



Insights for Importers

Importer Security Filing (ISF) Overview and Risk Mitigation

On November 25, 2008, U.S. Customs and Border Protection (CBP) published the 10+2 interim final rule titled Importer Security Filing and Additional Carrier Requirements. This rule requires importers (or their agent) that ship via ocean to transmit additional information (10 data elements) prior to loading the cargo on the vessel. The purpose of this rule is to assist CBP in ensuring cargo safety and provide better security to American ports. The rule took effect on January 26, 2009, but CBP delayed enforcement for a year. Full enforcement becomes effective on January 26, 2010.

▶ Data Elements that Must be Filed

1. Importer of record number
2. Consignee number
3. Seller (owner) name/address
4. Buyer (owner) name/address
5. Ship to party
6. Manufacturer (supplier) name/address
7. Country of origin
8. Commodity HTS-6 code
9. Container stuffing location
10. Consolidator/stuffer name/address

▶ Who is Responsible?

Per CBP, "the ISF Importer is the party causing the goods to arrive within the limits of a port in the United States by vessel."

▶ Bonds

The ISF Importer (or its agent) will be required to post a security to CBP to guarantee the accurate and timeliness of the ISF transmission. Almost always, a CBP bond is used as the security.

There are four bonding options available:

Single transaction ISF

For a single ISF transmission only. The bond amount is \$10,000.

Single transaction CBP Form 301

For a unified filing. "Unified" means that the entry and ISF filing are being submitted at the same time. Only if the filings are unified (occurring simultaneously) will this type of bond work without a separate ISF bond. Import bonds are generally calculated at value plus duties, taxes and fees OR 300% of the value, unless otherwise directed by CBP.

Continuous ISF

This bond covers ISF transmissions only, not entries. All bonds are \$50,000. (Note: CBP may require an increased bond, depending on the bond principal's violation history.)

Continuous CBP Form 301

Activity codes 1, 2, 3 or 4 may be used to cover ISF filings. The activity code 1 (import) bond may be used to cover both the ISF filings and entries, whether they occur at the same time (i.e., "unified") or not. The bond amount is generally calculated at 10% of the total duties, taxes and fees paid to CBP for either the last 12 months or the next 12 months, whichever amount is greater, and is subject to rounding rules and an overall minimum of \$50,000.

▶ Bond Exemptions

The following products are exempt from requiring a bond. Please note, however, that CBP still requires the ISF to be transmitted.

- Household goods/personal effects
- Government/military
- Diplomatic
- Carnets
- International mail

Large or frequent importers usually have a continuous import bond in place. As stated above, this bond will now include coverage for ISF obligations as well. If a principal uses their import bond for ISF, they should be aware that CBP may require their existing bond be increased if liquidated damages are paid for ISF violations.

► Most Common Reasons for Claims

CBP will assess liquidated damages to the ISF Importer if the transmitted data is incomplete, inaccurate, or untimely. The maximum consequence for a violation will be \$5,000, possibly a “no-load” order on the cargo overseas, or cargo release delays at the U.S. port. Should CBP pursue the monetary recourse, called “liquidated damages”, first-time offenders will pay between \$1,000 and \$2,000 depending on mitigating or aggravating factors. Subsequent offenses will pay not less than \$2,500.

Mitigating Factors

CBP may consider leniency when issuing liquidated damages if there is evidence the ISF Importer attempted to submit ISFs during the flexible enforcement period (January 26, 2009 – 2010). CBP will also take into consideration: A small number of ISF violations compared to the number of filings; demonstration of remedial action to prevent future violations; or if the ISF Importer is a tier 2 or 3 C-TPAT participant. Tier 2 and 3 C-TPAT participants may qualify for a 50% reduction in damages described.

Aggravating Factors

There will be no leniency considered if the ISF Importer does not cooperate with CBP, there is evidence of smuggling or attempt to introduce merchandise contrary to law, multiple errors or rising error rates.

CBP has stated that liquidated damages cannot be assessed for failure to file an ISF if there is no bond in place. However, they will not release the cargo until the required bond and documentation is submitted. At such point, there is a guaranteed claim issued against the bond.

Liquidated damages are capped by the bond amount, regardless of the bond type. Various parties have commented that securing ISFs via a smaller bond could cap ISF liquidated damages liability. However, at this time we do not have any historical data to assure that CBP will not file a claim against your other existing bonds if such smaller bond becomes saturated.

► How Can I Mitigate My Risks with ISF?

With these new stringent rules imposed on the international trade industry, it is now more important than ever to know your supply chain partners. Your supply chain partners must be able to provide the required ISF data elements in a timely manner. Consider requiring such data elements be collected and provided earlier in your shipping process.

Know what you are importing before you import it. CBP requires the lowest AMS Bill of Lading number (i.e., house or regular bill) be provided as part of the original ISF transmission. Your supply chain partners must be able to provide this data or there is a guaranteed claim by CBP.

Have a plan as to how you will compile and provide the information. Make the requirements part of your supplier agreements or purchase order agreements.

Roanoke Trade is offering ISF bonds with minimal burden to the trade community. However, CBP has very recently announced that they will collect under your CBP 301 continuous import bond if your ISF bond becomes exhausted. Therefore, we strongly encourage you to obtain a CBP Form 301 continuous import bond in order to cover importer security filings. This is the most efficient solution at minimal cost and controlled liability. Please contact us at 1-800-ROANOKE with any questions, as this is critical to your importing business.

Roanoke Trade is the leading provider of customs bonds in the United States, and is working closely with CBP to ensure a smooth rollout of the bonding process. Roanoke Trade is committed to serving your needs now and in the years to come.

This information is provided by Roanoke Trade Services, Inc. as a public service and is a discussion of the subject in general. It is not to be construed as legal advice. Users are urged to seek professional guidance from licensed customs brokers and competent customs counsel on all import matters. Roanoke Trade Services, Inc. is the oldest and largest import bond provider in the nation. Known for its customs bond expertise since 1935, Roanoke Trade closely follows the ever-changing rules under CBP. Importers working with their customs broker or agent to obtain a bond from Roanoke Trade will have the assurance that their bond is placed with an expert in the industry and a surety with an “A” (excellent) financial rating.



Insurance programs offered by
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