Importer Security Filing Enforcement Update

Surety Insights

June 27, 2013

ROANOKE TRADE

Starting with Importer Security Filings (ISF) due on or after July 9, 2013, US Customs and Border Protection (CBP) will begin to use liquidated damages as an enforcement tool for compliance. For over three years, CBP relied on outreach, education, and port examinations for non-compliant ISF Importers.

The information in this notice is based on the ISF regulations, CBP's ISF FAQ, and public statements CBP has made to media outlets and to trade groups. This notice provides a summary, but we encourage everyone to refresh their understanding of ISFs by reviewing Part 149 of the Customs Regulations and the FAQ document.

Hyperlink for Part 149:
http://www.gpo.gov/fdsys/pkg/CFR-2013-title19-vol2/pdf/CFR-2013-title19-vol2-part149.pdf

Hyperlink for the FAQ:
http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/10_2faq.ctt/10_2faq.doc

ISF liquidated damages arise from the bond contract. Any ISF Importer with certain continuous bonds on file (Activity Codes 1, 2, 3, 4 or 16) automatically agrees to comply with all ISF requirements. Breaches of those requirements results in a claim for liquidated damages of $5,000, subject to $10,000 in total per ISF transaction number. (Caution: the cap is a policy decision by CBP, which can be easily changed without formally rewriting the regulations or statute.)

In 2009, CBP created Part 149 of the Customs Regulations to implement the ISF requirements. To create the enforcement mechanism involving liquidated damages, CBP also amended the bond regulations. CBP expanded the obligations of the Activity Codes 1, 2, 3, and 4 bonds, and created the ISF Bond (found in Appendix D to Part 113).

An ISF is a transaction distinct and separate from the entry of merchandise. The ISF is required for most goods arriving in a US port by an ocean carrier, even for goods transiting in-bond to another port and for goods remaining on the vessel.

To avoid liquidated damages, the ISF must be complete, accurate, and timely. While the ISF must be filed 24 hours prior to lading, the practical means that CBP will measure timeliness is vessel departure date/time minus 24 hours. When information in an ISF has changed or is determined to be inaccurate, the ISF filer has an obligation to promptly update the ISF – up to the time the goods have arrived in the US port.

What if the filing deadline has passed and no ISF has been filed? CBP recommends that an ISF be filed, even if untimely. This filing gives them the targeting information needed for security purposes. Merchandise without an ISF may be held up by CBP for additional security measures, such as non-intrusive inspections, intensive examinations, or, CBP may even deny unlading. A late-filed ISF may trigger liquidated damages, but it may avoid unnecessary examination fees and cargo delays.

For the ISF Importer without a continuous bond on file, the ISF can be secured by one of two bonds: Activity Code 16 ISF STB, or Activity Code 1 STB. The use of Activity Code 1 STB may only be done when both the entry and ISF are submitted to CBP in a unified filing.

For an importer with no bond on file and the deadline to file an ISF has passed, CBP acknowledges that it may be difficult to obtain a bond to file the ISF. In these situations, CBP will permit the filing of a late ISF without an ISF bond. Overuse of non-bonded ISF filings can lead to more severe action by CBP.

Ports will be responsible for identifying the ISF violations, and for a while, CBP HQ will review all violations before the port will issue a CBP Form 5955a. A proper ISF is complete, accurate, and timely. Some ports may focus more attention on missing ISFs, while others may see most problems with late or inaccurate ISFs. Any violation of the ISF regulations can result in liquidated damages.

It is CBP's policy to identify ISF violations promptly (within a month of the occurrence). However, workload fluctuations and HQ review may delay the issuance of the CBP Form 5955a. Additionally, CBP is not waiving any of its rights, including the right to pursue violations at any time up to six years after the breach of the regulations occurred.

About us

Roanoke Trade is a division of Roanoke Insurance Group Inc., specializing in insurance and bond solutions for international trade and transportation. Established in Chicago in 1935, Roanoke became a subsidiary of Munich Re and an affiliate of Watkins Underwriters at Lloyd's of London in 2008, and is the North American primary insurer of marine insurance and customs bonds for this worldwide organization. Roanoke Insurance Group employs approximately 200 employees across 10 US locations with its focus on providing targeted insurance solutions backed by agile service and technology.

For more information, please contact us at 1-800-ROANOKE, ext. 1252 or info@roanoketrade.com.