



# The American Companies

## "News Flash"

March

This is an excerpt of a series of informational distributions covering the implementation of the **Importer Security Filing (ISF) or "10+2."** This distribution is issued to the members of the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA). The issues captioned are authored by subject matter experts (SME), working with senior managers at Customs and Border Protection, who have continued to consider these issues and prepare their responses to them.

During the NCBFAA Educational Institute Importer Security Filing (ISF) webinar held in November, it became evident that there are several issues continuing to raise questions and concerns within the membership. In response, the NCBFAA has compiled this Frequently Asked Questions (FAQ's) document that will address some current ISF related concerns.

The American Companies has decided to share this industry informational circular as we felt it addresses many areas of everyone's concern. If you have any questions or require further clarification please contact your TAC ISF Representative or e-mail us at [10plus2@shipamerican.com](mailto:10plus2@shipamerican.com)

### **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 recordkeeping requirements for ISF?**

The CBP ISF FAQ's fail to address the recordkeeping 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.

### **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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**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.

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**When a shipment is diverted, is there a requirement to cancel and replace the original ISF filing, or can we amend the filing?** You must amend the existing ISF filing when the information becomes available. A cancellation and replacement is not required, and is not preferable due to timing issues. An amendment will allow you to demonstrate that the ISF was filed timely, but had changes to the information.

**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 customs sanction might be expected.



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