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Important Notice

10+2 and the Bonding Requirement

December 22, 2008

Important Dates for 10+2

As you know, U.S. Customs and Border Protection (CBP) published the 10+2 [interim final rule](#) on November 25, 2008. The effective date for informed compliance is January 26, 2009, and enforced compliance will commence January 26, 2010, unless CBP determines that it is necessary to delay it. Public comments are due June 1, 2009, and must meet certain criteria to be considered. Please [contact us](#) if you would like further details on the criteria.

From January 26, 2009 to January 26, 2010, CBP will be evaluating any compliance difficulties the trade may experience as a result of 10+2. This "informed compliance" approach notwithstanding, CBP reserves the right to take enforcement action when an importer is not achieving "satisfactory progress" or making a "good faith effort to comply" during this period.

Bonding Requirements

When implemented, 19 CFR 149.5(b) requires that the Importer Security Filing (ISF) importer, or his ISF agent, must possess one of several Customs bonds. The Customs bond ensures CBP's ability to enforce compliance through the assessment of liquidated damages of \$5,000 per violation. While the CBP 301 form itself is not changing, the related bond regulations are being expanded as of January 26, 2009, so that these bonds will automatically cover ISF liabilities:

- Activity Code 1 - Basic Importation and Entry Bond (19 CFR 113.62)
- Activity Code 2 - Basic Custodial Bond (113.63)
- Activity Code 3 - International Carrier Bond (113.64)
- Activity Code 4 - Foreign Trade Zone Operator Bond (113.73)

The formula to determine the bond amount for continuous bonds under each of the above activity codes is not expected to change. Further, principals with such bonds will not need to refile them or file a bond rider to cover ISF changes.

CBP is also adding an Importer Security Filing continuous bond as Appendix (D) to 19CFR 113 as an "ISF only" bonding option. The interim final rule does not indicate the required amount for the new "Appendix D" bond, and in the meantime CBP is expected to provide guidance on calculating the amount of this type of bond as needed.

Single transaction bonds (STBs) may be accepted for an ISF, but their use will be evaluated by CBP on a "case by case basis." CBP has not yet determined an ISF STB process or amount, but is expected to provide guidance as needed.

Whose Bond Should be Used for the ISF?

Either the bond of the ISF importer or the bond of the ISF importer's agent submitting the ISF may

be used. The most likely type of 'agent' to be in a position of submitting an ISF on behalf of an ISF importer is a customs broker. Each time a customs broker files an ISF under its own bond it increases its exposure to liability for liquidated damages. However, it is also true that not having a continuous bond of its own on file may leave the customs broker at a competitive disadvantage if a client requires such a service and the broker believes offering it is a sound business decision.

Do you have a continuous bond? Is your company prepared to take on the additional liability exposure if you decide to secure an importer's ISF? What criteria will you use to qualify an importing client for ISF filings under your own bond versus the importer's? Just as most of your clients' entries today are placed under your clients' importer bond and not your own, we anticipate that this will generally be the most prudent course of action for your company with regard to the ISF.

Let Us Help

As the leading Customs bond provider in the nation, Roanoke Trade has advocated for its clients since the early stages of this rulemaking, and pushed our surety associations to pursue clarity and improvements on the bonding issue. We know that you are busy weighing the pros and cons of how your business should approach the submission of ISFs, and we hope you will please contact us for any assistance we can provide. Furthermore, we will keep you advised of any new information and continue to work with CBP to reach the best possible final regulations and operational policies on the bonding requirements.

We invite you to attend the Foreign Trade Association of Southern California's seminar January 15, 2009 on 10+2 in Los Angeles, where Matt Zehner from Roanoke Trade will be speaking along with Richard DiNucci and several industry experts from the trade. Matt and this group will also be speaking in Ontario, California on January 14 - please contact us if you would like further information.

We sincerely appreciate your business and look forward to working with you in 2009!

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