

Importer Security Filing (ISF) Enforcement Update Webinar – Transcript

(Andrew Taub/CBP): Thank you for joining today's webinar. This webinar is being hosted by the Office of Trade Relations and run in conjunction with the Office of Cargo and Conveyance Security here at U.S. Customs and Border Protection. Please note all participants are currently in listen only mode. Please type any questions in the Q&A pod in the webinar tool. This webinar will be recorded and posted to CBP.gov by the end of the week. The slide presentation will also be sent out and shared in the near future. Once the slide presentation and recording are posted online, we will send out an e-mail notification. I will now hand things over to Craig Clark.

(Craig Clark/CBP): Thanks, Andrew. I want to start by thanking everyone online for taking the time to join us today and give a big thanks to Lisa for traveling all the way to us from Chicago. Welcome to the final ISF enforcement update webinar before full ISF enforcement goes into effect. We are looking forward to lively discussion today so let's go ahead and begin.

Today's topics for ISF will be:

- 1) Evolution of the **ISF Enforcement Strategy**
- 2) Importance of the **Bill of Lading Match**
- 3) **Cargo Holds** and what you are going to see in the various ports, as well as
- 4) **Liquidated Damages** what they will look like for you moving forward, and discussion on the
- 5) **Petition and Mitigation** process including some best practices that we have discovered across the years.

This is a **timeline of ISF** for those of you who may not have heard us speak about this. We will not get too much into the details, but the important piece is at the end there, the May 14, 2015 date. This is what we are calling full ISF enforcement and this is a bit of an evolution of the graduated approach that CBP has taken to enforcement and this will mean that the Headquarters review of ISF liquidated damage claims will be coming to an end, and the stated policy of providing three warnings to violators in the last year is also coming to an end.

An important piece to consider is **ISF-5**, this is not anything being enforced by CBP right now. All of today's webinar is going to be about ISF-10. ISF-5 is still in a Notice of Proposed Rulemaking (NPRM) process so we can get clarification in certain scenarios since it may not be clear who should be filing the ISF-5, and we are seeking clarification on that. That is forthcoming, and I don't have a publication date yet, but it is coming soon. And following on that will be the ISF Final Rule. As everyone knows, ISF is the ISF Interim Final Rule. Once we have ironed out the kinks of ISF-5, we will publish it as a Final Rule and move forward from there.

(Lisa Gelsomino/Avalon): Thanks Craig. There was a question about the ISF FAQ since that has not been updated since 2010. Do you know what the status is on the ISF FAQ?

(Craig Clark/CBP): Yes, there is another **ISF FAQ** in the works. CBP updated their website and it has broken a few links in the old FAQ so we are going back and updating it and freshening it up a bit. I'm sorry I do not have a real timeline for you, but it is something that we are working on and expect to see soon.

(Lisa Gelsomino/Avalon): Great, this is Lisa Gelsomino from Avalon Risk Management, and we have done tremendous outreach since ISF enforcement was first announced on July 9, 2013, and the phased-in approach since then to bring us to this date. This is probably the last outreach we will be conducting, and we want to thank everyone who joined us along this journey. If you have been on prior seminars or webinars, you will understand my comic relief that I try to inject for something that's a pretty serious topic.

Moving along here, we always like to share with you where the numbers are, and they continue to grow as the national rate goes up in terms of how ISF importers are filing. The 2015 number is projected at 12 million ISFs based on what we see in volume. As I've reported many times before, we are looking at about 289,000 or so importers that have been filing every year and that will probably go up again this year. 99% of those transactions are being handled under the continuous bond. We often get the question, "Are all the importers filing?" And I think if you look at the number of continuous bonds on file and at the number of single transaction ISF bonds that are filed, we get pretty close to that number, so yes the numbers make good sense.

There are about 2,500 or so ISF filers. 85-90% of ISFs being filed by licensed customs brokers. I will turn it over to Craig Clark to talk about the compliance rate and what that means, and we want to thank everybody who has been helping us get those rates up.

(Craig Clark/CBP): Yes, absolutely, a big thanks to everyone because we have seen an increase in the last year and right now the compliance rate is floating around 92%, which is pretty fantastic. I know we can get a little better, but I am pleased with the increase. What we mean when we say compliance rate, in this context, is irrespective of timeliness so this is not addressing late filings. This is all successful transmissions of ISF data to CBP, but the data is what we are concerned about most so much appreciated for everyone's efforts in increasing this number.

(Lisa Gelsomino/Avalon): Great, thank you Craig. I want to give a brief update on the **Unified ISF** in ACE. Actually about 99% of all ISFs are being filed as a stand-alone transaction, but there was an update in ACE to include Unified ISFs so Craig and I conducted a webinar with Steve Lubel. Once you receive a copy of this presentation, there will be live links and you can go to view that webinar for more details. But basically just so you know and you are aware that you can file a Unified ACE Cargo Release and ISF transaction in ACE, but then will no longer be a separate ISF transaction but would then be considered customs business because you are filing the ISF at the same time as the entry. You must file at the HTS-10 digit level and also file your entry 24 hours prior to vessel departure along with the ISF. The main benefit being for importers that have a lot of volume of the same transaction, this could actually allow their cargo to be reviewed more in advance of the five days that Customs typically does now from arrival. And that can be a benefit for importers because they can know if there are going to be any delays prior to arrival of the cargo and know this much sooner than today. And also many importers like to have their ISF and entry and entry summary records match from an audit standpoint so this is definitely something you want to consider if this is a good fit for you. For the most part, what we'll be discussing today is ISF as a stand-alone transaction. So I'll turn it over to Craig to talk about the big topic of what's to come for ISF Enforcement.

ISF Enforcement

(Craig Clark/CBP): Everyone will remember back in May of 2014, CBP sent some updated guidance to the field and to the trade to explain the newest phase of ISF enforcement. What that included was a piece where, as I mentioned earlier, CBP was providing three warnings for every violator for ISF violations prior to pursuing liquidated damage claims against that importer. And since really the beginning of ISF, all liquidated damage claim requests have been filtered through CBP headquarters for review prior to being issued. But those are two big points that are now changing. On May 14th of this year those warnings will no longer be required. Some of you may still receive warnings. A port may choose to do a little more outreach to you, but are not required to do so on or after May 14th. And no longer will liquidated damage claim requests be coming to headquarters. These will be generated from the field directly as they are in most cases today anyway. This does not mean, however, that this is going to be the Wild West. The guidance that was provided back in early May of last year is still in place. There will still be a focus on significantly late violations and on repeat offenders. So the ports will still be using that guidance and also issuing those claims within six months of the violation. Those are two policy decisions that are staying in place.

The question always comes up what do we mean by significantly late? And significantly late is purposefully nebulous in its definition simply because it matters where the cargo is going and where it is coming from as to what is actually significantly late. Journeys from the islands to Florida are much shorter than from Asia to California. Basically what we mean by significantly late is that if you have provided an ISF in such a time that you have negatively impacted CBP's ability to effectively target the cargo, the port is likely to consider that significantly late and that may expose you to liquidated damage claims.

Bill of Lading Match

(Lisa Gelsomino/Avalon): In terms of ISF enforcement, you should all be aware of the data elements by now, but ISF enforcement not only applies to ISF-10, but also the carrier requirements for vessel stow plans and container status messages. Craig, do you have any update on that from the carrier requirements?

(Craig Clark/CBP): No, these are exactly right. As we mentioned earlier, this is not about ISF-5. Here you have a nice handy chart for everyone to understand the data elements and those parts of ISF that are subject to enforcement at this time. So it is ISF-10 and the carrier requirements that are being enforced.

(Lisa Gelsomino/Avalon): As you know, ISF is frequently referred to as 10+2 and the house bill lading that needs to be matched at the lowest bill of lading level is frequently referred to as the 11th data element because it's so

important to the process, and we're going to talk a little bit about that now. Maybe you want to introduce Peyman in terms of what his background is as the new ISF Program Manager.

(Craig Clark/CBP): Yes, we want to take an opportunity to welcome Peyman Jamshidi. He is coming to us from our technical side of the house, which is really fantastic. He is a hugely valued member of the team now, and we are very excited to have him here. We'll just let him say hello.

(Peyman Jamshidi/CBP): Hi everyone just kind of exciting time here. I got here pretty much end of March and coming from ACE. I am glad to help on a technical side if there is any technical issue on ACE. Lisa will go over some of the bugs that we already identified and try to kind of accelerate fixing those problems.

(Lisa Gelsomino/Avalon): Yes, that is why you see me here since things are looking sunny for us, and Craig finally gets to take a lunch break.

(Craig Clark/CBP): Yes, my lunch break is here finally after six years. But I am not going anywhere, and I will be around to assist with legacy issues and help with Peyman's transition into the full-on ISF Program Manager.

(Lisa Gelsomino/Avalon): With that we are going to talk about the Bill of Lading match, and continue to reiterate how important it is for this to match because CBP doesn't have the ability to see the ISF. Craig, can you talk about this at the port level?

(Craig Clark/CBP): Right, if there's no match of the bill to the ISF then when that cargo arrives at the port, it will look like no ISF was filed. That is an unfortunate thing for you because you will of course be put into that process as if you were completely non-compliant and made no effort to try to file an ISF. This is not something to take lightly, it is very important to get that match.

(Lisa Gelsomino/Avalon): In fact, some of the questions were people had been receiving warning letters about this during this last phase of enforcement. We actually have seen claims already because of the bill of lading match, and so it is important to understand those two distinct processes where you need to get the ISF on file timely with 3Z disposition code, and the bill of lading match with the S1 disposition code in ACE that needs to come after because sometimes there is no match to be made if filing your ISF early. You will typically see that match come after, but the match must come before the cargo arrives. If Customs is going to be targeting, which they often do anywhere between five days to 72 hours prior to cargo arrival, you want to have that bill of lading match at that time. Craig, do you want to talk a little bit more about this or wait until later?

(Craig Clark/CBP): We can talk about it now and later if it comes up, but I just want to reiterate that not having that match, and if your cargo arrives without that match, this does expose you to an inaccurate ISF violation and this is a \$5,000 liquidated damage claim. Not only is it critical for expedited release of your cargo that you have a match, but you want to avoid exposing yourself to these violations so it's just very important that you make that match.

(Lisa Gelsomino/Avalon): On the timeline we showed how the SAFE Port Act prompted all this, do you want to explain how the VDM is used?

(Craig Clark/CBP): Yes, the Vessel Departure Message (VDM), for practical purposes, is how we measure the timeliness. So you need to be sure you are on time, and have all the matches before arrival.

(Lisa Gelsomino/Avalon): Just so you are also aware, at the port level there has been some discussion that they may not be able to track the VDM and do not have transparency to it. They absolutely do and every port has the ability to manage their compliance in terms of how many importers are filing, they have the ability to see how many of the ISFs are late, and they also have the ability to see bill of lading mismatch problems. Don't think that the port cannot see this information because the Trade Act does require it to be reported and it is visible.

We have given you many times some of these best practices that need to be followed when you are trying to match the bill of lading using the disposition codes. We frequently get questions because sometimes ISFs are submitted so early, even more than 60 days out, and the system will actually stop querying for a bill of lading match after 60 days so you need to be mindful of that. There are many ways that you can with your own processes and systems make sure that you continue to query the bill of lading depending on which port it is coming into, when it is being

targeted, and when CBP is looking at cargo holds. These are some guidelines for doing that within your own process and hopefully you have software that can help you manage that as well. We do have situations where the bill of lading match is dropping or sometimes there are situations where the ISF has to be deleted and retransmitted and that is usually something where they need to come to Customs for approval? Is that correct, Craig? Or how should they be managing this in full enforcement since they could be submitting a late ISF?

(Craig Clark/CBP): This is not necessarily something you need to come Customs to for approval, but I will say that it will be very important in these odd scenarios that you maintain a record of your original filing and make sure you have got your records in order if you have to delete and add a new ISF.

(Lisa Gelsomino/Avalon): This brings us to Peyman who has been extremely helpful with his ACE background and a big thanks to the NCBFAA ISF subcommittee who sent several examples of these bill of lading match drops in ACE that were causing problems. We were able to use those examples to work with the ACE and Manifest offices to identify a ticket number that was submitted and this has already been programmed to be fixed with the next increment 10. As you know with the agile development that CBP uses, everything comes in increments and so increment 10 is going to be starting in May and running through August so we don't know exactly the date when this gets fixed. We do want to make sure if you have these bill of lading match drop issues, which we expect it's only a few instances where this may happen every month, you will need to replace the ISF and that ISF will probably be late. That's why it's important for you to keep your records in the event that a claim is issued so you can reference this information in the petition to get the claim fully cancelled until this issue is resolved. I know Peyman has been trying to push this to get resolved as soon as possible.

(Peyman Jamshidi/CBP): Yes, this is the schedule for Increment 10, which starts on Wednesday. This is not really common and not happening that often, it can be mitigated by importers getting the bill of lading match in place.

Cargo Holds

(Lisa Gelsomino/Avalon): Thank you. I had a customer actually share with me this cartoon and you may remember from some of our prior webinars about the dreaded cargo hold. If any of you who have not met Craig, we think this is a pretty good photo of him although he says I made his hair a little to red. We are calling him ISF Enforcer today, of course getting your ISF filed timely and getting that bill of lading match is so crucial in avoiding the cargo hold. Cargo holds are pretty much already happening and are not going to change much from what's happening today, right Craig?

(Craig Clark/CBP): That's correct there's very little in terms of the cargo holds, the new enforcement strategy is not really affecting the cargo holds at all.

(Lisa Gelsomino/Avalon): All of you have been working with your local ports, and I include this chart in terms of volume and it is what it is, we have about 40% of the ocean volume coming through LA/Long Beach and they have been very transparent in their hold strategy to still manage the process of getting the cargo facilitated. As you see here NY/NJ also has high volume. Both of these ports have been really proactive in trying to get consolidated cargo to the Container Freight Station to get the container stripped and allow the cargo that has a timely ISF moving along. So it's important to know this is going to continue as we move forward. Mostly you are all seeing the 2O hold code. Craig, do you want to give an update as to whether the 2Q code will change in ISF enforcement?

(Craig Clark/CBP): The 2Q code, for those of you who don't speak code, is the Do Not Load for ISF reasons. At this time, 2Q is still reserved for national security issues only. We are not at this time going to be using 2Q for ISF non-compliance on its own. To that effect if you are receiving the 2Q hold, both Peyman and I would very much appreciate if you would let us know. This is generally just an outreach to the port and something that we can quickly correct. This isn't something that should just be happening for ISF compliance reasons.

(Lisa Gelsomino/Avalon): The only other thing I want to add here is about the comparison of ISF to entry. As I started out at the beginning talking about Unified ISF, when ISF is filed as a separate transaction, an ISF is not compared to entry unless there are situations where maybe an exam is done, and there could be a comparison at that time obviously because CBP is looking at any discrepancies that may take place. This is another reason why you don't want to have your cargo held in the first place. What we have seen most of the time, especially at the larger ports, CBP is typically running a non-intrusive inspection (NII), and it very rarely goes to full exam. So certainly

not having disparities in your ISF or entry information will help get the cargo moving along. Anything else you want to add, Craig?

(Craig Clark/CBP): No, nothing to add. That's pretty complete.

(Lisa Gelsomino/Avalon): We get a lot of questions that come in as far as pipelines that you might be getting as updates from the ports. These are really the most recent pipelines we received. When you get a copy of the presentation, you will be able to go to the links for the information. Some of the ports primarily on the West Coast, LA/Long Beach coupled with the other ports, is about 70% of the ocean volume. They have been a little bit more flexible in terms of when they hold the cargo, but you should be aware that ISF timeliness is measured on the 24 hour prior to vessel departure date, that VDM that we talked about quite a bit. All other ports are using this as a measuring stick for timeliness and cargo holds applying whether the ISF was filed significantly late. But it's important for you to realize that there may be instances where a liquidated damage claim gets issued that you didn't expect because the law is the law and is going into full enforcement. I talk about this like a speeding ticket. We all know what the speed limit is and we take our chances if we go over the speed limit, and sometimes we get caught. Because Customs hasn't put the full fist down on claims and even cargo holds, it is because they are trying to facilitate the trade, and trying to help good importers that are filing ISF on a regular basis and not hold an importer hostage for one late ISF. Craig, isn't that the tone that will continue in full enforcement mode?

(Craig Clark/CBP): CBP is still committed, and will forever be committed, to a common sense approach to ISF Enforcement.

(Lisa Gelsomino/Avalon): I did talk to both the West Coast and the East Coast ports and they don't anticipate issuing any new pipelines because they don't really anticipate a change in practice. LA/Long Beach did just modify the cargo hold strategy. They were previously 72 hours prior to arrival and they are now four days prior to arrival. As you can see, they started out 24 hours, then 48 hours, then 72 hours and now four days prior to arrival and have been continually communicating that to the trade. You will need to be mindful of the different postures the ports take. ISF is a security measure and not admissibility of the cargo. When C-TPAT comes to play, it doesn't mean that C-TPAT cargo will not be held for various reasons. Craig, did you want to go into some detail on that?

(Craig Clark/CBP): **C-TPAT**, of course, does not give you a free pass for ISF violations so there are a couple best practices that C-TPAT participants can use, especially in consolidations, which are everyone's tough spot. With consolidations, in as much as it is possible, it's a good idea to consolidate with other C-TPAT cargo. This will better ensure that everybody is compliant with ISF rather than just rolling the dice with a consolidation. This is something where you will see the big glaring red threat there, of course. C-TPAT is very serious and your tier and your participation in the program is threatened by a record of non-compliance with ISF. So this is not something that C-TPAT participants want to establish. You absolutely want to stay on top of your ISF compliance.

Liquidated Damages

(Lisa Gelsomino/Avalon): This brings us to liquidated damages and you see me a little stressed out there as the surety, and we are just as worried about liquidated damages falling from the sky. I think Craig is here to tell us that this still is not going to be a reality and go into a little bit more detail on this guidance. What I do want to reiterate to you is what we've said from the beginning that an ISF liquidated damage claim really stems from the Customs Bond. ISF requires bonding and this is how a claim can come to fruition, but there can be no liquidated damage claim without a Customs Bond on file for the ISF transaction. We will talk about some of the bonding exceptions because I know that has been an issue for some smaller importers. We already talked about how some liquidated damages are \$5,000 per violation and \$10,000 for any one transaction. The reason you can see up to \$10,000 is because you can get a \$5,000 liquidated damage claim for a late ISF as well as a \$5,000 liquidated damage claim for a bill of lading mismatch, which is an inaccurate ISF. We haven't seen that yet, but it's something that is part of the law. We want to make sure that importers recognize that even though they are the party that needs to be bonded that guarantee is really to Customs, and the importer is ultimately responsible since the surety can also subrogate against the importer. You'll see later on that importers have responsibilities for ISF far above the bond for potential penalties for fraudulent behavior.

What also transpired January 10, 2015, is we went live with eBond and there used to be the status of Late ISF-10 or Late ISF-5 with no bond typically reserved for that one-time importer that didn't really need to have their ISF bonded. Because of eBond and the business rules built into it, these status types had to be eliminated. In talking to

some of the ports they felt that they have seen an uptick in cargo being abandoned because of this reason. I want to stress in many instances these small importers are not the target of CBP since they are not repeat violators and in many instances it is not intentional behavior. Craig, can you clarify CBP's standpoint?

(Craig Clark/CBP): Obviously there are so many reasons that I would hesitate to say that we can fit everyone into one nice category. But one of the things that I want to clarify with this particular change that is referenced in the CSMS is that it was not that CBP is no longer accepting late ISF filings, of course we are. The issue is that there is no longer the option to file an ISF that would ordinarily be bonded without a bond. Those options are no longer on the table so of course an ISF can still be filed late. A late ISF is always better than no ISF. So definitely still file, even if it is late, that is perfectly fine. The thing that maybe the industry would do well to remember is, of course, there are mitigation guidelines out there for ISF and these might help a decision to be made sort of what direction to take it if this is a one-time importer this will obviously be the first violation. There are some things in the mitigation guidelines that are worth considering in those scenarios.

(Lisa Gelsomino/Avalon): Thank you to Craig, as you know there is a six-year statute that applies to ISF and all transactions with CBP, but with the revised enforcement strategy implemented back in May, he gave instructions to the ports to issue any claims within six months of the violation. Even if you may anticipate a claim for a small importer, it would not be sitting there for six years. Even for a high-volume importer, claims would not be stacking up without knowledge. I have to say we haven't seen a lot of claims from a surety standpoint, but the ones we have seen have been issued within 30 days of the violation. The 5955A liquidated damage notice we receive is actually quite timely and so you can see the violation right away. Obviously that does not absolve Customs of the six-year statute that always applies, but I do think it eases the burden at least for some of the smaller importers from a surety standpoint, and we have been much more flexible in terms of allowing bonding in these scenarios, and even without collateral particularly for an importer just coming in for the first time. Even when the bond was not required, CBP was doing an examination, usually an NII, and allowing that cargo to be facilitated. As Craig stressed, it is better to file the ISF late. You will find that every surety market is different in their underwriting policy, but bonds for late ISFs are available in the marketplace. We want to remind you also of the exemptions to bonding. As outlined in the 2010 FAQ, we think that some people are forgetting the bonding exemptions and still trying to get a bond for shipments that are exempt. Informal entries under \$2,500 in value, and any household goods, personal effects or military shipments, international mail, carnets, and diplomatic shipments, regardless of value, do not require a bond. Craig, do you want to comment on this?

(Craig Clark/CBP): Yes, I have been hearing quite a lot since January when no bond options were removed, and I have been hearing quite a lot from small importers that they are having difficulty finding anyone to take their business to be honest when they are out of compliance. They are already late and just have a difficult time trying to get someone to file for them, and so I just want to remind everyone that there are these six types that are exempt from the bonding requirements of ISF. That might help with some decisions when an importer comes to you in these scenarios.

(Lisa Gelsomino/Avalon): Thanks Craig. Getting into the meat of the liquidated damage claims, can you talk about the violations you have been seeing in the last year since you've been reviewing claims?

(Craig Clark/CBP): Sure, so the vast majority as everyone anticipated is of course late ISFs and that is something I think will be an ongoing concern, but they are getting better. We see fewer of them, but it's still a problem, but late ISF is still continuing to be the number one violation. Next behind that is bill of lading mismatch, this is cargo that has arrived without a match to the bill. To CBP this looks like no ISF exists and that is a \$5,000 liquidated damage claim. Sort of falls into an inaccurate ISF and it was just on this slide as a specific example of an inaccurate ISF. We'll talk about this a little bit later on the flexible filing since it's not so flexible.

(Lisa Gelsomino/Avalon): What I thought would be helpful because many of you may not have seen claims for ISF before is to provide an example of each. I know some of the questions we are receiving is how the Warning Letters have been issued by the port in error. But that will go away since going forward all claims will be issued on the standard 5955A form you should all be familiar with. You can see just in this verbiage that we kind of cut and pasted protecting the innocent, this ISF was about five days late and the claim was issued. But the claim was petitioned and it was mitigated from \$5,000 to the minimum \$1,000 for a first time violation. In all cases, we have seen the claim reduced to the minimum amount of \$1,000 or \$500 for that 50% reduction for C-TPAT.

The second claim that I have here is the bill of lading mismatch just like you described Craig. A situation where they did not have the bill of lading match at the time of filing the ISF and did not provide before the cargo arrived as the language shows on the 5959A. A petition was submitted and the importer recognized the errors and talked about putting procedures in place to avoid future errors so the claim was mitigated to \$1,000. That is really what we have been seeing as these claims come to fruition and get resolved. The petitions do sometimes take a few months to get resolved, and it really depends on the port and the backlog.

In this next slide, I do want you to anticipate that in the future an importer could get multiple violations. If they still are not complying, Customs is really going to be focusing on this. In some instances, we are still seeing importers that only have 40% of their ISFs filed timely, and I would say in those scenarios CBP will want to take action against that importer if the cargo holds over the past year have not been helping compliance. Is that correct Craig in terms of what CBP may be looking at going forward?

(Craig Clark/CBP): Yes, repeat violators are definitely on the radar. As we have discussed countless times, it's not a good thing for you to establish a pattern of non-compliance.

(Lisa Gelsomino/Avalon): You have seen this chart before if you have participated in our webinars in the past, and we apologize because we always have new people join the call for more information. In short, this is showing you how violations can stack up because after that first time violation the minimum mitigation amount increases to \$2,500 so an importer does not want to have Customs looking at them from a repeat violation basis. If they don't take one claim seriously and get the compliance rate up, they could see a much stiffer penalty. Please keep this in mind, and we will go through the mitigation guidelines. Some people have asked where they can be found. There are links to them in the presentation.

I want to reiterate for many importers out there, 92% of all continuous bonds on file with Customs are at the \$50,000 minimum amount, and for most importers this is typically the most liquidated damages that could be issued in any one annual bond period. Of course, if you're a high volume importer, you will have a larger bond amount. I can tell you in all the outreach we've been doing, Craig, the large importers have been very close to 100% compliant. Even the smaller importers tend to be compliant. I think it's sometimes the mid-sized importers that do not have as much control over their supply chain or resources, and those are the ones where there are repeat violations, and want to make sure they are getting the compliance rate up.

Questions

(Lisa Gelsomino/Avalon): We are not quite done yet, we actually do have to get into mitigation as you see here we are all sitting around talking about it, but this is a good time to take a break and take some of the questions.

(Craig Clark/CBP): If you don't mind we will pause for just a moment to review all the questions. We want to take a second to look them over and respond to some of them. So just give us one moment...

(Craig Clark/CBP): **So one question is whether there could be a liquidated damage claim for the bill of lading mismatch at the time the ISF filing is due?** For the bill of lading mismatch, that is a violation that really occurs at arrival. No, the bill of lading mismatch is not a claim when the ISF filing is due because the ISF is eminently amendable, you have the ability to update it until the arrival of the cargo. Maybe you fat fingered it, not a problem, just update it. This is something generally that you can do up to arrival of the cargo. So we will talk later as Lisa mentioned about flexible filing options that further limits when you would be able to update. But in most cases, you can update up to arrival and the liquidated damage claim for the bill of lading mismatch is not something that actually occurs until arrival.

(Lisa Gelsomino/Avalon): Craig, can you also touch on what we talked about how Customs conducts their targeting prior to cargo arrival and they don't see a bill of lading match at that time. Will that be a violation? Or as long as the bill of lading match occurs before the cargo arrives in the US will that satisfy the requirement?

(Craig Clark/CBP): It may not because Customs is not waiting until the last minute to do the targeting, and yet again why it's so important that you get this match because Customs is not going to wait until the last moment. Five days out or four days out if you don't have a match, this looks like you do not have an ISF on file to CBP so you may already be swept into cargo holds and the process that may occur for someone who just didn't provide an ISF at all because that is what it would look like. You don't want to wait until the last minute. In terms of whether the

liquidated damage claim for the mismatch would be occurring at that time? No, a liquidated damage claim for bill of lading mismatch would only occur at arrival.

(Lisa Gelsomino/Avalon): So there really is no specific time frame we can give you, I know that is a question everybody has, but it's a situation as we have already outlined. That is why we try to give people best practice guidelines in terms of always querying that bill of lading to make sure it's there. Customs has been very reasonable in the petition process if a claim does get issued erroneously, or if you are able to show what you have been doing to mitigate those claims, I think you will see a favorable response.

(Craig Clark/CBP): This is a good question because it's quite complicated and doesn't work the same as old AMS. The question is: **If you divert cargo and the steamship line issues a new B/L how will that be handled, as no ISF will be on file?** Essentially a split bill should be used. A split bill indicator is not present with ISF. However, you can update the original ISF to reflect the new bill of lading and sweep that under the umbrella of the original ISF and you will be covered.

(Lisa Gelsomino/Avalon): **We also have a question about how the liquidated damages are received?** Whether you had a Warning Letter that was received in the past 12 months during that process or receive a 5955A in the future, it is always issued to the ISF importer. That is the party that will receive that information. Going forward with the 5955A, it will refer to the continuous bond that was obligated for that ISF, and that continuous bond is then the party that is contractually responsible for the liquidated damage claim.

(Craig Clark/CBP): **Here is a perennial favorite, the timing of the ISF, when is it actually required? I want to clarify it is not necessarily from the last foreign port.** The ISF is due no later than 24 hours prior to the cargo being loaded on the vessel that is arriving in the United States. That is not necessarily the last foreign port. There are many shipping routes that hop from one country to the other, picking up cargo along the way, and then arriving in the United States on that vessel. From country A to country B to the US, if it's the same vessel, you have two different timelines. You have an ISF timeline for country A, and an ISF timeline for that cargo loaded in Country B. In mother vessel/feeder vessel relationships, where you have one vessel coming from country A bringing cargo and offloading in country B to be loaded on another vessel that arrives in the United States, then you only have the one ISF timeline from country B. But it's just not true that the ISF is based on the last foreign port; that is not true. If the cargo was loaded on the vessel and that is the same vessel that is arriving in the United States, it is due 24 hours prior to be loaded on the vessel.

You guys are asking a lot of questions, which is fantastic, and there's no way that we will have time to answer all of them on the webinar, but all of the questions are captured, and we will be responding within a week or two. We will make sure that the questions, at least the categories of questions, are responded to and posted and distributed.

Mitigation

(Lisa Gelsomino/Avalon): Thanks Craig. Those of you who have questions about the mitigation guidelines, you will see here this hyperlink. When you get the presentation, this will give you a link to the mitigation guidelines and this chart outlines in summary format when a claim can be issued, what is the maximum claim that can be issued and how the claim can be mitigated. We also talked about the escalation after the first violation and the benefit of the C-TPAT importer where they can get a 50% reduction of the mitigated amount. I should also add that what we have seen through the petitioning process that in instances where the ISF filer may have contributed to the error in some way that C-TPAT benefit was also provided, but it is not in the mitigation guidelines so not something that would always be a guarantee.

Moving along, I talked about these benefits many times about what you can include in your petition so I'm going to focus on the newer information you want to address. As Craig referenced earlier, maintaining your records whether there is a problem with ACE, glitches in ACE, or that bug we previously identified. One of the questions that came in regarding the bill of lading match had to do with changes from an ISF-5 to an ISF-10. Yes, these are all things being addressed and if you continue to see problems with the bill of lading matches, you should be going to your ABI Client Representative and those get routed to Peyman. With his background in ACE, I think you'll find a lot of those issues are little by little getting resolved. You want to maintain a record so if a claim gets issued you can successfully petition that either for full cancellation or reduction. I would also expect that there might be claims that don't get issued within the six-month policy. This is a situation where you want to petition that to reference the CBP Policy that Craig sent to the field offices. I know the trade had questions about getting access to the policy and

guidance to the field, but that information was internal and is not something that can be provided externally to the public, but the ports are aware of it if you mention in your petition. Of course, there's no guarantee that Customs still has other concerns that would still be subject to the six-year statute, such as cases of fraud, but certainly the intent of the policy was that claims would not be unduly delayed in terms of getting out to the trade. Anything else to add, Craig?

(Craig Clark/CBP): No, nothing to add except that the six-years statute of limitations is in place and six-month policy does nothing to prevent CBP from pursuing liquidated damages further out beyond that six-month timeframe. Of course, this is typically for ISF purposes and something that happens when there's a bigger issue rather than just routine ISF violations happening.

(Lisa Gelsomino/Avalon): I want to touch on again the smaller, one-time importer since we have not seen any claims on these. All the claims we have seen thus far are active importers with a continuous bond and repeat shipments and repeat ISF violations. I also want to point out to you for those who don't know the **Small Business Regulatory Enforcement Fairness Act** is also something you can incorporate into your petition. It is never Custom's intention to cause undue financial hardship.

Another point I would also address is that as sureties we are always dealing with the six-year statute and not all transactions liquidate in a year like entries or have a manageable liquidation process. I will give you an example, we frequently go back to Customs when we have collateral on file to evaluate if we can release collateral. We will go to the National Finance Center or the port where the petition is filed. They will never give you that kind of guarantee but they will give you a formal opinion. For example, this is something we received from the National Finance Center on a claim we had: "An unconditional release from this bond is not possible at this time since bonds are subject to claims for a period of six years per statute. CBP has concluded that there are no known outstanding liabilities at this time that will be covered by the referenced bond. Therefore, CBP does not anticipate any future liabilities arising that would encumber this bond. CBP recognizes the surety is the sole authority in deciding to release any collateral securing the bond."

When you consider the scenarios and how maybe a smaller importer where collateral was provided, it is our hope that Customs will issue those claims timely. If there are situations where the collateral needs to be returned, there is a means of going to Customs to get those resolved. I thought it would be helpful to share that with you. Does that help Craig in terms of your situation where you're getting a lot of inquiries on the small importers? Any other information I can share?

(Craig Clark/CBP): No that definitely helps.

(Lisa Gelsomino/Avalon): Next, I want to give an update from the NCBFAA subcommittee since they have been pushing hard for different means to get the VDM. One of the questions was how do we get the VDM? We will talk to you about how you can get that VDM, and one way is this new query now available that an ISF Filer can query in ACE to get the Vessel Departure Date and port. This is now in Certification so we encourage you to test it so if you find any issues you can make sure you're sending them to Peyman as the new ISF program manager given his technical background to assist.

Another way to get more information on the VDM is to run ISF Reports in ACE. Your ISF filer can help facilitate this for you and for importers there are two key reports available. One is the ISF Progress Report and this is going to provide just a snapshot of ISF transactions for a three-month period because that is usually the best timeframe to evaluate most of the VDM transactions from customs standpoint. For importers that are C-TPAT Tier II or III, you can actually get line item detail behind the report, which would include the actual Vessel Departure Message that Customs is receiving from the carrier.

As Craig referenced already, the report is based on his definition of ISF timeliness. In the report, you are also going to see the ISFs not measured for timeliness. Because no VDM has been received by CBP to measure the timeliness yet, that will not impact the importer's compliance. Want to talk about this, Craig?

(Craig Clark/CBP): Maybe not specifically about this, but about the progress reports and what is shown on them. The reports are only a snapshot in time so there may be vessel departure messages that we received for this particular ISF after the cutoff date for the report or maybe there's a mismatch with the ISF, but your progress report

doesn't show that. Maybe there was simply a crossover in the timelines. So something to remember about the purpose of the reports, they are not perfect and nothing that CBP uses as an enforcement tool against you. They are just an insight for you to better understand where you are and have a general idea of where you are. That's really about it and just something I want everyone to remember that these are not absolute numbers.

(Lisa Gelsomino/Avalon). We also want to remind you of the Late ISF Report that can be run both by ISF filer and by ISF Importer to then evaluate only the late ISFs. The progress report looks at everything in all the transactions and what is the compliance rate looking at that for a 90-day period. This report also runs for a 90-day view, and it will show all of the late ISF and list them in transaction detail and you can get that in a PDF or Excel format that would include the VDM field. We want you to be aware of the CSMS message recently issued that is only going to store those reports now for 120 days. I think Peyman explained with Customs going completely paperless they need to store more images so this is mostly related to a storage problem for CBP.

(Craig Clark/CBP): For those of you who are concerned about getting a liquidated damage claim for something that happened 130 days ago? What you should begin getting into the habit of doing is downloading your reports on a regular basis so that you have them and not finding yourself in a position of 131 to 150 days later to access reports that are no longer accessible.

Best Practices

(Lisa Gelsomino/Avalon): This is bringing us to wrap up in terms of best practices, and we have literally, as I mentioned, conducted all of the outreach and in all the major ports, and in many situations the local ports have CBP officers present to talk about their local policy. I also reached out to West Coast and East Coast to get some feedback on what are they seeing and what kind of tips do they want to leave you with. We have five of those that we want to share with you today. Craig, I think you wanted to start out with this one.

(Craig Clark/CBP): This is almost ISF 101, but it always bears repeating. **5) The ISF Importer is responsible for timely complete and accurate ISF.** The ISF enforcement and please write now, you're seeing in the form of cargo hold a liquidated damages claimed and that is out there. Know that C-TPAT importers and in some cases even the fighters who have been C-TPAT, we have extended the 50% reduction in mitigation to them. So that is something to bear in mind if you are C-TPAT or thinking about becoming C-TPAT. The importer can also be subject to penalties under 19 USC 1595. In more plain language that basically means a penalty based on value of the cargo and that is something we could of course pursue if we chose. And I'll let Lisa discuss this last point, but it's always great to work with an ISF filer, if you establish a good relationship that can certainly help with compliance.

(Lisa Gelsomino/Avalon): Yes, as I mentioned that 85-95% of ISFs are filed by licensed custom brokers and they are used to compliance since they have to be comply with so many laws and regulations so can really help you manage your compliance and access those reports in ACE. I know we have some questions that came through that you may have trouble accessing the ACE reports and getting support. We do know who submitted the question, and we will reach out to you directly to help with any problems you are having to see how we can assist with that. By now the reports are set up to just be pulled from the portal, there is no email logic that pushes those reports to you. But certainly you will want to get familiar with these reports. Once you get a copy of this presentation, you will find links to the PDF document that Customs has provided with full instructions in getting access to ACE and the various ISF reports that can help you with that.

The other thing we want to reiterate again and again, Craig this is your message.

(Craig Clark/CBP): **Yes, 4) ISF Timeliness and Accuracy.** The timeliness is incredibly important as I've mentioned a couple of times today. I have held off answering this question because we have seen it come in, but when you have the 3Z status messaging this doesn't mean that you have a bill of lading match. The 3Z is like you successfully communicated your ISF information to CBP and the S1 message is what you need for your bill of lading match so they are not the same thing, and they don't mean the same thing. The lateness, I said earlier, very important to file your ISF timely and it is better to file our ISF late than never file at all. For someone to get jammed up having no ISF, it's a very expensive problem.

(Lisa Gelsomino/Avalon): **Next is 3) File Your ISF Even if Late.** This is feedback that actually came from the ports directly and again to remind you of those bonding exemptions again. The ports say they are seeing that it's a transaction that does not require a bond yet is still being delayed because no one will file the ISF. In the past year,

we have seen Customs put these small, one-time shipments through a non-intrusive inspection (NII) and that really satisfies most concerns because in most situations these are not high-risk security threats. I think that is something that we have seen CBP act very reasonably on, and I think that will continue.

Next is **2) Flexible Filings**, Craig.

(Craig Clark/CBP): Yes, one of my favorite issues. Many of you that have heard me talk about this the last five or six years, you heard my opinion on the flexible filing options. They are of course not as flexible as they would appear. I just have antidotes to say that of course people see the word flexible and think that it is a benefit, but if you have filed one of the flexible filing options, you have limited yourself in terms of what you have to update and have one more obstacle to compliance and when you could have just filed a compliant transaction in the first place.

If you have to file a flexible filing option, you have to update no later than 24 hours prior to the cargo arriving. To contrast that with the compliant transaction that can be amended up to arrival. So you're giving up 24 hours of flexibility for yourself if you use that. Another big issue if you use one of those codes (FR, FT, FX) for the flexible filing codes, you have to go in and update into a CT (compliant transaction) 24 hours prior to arrival. If you do not, even if you have given CBP all of the correct information, you now expose yourself to an inaccurate ISF and liquidated damage claim, which may have been for nothing.

I strongly recommend finding ways to work around using the flexible filing options. The compliant transaction is eminently amendable and flexible innately as it is. If you're using the flexible filing options, just know that you have some extra steps to take before it is actually complete to convert to a CT transaction 24 hours prior to arrival.

(Lisa Gelsomino/Avalon): The flexible filings are only about 2%, right Craig?

(Craig Clark/CBP): Actually less than 1%. It's not a big problem, but I would just like to see everybody not have this concern.

(Lisa Gelsomino/Avalon): Unfortunately, because of this small volume, it's something that's important to pay attention to and want to be mindful of it because it's a violation.

(Lisa Gelsomino/Avalon): **Of course #1) Always Update a Timely ISF, Do Not Delete and Redo an Untimely ISF.** I was really surprised to hear that this is still an issue because we've done so much outreach on this and updates can be made throughout transit and are encouraged by CBP to reflect the most current information. Frequently, people think that they have to delete the ISF because there was change in the ISF importer or consignee, this is not correct. Once the ISF is filed 24 hours prior to vessel departure that is what we call in the surety business the right of action because the ISF importer is already obligated, and it doesn't matter that the ISF importer may have changed. We frequently see the ISF importer or ISF is not the same as the Importer of Record on Entry. So there could be these variations and again here's the link to the regulation that specifies you can update the ISF up to arrival of the cargo. We also get questions about that from importers who want their records to match and so they can still continue to update the ISF even though they have no obligation to do so.

(Craig Clark/CBP): Obligation to update ISF generally terminates at first port of arrival, but CBP will not prevent you from updating if you so choose after that timeline.

In summary, we have got a bunch of links here to information and you will get a copy of this presentation and will post the recording and there are hundreds of questions here and we will not have time to get to all of them but as most of you are familiar with we always put together written Q&A as a follow-up. There will also be a full transcript posted of this webinar so stay tuned for that? We thought we would share with you our contact information and also our real pictures for those of you who do not know us this is what we really look like and this is Peyman who many of you are probably meeting for the first time. Our contact information is also available, please feel free to reach out to all of us and also. I would like to say congratulations to Craig for those who have not heard already, he has taken over the Program Manager role for ACAS. Craig, do you want to tell us about ACAS?

(Craig Clark/CBP): In a nutshell, ACAS is the air cargo advance screening program, or pilot I should say, and this is something that was born out of the cargo incident out of Yemen in October 2010 where there were bombs that were shipped disguised as the cartridges aboard aircraft. This is a program in the same spirit as ISF and that is the

advanced data for security purposes, but please do not confuse it with ISF. Is not ISF in the air and anyone that is familiar knows I am going back to this program I a few years ago and then came back to sort of pass it on to someone so I can focus on ISF and bring it to its current state today and ready to let it go. Back to ACAS and Peyman is moving on with ISF.

So many of you will start hearing from Peyman, especially those on the NCBFAA Subcommittee that I also participated in. Peyman will be taking over the monthly calls and they have done a great job communicating many of these issues to CBP to get issues resolved prior to full enforcement on May 14th. We call it full enforcement but it's still going to be more of, what do you want to call it, Craig?

(Craig Clark/CBP): Commonsense approach is still in place and like we said earlier headquarters is not divorcing itself completely from ISF and the process in the field. There is still going to be guidance and monitoring of the ISF activities in the field. Not the Wild West. Not going to be just an avalanche of liquidated damages, claims for one day late types of violations. There will be some guidance from headquarters to the field.

(Lisa Gelsomino/Avalon): Another key question, in the past you gave an FAQ update with the original guidance provided in May 2014 anything subsequent planned?

(Craig Clark/CBP): Yes and everyone can expect to see in the next few days, maybe early next week, some guidance and some updated information by the CSMS. We will keep you in the loop about how we are moving forward.

(Lisa Gelsomino/Avalon): But for the most part they should not expect a whole lot of changes from what was communicated today?

(Craig Clark/CBP): That is true. The biggest take away from this new enforcement posture is that CBP headquarters will no longer be involved in the day-to-day sort of approval of liquidated damage claim requests, and no longer required to provide three warnings to violating importers. Of course, the ports may choose to continue outreach to facilitate the movement of the cargo without begging people of liquidated damages claims, but they do not have to any longer. That policy promised back in May 2014 is expiring

(Lisa Gelsomino/Avalon): As you can see, there is still a need for an ISF Program manager to be a resource to the trade and for questions. What would you expect Peyman to be working on going forward?

(Craig Clark/CBP): I expect that Peyman will be experiencing quite a lot of outreach in the next year just to keep everybody in the loop on the progress of the points CBP is making on ISF enforcement, and what it continues to look like. We're not going to fall silent. Certainly our email addresses and phone numbers are the same, and we expect you to use it. Any questions or concerns, just call us.

(Peyman Jamshidi/CBP): Yes, any question or concern or any problem just email us or call us anytime.

(Craig Clark/CBP): And if you email me, I will forward it to Peyman

(Lisa Gelsomino/Avalon): And the Security filing general inbox is still in place?

(Craig Clark/CBP): Yes, please take advantage of that.

(Lisa Gelsomino/Avalon): The benefit of that is it is always dealt with by somebody in the office in case you or Peyman are out of the office. The email address was provided in this presentation. We have about 10 minutes left for questions that we can answer within the time allotted. I want to mention to anyone who participated in the call, we did partner with the NCBFAA today so you'll receive 1.5 CCS credits and please email your registration receipt as requested here and with that we have about 10 minutes to take some more questions.

Before we jump into the questions, I want to preface this by saying you guys have sent in lots of questions. Attendance is huge. More questions than we're used to receiving. I do apologize that we cannot answer all of them on the webinar, and I think this may be a couple of weeks project to answer all of these questions. We are looking for to getting back to everyone.

Questions:

(Craig Clark/CBP): **There has been a record-keeping question a couple times that comes up when we're talking about the statute of limitations for six years.** ISF was introduced back in 2009 and there was no record-keeping requirements published and simply because we do not think there needed to be. Please don't confuse the record-keeping five years with the statute of limitations of six years for the issuance of liquidated damages claims. They are different things.

(Craig Clark/CBP): **Repeat offenders question has come up too.** We talk about egregious violators or repeat offenders, whether that is something that is port specific or nationwide, and there are ways of course to internal databases that all ports in the nation can see an importer of record number associated with any particular importer. And whether or not this importer has violated repeatedly, so I will say generally it is nationally based. It's something that you have a couple of will cease in the late, LA can know about it.

(Lisa Gelsomino/Avalon): **We also have comments about how the warning letters may have been issued to an incorrect party.** I will have to reiterate that these were issued manually and while Customs actually tries to reach out by phone or email in a less formal manner because really just trying to give everybody a heads-up that they received some compliance issues. When it comes to the 5955A that gets issued for liquidated damage claims that is attached to the bond that obligates the ISF transaction so you will not see those problems in the liquidated damage environment as you may have in the warning letter environment?

As mentioned, the warning was just a warning so did not have to be that accurate. CBP really tried to get out to the proper party and in some cases it was not. But those 5955As will absolutely go to the ISF importer and any other party who may have contractually obligated their Customs Bond for the ISF transaction. That would be the case for an ISF filer who does so and they would get the 5955A. We also want to remind the trade that the ISF Importer also has obligations to Customs for penalties over and above any liquidated damages that would be created by the Customs Bond contract.

(Craig Clark/CBP): **Couple of times I've seen questions regarding some of the messaging, in a nutshell the question is do we get notified that there's not a bill of lading match?** Yes, you do. There are disposition codes, the S2, S3, S4 and S5 that we included in the presentation. Those are all basically the same message just a progression in time that you don't have a bill of lading match so you need to secure the S1 message so you are sure that you have the match. ACE continues to do that query for a 60 day period in ACE. I was quite surprised to find that there are many ISFs filed so far in advance. If you have done such a thing filing your ISF further than 60 days out from sailing, you are going to have to refile your ISF because it's not going to get the match if you are beyond the 60 day timeframe.

(Lisa Gelsomino/Avalon): We have just a few more minutes. Craig, any other questions you can answer?

(Craig Clark/CBP): There are so many that I fear getting into too many of these at this juncture. I think this is probably a good place to stop. I have to express my appreciation for everyone online. You have given us a huge amount of homework, and we are looking forward to getting back to you on this. There are literally hundreds of questions, and I do wish we had more time to answer them, but we will put them together and we will write them up and distribute so everyone will get an answer.

(Lisa Gelsomino/Avalon): I know there are a couple of comments that came through thanking you Craig for all your outreach, and we appreciate all that CBP has done through all the outreach in the past and at the port level as well. The trade really thanks you and looks forward to working with you, Peyman, going forward. **I think there was a question about ACAS and it's time to wrap up ISF because ACAS will soon enter a Notice of Proposed Rulemaking?**

(Craig Clark/CBP): Yes, ACAS is still a pilot so there's a lot of work to be done before ACAS is a program and regulatory, but it is something for those of you who are involved in the air environment that you want to pay attention to. But it's not yet, a Notice of Proposed Rulemaking has not yet been published, but once that is it will set off the comment period expected to be about 60 days. Then we will go from there, but it's not out yet.

(Lisa Gelsomino/Avalon): Yes, we had the timeline at the beginning of the presentation for ISF so that timeline will soon apply to ACAS?

(Craig Clark/CBP): Yes, just lather, rinse, repeat.

(Lisa Gelsomino/Avalon): Thank you everyone for staying on the call and participating today. We appreciate your time. Thank you.

(Craig Clark/CBP): Thank you very much.

[event concluded]