

## **January, 09 Special Report: Importer Security Filing**

As reported in the November newsletter, Customs has issued the “interim final regulations” implementing the Importer Security Filing (ISF), also known as “10 + 2”. The new ISF will be required effective January 26, 2009, and applies to all merchandise arriving in the U.S. by ocean vessel. The ISF is required to be filed with Customs **at least** 24 hours before the goods are loaded on the vessel. Also, ONLY the party filing the ISF will have visibility into the actual ISF data transmission and can change it should that be necessary. Because the “ISF importer” (defined below) is responsible for the filing, and because the information on the ISF and the Customs entry must match, we recommend that you allow us, your customs broker, to file your ISF.

### **Basic Data Elements**

For merchandise that is destined to arrive in the U.S. by ocean vessel for consumption entry, the following data elements are required:

1. Manufacturer (or supplier) name & address;
2. Seller name & address;
3. Buyer name & address;
4. Ship to name & address;
5. Container stuffing location;
6. Consolidator name & address;
7. Importer of record number;
8. Consignee number;
9. Country of origin of goods; and
10. HTS number (6 digit).

Items 5 and 6, container stuffing location and consolidator name & address, can be submitted as late as 24 hours prior to vessel arrival, but we recommend this information be collected and submitted with the other data elements to preclude inadvertently omitting it entirely. In addition to the 10 data elements set forth above, a bill of lading number at the lowest level (i.e., the regular/straight/simple bill of lading or the house bill of lading) must also be provided. The carrier must provide CBP with 2 elements: (1) a vessel stow plan; and (2) container status messages (hence “10+2”).

### **The ISF Importer**

The “ISF Importer” is “the party causing goods to arrive within the port limits of the United States” and this entity is responsible for filing the ISF. This is generally the importer of record, but circumstances could cause another entity to qualify as the ISF Importer. A third party agent, such as us, who is properly authorized by a power of attorney, which we already hold, may file the ISF on behalf of the ISF Importer.

### **Bonding requirements**

Customs requires that the ISF importer, or his agent, have a bond. The Customs bond ensures CBP's ability to enforce compliance with the ISF program through the assessment of liquidated damages of \$5,000 per violation. An importer's continuous bond covers the ISF. Customs has not yet informed us on the requirements regarding a single transaction bond

### **Updating information**

The ISF Importer is required to update the filing if there is any change in the data while the merchandise is in transit to the United States. Although the ISF will only be used for security targeting purposes, CBP has indicated that it may validate the ISF data against the information submitted at entry. Data discrepancies may lead to the assessment of liquidated damages or penalties against the ISF Importer, but probably not until after the flexible enforcement period unless the discrepancies are blatant. This is the primary reason you should have us, your customs broker, submit the ISF – we are in the absolute best position to insure compliance with both the ISF and the entry.

### **Flexible enforcement period**

Customs has provided for a flexible enforcement period of at least 12 months. During this period, CBP will “show restraint” and waive liquidated damages or penalties to ISF importers and filers making a good faith effort to comply with the new ISF requirements. CBP has also indicated that importers who do NOT demonstrate a good faith effort to comply with the program will be subject to enforcement actions during the 12-month flexible enforcement period. It is therefore VERY important that importers make every effort to comply from the beginning.

### **“Do Not Load” messages**

Customs has indicated that an erroneous or untimely ISF would usually not result in a “Do Not Load” message at the foreign port during the flexible enforcement period. If, however, Customs determines there is a security risk

due to the ISF, a “Do Not Load” message will be issued. You should know that carriers are still required to transmit manifest data to Customs 24 hours prior to lading under the 24-Hour Rule, which is still in effect. WE have every expectation that Customs will cross-reference the 24-Hour Rule transmission with the ISF so that the total absence of an ISF filing even during the flexible enforcement period may trigger an investigation as to whether the importer is acting in “good faith”.

### **Entry Option**

Customs allows the entry to be filed with the ISF. We are offering our customers that allow us to file both the ISF and the entry a reduced rate, especially if we can file both simultaneously. This is obviously the most efficient method, but this requires the importer to get us all the documents several days in advance of vessel departure.

### **Confidentiality**

Customs has clearly stated the ISF transmission is considered confidential business information and is exempt from public disclosure. While licensed customs brokers are prohibited by regulation from disclosing client information, other entities that make the ISF are under no such prohibition. This confidentiality is another reason to use us, your customs broker, for the ISF.

We will soon post on our website more complete information on the data elements. Also, we will advise you when Customs sets forth the rules on single transaction bonds and the ISF. Meanwhile, to reduce confusion and insure compliance, please give serious consideration to allowing us, your customs broker, to make this important filing for you.

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