry filings after the enforcement date of Jan. 26. 2010. Accordingly, you will be billed for two separate bond charges for each applicable import transaction.



- ✓ *Shipping problems?*
- ✓ *Are you protected from cargo loss?*
- ✓ *Do you need expert advice?*



## HOW CAN I LIMIT MY EXPOSURE TO ISF PENALTIES?

- Before exporting any ocean cargo to the USA, unless self-filing, the **US Importer must nominate a US Agent** to file ISF on their behalf. A valid **Customs Power of Attorney (POA)** is required.
- If the Importer has no **Customs bond**, an **ISF STB/fee** will be required in addition to an import entry bond/fee.
- Be sure to contact your nearest JJB USA destination branch to **make arrangements in advance**.
- Once you have nominated JJB as your ISF filing agent, a current version of JJB's ISF Form will be provided to you. You must submit a complete and accurate **ISF Form electronically** (softcopy) by email attachment to the JJB USA destination branch for all ocean shipments **more than 72 business hours prior to lading aboard a vessel destined to the USA**. Alternate methods of data delivery may be possible, if arranged in advance. Please contact your local JJB branch office for arrangements to discuss your ISF requirements with our I.T. dept.
- JJB is not responsible for late-filed ISF or any penalties due to incorrect, incomplete, or untimely data.

## DON'T DELAY. ISF ENFORCEMENT IS HERE!

If you have not yet begun filing your ISF through James J. Boyle & Co. or another designated ISF agent, or if you have been experiencing difficulties with obtaining and providing ISF data in a timely manner, please do not delay efforts to comply with the ISF rules because penalty enforcement will begin very soon!

If you wish to **appoint JJB as your ISF agent** or have any questions, please do not hesitate to contact your nearest JJB import branch manager for more details.

For information and details on Importer Security Filing, please see previous JJB Newsletters and CBP web site at:

- CBP 10+2 Security Filing "10+2" [http://www.cbp.gov/xp/cgov/trade/cargo\\_security/carriers/security\\_filing/](http://www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/)
- JJB Newsletter 7/24/09: ISF Penalty Mitigation Guidelines: <http://www.jjboyle.com/IndustryNewsAttachments/JJB-TheCurrent-07242009.pdf>
- JJB Newsletter ISF Update 1/23/09: <http://www.jjboyle.com/IndustryNewsAttachments/Newsletter-01232009-ISFUpdate.pdf>
- JJB Newsletter ISF Interim Final Rule 12/31/08: <http://www.jjboyle.com/IndustryNewsAttachments/Industry%20News%20-%20Dec31-2008.htm>
- JJB Newsletter ISF 10+2 Interim Final Rule 11/25/08: <http://www.jjboyle.com/IndustryNewsAttachments/ISF%20-%20Final%20Rules.pdf>

We thank you very much for your time and should you require any assistance or if you have any questions, please consult with your local James J. Boyle & Co. office listed below.

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