

**U.S. Customs (CBP) "10+2"
Importer Security Filing
("ISF") Rule: What Importers
Need to Know**

AHFA Online University
January 21, 2009

Robert J. Pisani
Pisani & Roll PLLC
1629 K St. NW Suite 300
Washington, DC 20006
Tel 1.202.466.0960
Fax 1.877.674.5789
rpisani@worldtradelawyers.com
www.worldtradelawyers.com



Agenda



- Understanding the new CBP rule and the data elements that importers must now furnish to CBP for all ocean shipments.
- Effective date, ISF filing times, phased in CBP enforcement plans and rule exemptions.
- How the ISF is filed - use of "designated agents" and filing the Customs entry along with the ISF.
- Explanation of the data elements or information associated with overseas suppliers/consolidators.
- Consequences of non-compliance with the new rule.



“10+2” Interim Final Rule Summary



The “10+2” interim final rule requires importers and vessel operating carriers to provide additional advance trade data to CBP pursuant to Section 203 of the SAFE Port Act of 2006

[Only applies to maritime cargo](#) that is being imported into the US. (CBP has stated that it does not intend to expand to other transport modes.)

- 10 elements to be transmitted by the **importer** or agent (generally) required 24 hours prior to lading (5 elements for transit cargo – FROB/T&E/IE Shipments)
- +
- 2 data sets to be transmitted by the **carrier** (i.e, Vessel Stow Plans & Container Status Messages)

“10+2” Interim Final Rule Summary (cont’d.)



- Interim Final Rule published in Fed. Register on 11/25/08
- Effective Date: 1/26/09
- CBP Enforcement: “Flexible” & delayed one year until 1/26/2010 – no penalties/liquidated damages or “no load messages prior to 1/26/2010
- 6 “data elements” subject to additional public comment by 6/1/09 (highlighted in green and red on next slide)
- Full text of rule: Go to www.worldtradelawyers.com and click on “News” link – **Warning**: 230 pages long!

The “10” Data Elements in the Interim Final Rule (Called “The Importer Security Filing” or “ISF”)



1. *Manufacturer (or Supplier) Name & Address
2. Seller Name & Address - last known entity by whom the goods are sold (owner if goods are not sold)
3. Buyer Name & Address – (the “sold to” party)
4. *Ship to Name & Address - first “deliver to” party
5. **Container stuffing location
6. **Consolidator Name & Address (stuffer)
7. Importer of record number/FTZ applicant
8. Consignee Number
9. *Country of origin of the goods
10. *HTS Number (6 digit level) for EVERY article in the shipment (10 digit level ok too)

*Data elements in green: CBP will permit flexibility in *interpretation* – range of responses permitted – must update if info not known 24 hrs prior to lading

**Data elements in red: CBP will permit flexibility in *timing* – but no later than 24 hrs prior to arrival at U.S. port

NOTE: Elements 1, 9 & 10 must be linked as a line item for the shipment on the ISF

The “2” additional Data Elements in the Interim Final Rule



Ocean Carriers must provide:

1. **Vessel Stow Plan** – The stow plan contains information about the vessel (e.g., vessel name, vessel number, vessel operator, ports of loading/discharge)
2. **Container Status Messages** – message about the status of the containers (may or may not exist)



What about the Bill of Lading?



- **Found in manifest data and joined to ISF**
- **Reported to CBP at lowest level (house bill – not the master bill)**
- **Multiple bills for single shipment: May be put on one ISF if shipment going to same importer on same vessel**



Who is Responsible for Filing and Are there any Exemptions?



For the Importer Security Filing:

- The Importer (i.e., the party causing the goods to arrive in the USA) or designated agent

For Freight Remaining on Board (“FROB”):

- The carrier (note that for FROB, the rule requires 5 fewer data elements than the ISF)

For Immediate Entry (“IE”), Transportation & Exportation Entry (“T&E”) and FTZ Entry:

- The party filing the IE, T&E or FTZ Entry (note again the rule requires 5 fewer data elements than the ISF)

EXEMPTIONS:

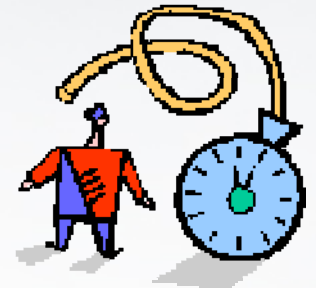
Bulk Cargo (e.g. oil) is exempt from the ISF requirement

Break Bulk Cargo (e.g., non containerized shipment – such as palletized cargo) – ISF must be provided 24 hours before arrival at US port provided cargo also is exempt under 24 hour rule

When is the Filing Required?



- **24 hours prior to loading the vessel bound for the USA except for FROB**
- **Any updates must be filed prior to goods entering the US port by same party who originally filed (no less than 24 hrs before arrival at U.S. port)**
- **Must be withdrawn and reason for withdrawal provided to CBP if goods do not arrive in USA**
- **For FROB: Any time prior to lading**
- **Vessel Stow Plan – No later than 48 hrs after departure**
- **Container Status Messages – Within 24 hrs of receipt or creation**

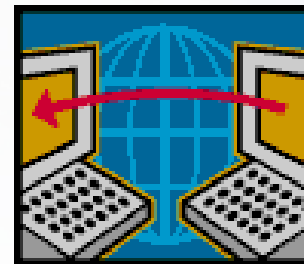


How is the Filing Done?



- Filed via Automated Manifest System (“AMS”) or by the Automated Broker Interface (“ABI”)
- ISF as a separate filing by Importer or designated agent
- ISF with CF 3461 and CF 7501 single filing (i.e., filing the Customs entry AND the ISF together as a “single filing”)
 - Importer of Record Number
 - Consignee Number
 - Country of Origin
 - 10 digit HTS

(These 4 data elements will only be filed once with the single filing)
- ISF Single filing - Must be filed by the importer or licensed USA Customs Broker (i.e, not any designated importer agent)



ISF “Single Filing”



- The wave of the future? In essence, the single filing amounts to filing your customs entry prior to the goods leaving the foreign port
- CBP has stated that the ISF is about “security” and improved targeting – and is not supposed to be used for commercial customs compliance purposes, yet it is unclear how CBP will treat disparities between the ISF and customs entry
- The Single Filing may avoid redundancies (as 4 of the ISF data elements also appear on the customs entry) – yet all entry data may not be readily available 24 hrs prior to lading
- U.S. Customs Broker fees: May be a consideration in electing to perform a “Single Filing”

10+2 and Bonds/Penalties



- The rule requires that the importer and (and any designated agent) obtain a bond that will provide for damages in the event of breach – sample bond set forth in interim final rule
- Liquidated damages: \$5000 per violation associated with ISF filings
- Carriers: Damages for breach are \$5,000 per vessel for failing to transmit Vessel Stow Plan and \$5,000 for each failure to submit any container status message (\$100,000 cap)





More on Bonds

- **CBP working on clarifications regarding ISF Bonds**
- **A Continuous Bond will suffice to cover both the ISF filing and the customs entry (recommended)**
- **Single transaction bonds OK – but will be evaluated by CBP on a “case-by-case” basis (single transaction bonds probably only advisable for new or infrequent importers)**
- **If you don’t have the bond filed with CBP (usually takes @ 2 weeks to get a bond filed with CBP), you may be able to get your designated agent (e.g., broker) to obligate their bond**

More on Penalties/Liquidated Damages



- **Importer faces \$5,000 liquidated damages claim for breach of the bond if the ISF filing is not accurate or timely (applies to brokers as well who file the ISF on behalf of the importer)**
- **CBP has indicated that mitigation will only occur as the exception rather than the rule**
- **Importer should consider indemnification clauses in their shipper contracts to provide importer insulation against the liquidated damages claims**
- **No liquidated damage claims until 1/26/2010**



Costs associated with “10+2”



- **CBP’s interim rule estimates a total cost of between \$48 & \$390 per shipment to comply with ISF filing**
- **CBP indicates potential \$43 billion in shipment delays in next 10 years**
- **Additional costs imposed by designated agents who handle ISF filings**
- **Software/IT enhancement costs**
- **Bond costs**
- **Impact on insurance premiums**
- **Recordkeeping costs**
- **Impact on inventory (provide cushion for shipment delays)**

“10+2” – Practical Considerations



If you use an agent to file the ISF:

- Power of Attorney is required
- Agent must have access to ABI or AMS

Accuracy of the data elements:

If information cannot be reasonably verified, CBP rule Indicates you may submit the information based on what you “reasonably believe to be true”

ISF Unique Identifier:

Provided by CBP upon filing – only for identification and receipt purposes. Note that the Carrier may request the ISF number from the importer

Stay Tuned!

There may be changes to the rule in 2009 based on public comments or Congressional/administration review

“10+2” – Possible Problems



- Immediate or last minute orders
- Insufficient communications with suppliers re the new ISF requirements
- Incomplete documentation
- Reliance on designated agents w/out indemnification agreements or contingency planning
- Impact of sales “on the water” – what changes need to be reported and when (CBP not clear on this)
- Shipment delays attributable to ISF filing issues

Data Elements (Comparison)*



Required Manifest Data

Bill of Lading Number
Foreign Port before vessel departs for U.S.
Carrier SCAC
Carrier Assigned Voyage Number
Date of Arrival at First U.S. Port
U.S. Port of Unlading
Quantity
Unit of measure of Quantity
First Foreign Place of Receipt
Commodity Description (description/HTS-6)
Commodity Weight
Shipper Name
Shipper Address
Consignee Name
Consignee Address
Vessel Name
Vessel Country
Vessel Number
Foreign Port of Lading
Hazmat Code
Container numbers
Seal Numbers
Date of departure from Foreign Port
Time of Departure from Foreign Port

Importer Security Filing Data

Manufacturer (Supplier) name/address
Seller (Owner) name/address
Container Stuffing location
Consolidator name/address
Buyer (Owner) name/address
Ship to name/address
Importer of record number
Consignee number
Country of origin
Commodity HTS-6

Stow Plan Data

Container Status

Message (CSM) Data

FROB, IE, TE

- Booking Party Name/Address
- Foreign Port of Unlading - Port Code
- Place of Delivery - code
- Ship to Name/Address
- Commodity HTS-6

Entry Data Elements

Entry Number & Type
Entry – District & Entry – Port
Filer Code
Importer of Record
Ultimate Consignee
Surety Number
Filing Date & Time
Importing Carrier
Vessel Name
Country of Origin
Exporting Country
Exporting Date
Foreign Port of Arrival
Estimated Arrival Date
Entry Value
HSUSA (10)
Manufacturer ID

*Source : CBP

Questions?

Robert Pisani:
rpisani@worldtradelawyers.com
1.202.466.0960

www.worldtradelawyers.com