

DEPARTMENT OF HOMELAND SECURITY
Bureau of Customs and Border Protection

19 CFR Part 149

Docket Number USCBP-2007-0077

RIN 1651-AA70

Importer Security Filing and Additional Carrier Requirements; Correction

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Correcting amendments.

SUMMARY: This document contains correcting amendments to the interim final rule entitled “Importer Security Filing and Additional Carrier Requirements” published in the **Federal Register** on November 25, 2008. The interim final rule, which requires the submission of an Importer Security Filing (ISF) for cargo arriving in the United States by vessel and a bond to secure compliance with the ISF requirement, inadvertently omitted the liability amounts for breach of the importer security filing bond and neglected to make provision for using the importer security filing bond to secure a single ISF transaction. This document clarifies the bond terms applicable to the importer security filing bond as set forth in an Appendix to the Customs and Border Protection bond

regulations by adding the liability amounts for a breach of the bond and by adding a paragraph to cover a single transaction.

DATES: This amendment is effective on **[Enter date of publication]**. The compliance dates for the regulations are set forth in 19 CFR 4.7c(d), 4.7d(f), and 149.2(g).

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344-2513.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2008, Customs and Border Protection (CBP) published an interim final rule entitled “Importer Security Filing and Additional Carrier Requirements” in the **Federal Register** (73 FR 71730). Pursuant to that interim final rule, an Importer Security Filing (ISF) must be submitted for cargo arriving within the limits of a port in the United States by vessel prior to arrival of the cargo. Generally, with certain exceptions, the ISF must be filed no later than 24 hours before the cargo to which the information relates is laden aboard a vessel at a foreign port. The rule was effective on January 26, 2009. On July 14, 2009, CBP published a correction to the interim final rule in the **Federal Register** (74 FR 33920) that amended the regulations by providing the time frame for transmitting an ISF for shipments intended to be transported in-bond for immediate exportation or for transportation and exportation. The document also corrected two CBP Responses to comments in the preamble text to align them with the regulatory text.

II. Clarification of the ISF Bond Terms

Under the rule, all ISF Importers must possess a bond as security for the ISF requirement. Specifically, 19 CFR 149.5(b) provides that the ISF Importer must possess a basic importation and entry bond containing all the provisions of 19 CFR 113.62, a basic custodial bond containing all the provisions of 19 CFR 113.63, an international carrier bond containing all the provisions of 19 CFR 113.64, a foreign trade zone operator bond containing all the provisions of 19 CFR 113.73, or an importer security filing bond as provided in Appendix D of part 113 of 19 CFR. In light of this bond requirement, CBP amended 19 CFR §§ 113.62, 113.63, 113.64, and 113.73, to provide that the principal agrees to comply with ISF requirements and in the event of a breach of the bond, agrees to pay liquidated damages in the amount of \$5,000 per violation. CBP also amended Part 113 by adding Appendix D, titled “Appendix D to Part 113 – Importer Security Filing Bond”, which lists the terms of the ISF bond. However, the liquidated damages language contained in the Appendix D ISF bond does not expressly provide for the payment of liquidated damages in the amount of \$5,000 per violation. Instead, the Appendix D ISF bond contains broad language that requires ISF Importers to pay any amount prescribed by law or regulation upon demand by CBP for a violation of 19 CFR part 149. CBP is revising the Appendix D ISF bond language to add the \$5,000 liquidated damages clause contained in the other bond provisions.

This amendment is consistent with the background portion of the Supplementary Information to the interim final rule. In discussing the changes made from the Notice of Proposed Rulemaking, CBP explained that “[t]he liquidated damages amount for violations of the Importer Security Filing requirements are changed from the value of the

merchandise, as proposed, to \$5,000 for each violation in proposed §§ 113.62(j), 113.64(e), and 113.73(c) and new §113.63(g) *and Appendix D to part 113* (emphasis added).” 73 FR 71736. The inclusion of the \$5,000 liquidated damages clause in the Appendix D ISF bond 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.

This document also clarifies the applicable time period for an Appendix D ISF bond. The current Appendix D language states that the bond is effective for one year beginning with the effective date and for each succeeding annual period, or until terminated. The text is being revised to make clear that the Appendix D ISF bond may also be used to cover a single transaction. This clarification will facilitate compliance with the ISF requirement by ISF Importers and is consistent the Supplementary Information portion of the interim final rule in which CBP stated that it would accept single transaction bonds on a case by case basis. 73 FR 71760. Despite this statement, the terms of the Appendix D ISF bond did not make provision for using it as security for a single transaction.

III. Inapplicability of Notice and Comment and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), CBP has determined that it would be impracticable, unnecessary, and contrary to the public interest to require notice and public procedure for these amendments as CBP is simply clarifying the terms of the importer security filing bond in Appendix D consistent with both the preamble of the interim final rule and the other regulatory language in other bonds used to secure the ISF. In addition, the amendment to add text to clarify that the importer security filing

bond can be used as either a continuous or single transaction bond confers a benefit to ISF Importers and imposes no burden on any interested parties. For these same reasons, pursuant to 5 U.S.C. 553(d)(1) and (d)(3), there is good cause for these amendments to not have a delayed effective date.

IV. The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Also, this amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

V. Amendments

List of Subjects

19 CFR part 113

Common carrier, Customs duties and inspection, Freight, Penalties, Reporting and recordkeeping requirements, Surety bonds.

AMENDMENTS TO THE REGULATIONS

Part 113 of title 19, code of Federal Regulations (19 CFR part 113), is amended as set forth below.

PART 113 – CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Revise Appendix D to part 113 to read as follows:

Appendix D to Part 113 – Importer Security Filing Bond

This appendix contains the relevant terms and conditions for Importer Security Filing Bonds.

Importer Security Filing Bond

KNOW ALL MEN BY THESE PRESENTS, that _____ of _____, as principal having Customs and Border Protection (CBP) Identification Number _____ and _____, as surety are held and firmly bound unto the United States of America up to the sum of _____ dollars (\$_____) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the named principal (including the named principal’s employees, agents and contractors) agrees to comply with all Importer Security Filing requirements set forth in 19 CFR part 149, including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation.

If the principal defaults on the conditions of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of \$5,000 for each violation, or such other amount as may be authorized by law or regulation upon demand by CBP.

[Complete this paragraph only for a single transaction bond]

This single transaction bond secures the single transaction identified by Importer Security Filing transaction number _____ issued by CBP on _____, 20_____.

[Complete this paragraph only for a continuous bond]

This continuous bond is effective _____, 20_____, and remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amount listed above for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the CBP Regulations.

This bond is executed on _____, 20_____.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

(Name) (Address)

(Name) (Address) (Principal Name) (Seal)

(Principal Address)

(Surety Name) (Seal)

Surety No. _____

(Surety Mailing Address)

Surety Agent Name _____

Surety Agent ID Number _____

Date: December 18, 2009

Jayson P. Ahern
Acting Commissioner

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