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CBP issued a Federal Register Notice December 24, 2009, making amendments to the Interim Final Rule for Importer Security Filing and Additional Carrier Requirements. Can you summarize the notice? This notice provides clarification on the following issues:

- The bond terms to the ISF bond in Appendix D to the Customs regulations regarding bonds (19 CFR, Section 113) adding the liability amounts for a breach of the bond and by adding a paragraph to cover the single transaction bond, which had not been included prior.
- CBP is revising the Appendix D ISF bond language to add the \$5,000 liquidated damages clause contained in the other bond provisions. This will bring the Appendix D ISF bond language into conformity with sections 113.62, 113.63, 113.64, and 113.73 and with CBP’s stated intention in the Supplementary Information section of the interim final rule.

The notice also clarifies the applicable time period for an Appendix D ISF bond. The current Appendix D language only states the bond is effective for one year beginning with the effective date and for each succeeding annual period, or until terminated which is applicable to a continuous bond. The language is being revised to make clear the Appendix D ISF bond may also be used to cover a single transaction.

When can a single transaction entry bond (STB) on CBP Form 301, a Continuous Entry Bond on CBP Form 301, and the new Appendix D bonds be utilized?

The following charts show the many options of filing the ISF and entry, which form is utilized, where it must be filed, and the reference number that must be provided.

Method ISF Filing	Bond for ISF Filing	Bond For Entry Filing	Joint Form	Reference No.	Location Filing
Unified Filing	One CONTINUOUS For ISF & Entry		CF301	N/A	Revenue Division
Unified Filing	One CONTINUOUS For ISF & Entry		CF301	Entry # & ISF TN	PORT
Separate Filing	One CONTINUOUS For ISF & Entry		CF301	N/A	Revenue Division

When will the ISF obligation be considered final similar to the liquidation of an entry?

In an entry filing, there are deadlines that are outlined in law and regulation that define when the obligations begin and end. There are no such timelines outlined for an ISF. The liquidated damages liability under the bond obligation expires 6 years from the date on which a claim accrues pursuant to the normal statute of limitations.

What are the record keeping requirements for ISF?

The CBP ISF FAQ’s fail to address the record keeping issue. There is confusion because liquidated damages liability under a bond is technically 6 years. The recordkeeping obligation arises under 19 CFR 163 and the recordkeeping requirement is 5 years (163.4).

When is the ISF required for goods loaded on a feeder vessel in a foreign port, transported to another foreign port, and then trans-loaded on a “mother” vessel destined for the U.S.?

The ISF is required to be filed 24 hours prior to the container being loaded on the vessel destined for the U.S. In this case that would be the loading on the “mother” vessel. As a practical matter, it is prudent to file the ISF as soon as you have the data available to ensure that there is a buffer of time to resolve any issues with the filing. If you or your importer knows the data, filing before the goods are loaded on the feeder vessel may be advisable.

Method ISF Filing	Separate Filing
Bond for ISF Filing	One STB for ISF and Entry
Bond For Entry Filing	
Form Used for ISF Only	Not Allowed
Reference No.	
Form Used for Entry Only	Not Allowed
Reference No.	

Method ISF Filing	Separate Filing	Separate Filing	Separate Filing
Bond for ISF Filing	CONTINUOUS ISF Only	STB for ISF Only	STB for ISF Only
Bond For Entry Filing	CONTINUOUS Entry	CONTINUOUS for Entry Only	STB for Entry Only
FORM Used for ISF Only	Appendix D	Appendix D	Appendix D
Reference No.	N/A	ISF TN	ISF TN
Location Filing	Revenue Division	NTC	NTC
Form Used for Entry Only	CF301	CF301	CF301
Reference No.	N/A	N/A	Entry No.
Location Filing	Revenue Division	Revenue Division	Port of Entry

Carriers are still loading containers without an ISF on file. How liable are the carriers in this situation? Will the importer receive a penalty?

The carriers are not responsible to determine if the importer portion (the ISF 10) is filed before the cargo containers are loaded aboard the vessel. If an ISF is not filed in a timely manner, the importer may receive a notice of liquidated damages for failure to file timely. If an ISF is not on file once arrived, the cargo may be scheduled for an exam, or cargo release processing may be halted by CBP until the ISF is on file and reviewed.

If I use the flexible filing option, and later find that the information was correct as entered, am I required to update the ISF?

If you utilize a flexible filing option (FR = Flexible Range, FT = Flexible Timing, or FX = Flexible Range and Flexible Timing) indicator in the initial transmission, then you must send an ISF filing with the CT = Compliant Transaction indicator to finalize the transaction. Failure to do so could result in liquidated damages.

If a shipment moves in-bond through the U.S. to Mexico via an In-Transit (I.T.) Bond to San Antonio, TX and then a T&E is prepared to Mexico, do we do an ISF 5 or ISF 10?

As an IT will be prepared when the goods are to arrive in the U.S. an ISF 10 must be filed with CBP.

Who is the ISF Importer of Record for Immediate Exportation (I.E.) and Transportation and Exportation (T & E) in-bond movements that require the ISF 5?

The party that is transmitting the ISF to CBP is considered to be the ISF Importer for these transactions. If a customs broker transmits a T&E on behalf of a client, the customs broker is the ISF Importer.

Will there be a comparison of the data filed on the ISF and the data filed on the entry via ABI to determine if they match or if they are inconsistent?

The statute does indicate that the ISF is a security related filing and is not to be used for commercial purposes. The ISF is filed via ABI or AMS, but it is sent to the Automated Targeting System (ATS) for analysis and review. The entry data is sent via ABI but is sent to the Automated Commercial

System (ACS) for review by CBP; however, this data is also pushed to the ATS for additional targeting purposes. So while the entry personnel at CBP will not see the results of the ISF targeting, the ISF team does have access to the entry data for a more complete look at the shipment. The simple answer is yes, and if there are serious or repeated discrepancies cus-toms sanction might be expected.

Can a customs broker utilize their own continuous entry bond for the ISF filing on behalf of clients?

Yes, but just as in the entry filing utilizing a customs brokerage bond, the broker then bears additional liability and is the responsible party for that filing should a claim for liquidated damages be issued.

If we utilize an Appendix D single transaction bond, also known as a single ISF stand-alone bond, where is this filed?

The Appendix D single transaction bond is emailed to the National Targeting Center within 12 hours (continuous hours, not ‘business’ hours) of receipt of the unique ISF transaction number. The Security Filing Transaction Number that is returned with the filing via ABI or AMS, and only that number, must be shown in the subject line of the email.

There is confusion regarding the timing measurements that appear on the progress reports that CBP issues to filers and C-TPAT importers. What measurements are utilized for this report to determine the timeliness of the ISF?

CBP had previously used only the carrier bill of lading or manifest filing date to measure the timeliness of the ISF. Some carriers do file the manifest data several days prior to the container lading dates which has resulted in some filings being indicated as untimely, when in fact they may not have been. CBP has now included the vessel departure date minus 24 hours as an additional measurement to display a broader picture of the timeliness of the ISF. While the additional measurement was added to the report, it should be noted that the regulations regarding the timeliness of the ISF has not changed. To be considered timely, the ISF must be on file 24 hours prior to the container being laden aboard the vessel departing for the U.S.

Why can't CBP issue a report with specific information regarding timeliness, as compared to the actual container loading date?

Currently CBP does not capture the actual container loading date as a unique field as part of the container status messages that carriers file. As a result, they are unable to easily generate a report depicting the timeliness of the ISF on the progress reports. CBP has indicated that the reports are an estimation only of the timeliness of the filing, and should be utilized with further analysis to determine if the filing was timely.

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