



Homeland Security

10 + 2 Update - U.S. Customs and Border Protection (“CBP”) has issued “interim final regulations” implementing the “Importer Security Filing and Additional Carrier Requirements,” the so-called “10 + 2 Rule.” The new Importer Security Filing program applies only to goods shipped to the United States via vessel and will require the submission of certain data elements to CBP at least 24 hours before the goods are laden on board the vessel. Merchandise arriving via AIR and or cross border with Canada and Mexico are not subject to the 10+2 filing requirements. The new Importer Security Filing (“ISF”) program becomes effective on January 26, 2009. The ISF program will dramatically alter the manner in which information is processed in the supply chain. Recognizing that the trade will require time to adjust to the new requirements, CBP has provided for a “*structured review and flexible enforcement period*” of at least 12 months. During this period, CBP will “show restraint” and forego the issuance of liquidated damages or penalties to importers and ISF Filers making a good faith effort to comply with the new ISF requirements. While CBP is still finalizing elements of this program, CBP has indicated that importers who do not demonstrate a good faith effort to comply with the program may be subject to enforcement actions during this 12 month phase-in period.

Basic Requirements For merchandise which is destined to be entered into the United States or placed into a foreign trade zone, importers or their agents must transmit the following data elements to CBP through either the Automated Broker Interface (“ABI”) or Automated Manifest System (“AMS”) electronic data systems:

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. Commodity HTS number(s) (6 digits).

Basic Requirements For merchandise which will transit (Trans – Ship) the U.S. under I.E. or T.E. (CF 7512) or FROB cargo ,importers or their agents must transmit the following data elements to CBP through either their Automated Broker Interface (ABI) or Automated Manifest Systems (“AMS”) electronic data systems.

1. Booking Party name & address;
2. Ship to name & address;
3. Commodity HTS number(s) (6 Digits).
4. Foreign port of Unlading (Final destination Port Schedule K code)

Place of Delivery (Final destination City Code (UN Abbreviation

In addition to the 10 or 5 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 (*aka the AMS Bill of Lading*) must also be provided/transmitted with the above 10 / 5 data elements. The vessel operator / carrier must provide CBP with: (1) a vessel stow plan; and (2) container status messages. Thus, the ISF requirement is referred to as the “10+2 Rule.” A single ISF may cover multiple bills of ladings as long as they are all going to the same importer as part of the same shipment and on the same vessel voyage.]

Filer Messaging Components - CBP will return system messages to the ISF Filer. These messages will be ACCEPT / ACCEPT with WARNING / CONDITIONAL ACCEPTANCE / REJECT. Further CBP will assign a unique identification number which will be returned for all ISF filings that have been accepted. A bill of lading [AMS BL] “ match” or “no match” will be returned. If “ no match” the system will periodically check for a match. If a match is made, a message will be sent back to the filer. If “no match” after 5 days , the system will return a warning , after 20 days the system will return a second warning , after 30 days the system will return a final expiration message. This ISF / AMS “ match” will be visible in most AMS systems. During the “*structured review and flexible enforcement period*” it is understood that CBP will continue to give AMS“ ok to load” messages for those AMS BL’s that do not have a ISF match. However at the end of this “ *structured review and flexible enforcement period*” of one year any AMS filings done that do NOT have an ISF match will NOT receive an “ Ok to load” message in AMS.

Data Flexibility The interim final regulations provide flexibility with respect to certain elements of the program: First, as to timing, the “container stuffing location” and “consolidator” data elements may be transmitted up to 24 hours prior to arrival of the shipment in the United States. Second, CBP has provided for flexibility as to interpretation of the following elements: “manufacturer (or supplier),” “ship to party,” “country of origin,” and “HTSUS number.” These flexibilities were created in response to importer concerns regarding the availability and definition of the ISF data elements. CBP has invited additional comments on these elements and will evaluate any specific compliance difficulties encountered by the trade before issuing final regulations.

The ISF Importer - The “ISF Importer” is defined as “the party causing goods to arrive within the port limits of the United States.” The ISF Importer is responsible for filing the ISF. For goods which are not shipped in bond, the ISF Importer will be the goods’ owner, purchaser, consignee or authorized agent. A third party agent who is properly authorized by a power of attorney may file the ISF on behalf of the ISF Importer or in its own name, provided that the ISF filing is secured by a CBP approved bond. 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 and that data discrepancies may lead to the assessment of liquidated damages and/or penalties against the ISF Importer (after the conclusion of the flexible enforcement period).

Bond Requirements The ISF must be secured by a bond posted by either the ISF Importer or the ISF Filer, e.g., an agent designated by the ISF Importer. The CBP approved bond must be a continuous entry bond, an international carrier’s bond or an “Importer Security Filing Bond.” The ISF bond is similar to a single entry bond (single entry bonds have not been approved for ISF purposes) and only secures the ISF filing; a separate bond must be posted to secure the entry. While CBP has yet to issue ISF bond guidelines, CBP has indicated that the maximum liquidated damages exposure for an improper ISF filing is \$5,000 per violation, so that \$5,000 would appear to be the maximum value of the ISF bond.



Do Not Load” Messages Whereas CBP had previously indicated that an erroneous or untimely ISF would not result in a “Do Not Load” message being sent to the carrier, a “Do Not Load” message may issue if the ISF indicates a security risk. Moreover, carriers are still required to transmit manifest data to CBP 24 hours prior to lading under the so-called “24 Hour Rule.” It is anticipated that CBP will cross- reference the 24 Hour Rule transmission with the ISF such that the total absence of an ISF filing may also trigger a “Do Not Load” message (after the conclusion of the flexible enforcement period).

Entry Option -Not only do importers have an option as to who will submit this data, but they have an option as to the type of filing that will be permitted. In this regard, importers can opt to file the ISF 24 hours before the goods are laden on board the vessel and submit a formal entry for the merchandise upon its arrival in the United States. Alternatively, the importer can make a combined customs entry/security filing 24 hours before the goods are laden on board the vessel for shipment to the United States. Whereas certain additional data elements will be required to complete the combined entry/security filing (i.e., value, 10 digit HTS classification), only an importer self-filer or a licensed customs broker can make a combined entry/security filing. This combined filing option would appear to be the most efficient option for many types of freight due to the overlapping data elements required in each filing.

Confidentiality Unlike manifest data which can be retrieved from CBP under the Freedom of Information Act (“FOIA”), the ISF transmission is considered confidential business information which would be exempt from public disclosure by the government under the FOIA. Whereas licensed customs brokers are prohibited by regulation from disclosing client information, this prohibition does not extend to other parties who may be authorized to make the ISF. Importers should carefully consider who will be given access to this data, how they will control the use of this information and determine whether appropriate safeguards can be put into place through the use of enforceable legal agreements in order to keep this information confidential.

ISF Considerations The Import Security Filing is effective January 26, 2009. While CBP will delay enforcement of the new requirement for at least one year, importers are strongly encouraged to consider how they will meet their obligations under the new program and to begin transmitting the available ISF data elements as soon as possible. Decisions must be made with regard to who will make the filing and it may not be uncommon for importers to appoint multiple filers depending upon logistical considerations. However, in considering who to nominate to file the ISF, importers should consider the manner in which they provide the data (e.g., will the filer have to make judgmental decisions?), whether the filer is familiar with this type of data (can they distinguish between the parties in the transaction?) and how the importer will confirm that the ISF has been filed both timely and accurately. The only party with visibility into the actual ISF data transmission is the party who files the ISF. Importers will be unable to independently verify the ISF data, unless they self file. If the ISF data is discrepant with the data submitted at the time of entry, the importer may not learn of the discrepancy until after the goods arrive in the United States. (Possibly only when CBP issues a liquidated damages claim.) This risk may militate towards a combined ISF/entry filing which can be reviewed and amended as necessary prior to the arrival of the goods.

Service providers who may consider submitting the ISF on behalf of ISF Importers must carefully examine the potential liability from both a commercial and regulatory perspective. Arrangements should be made to clarify who will bear responsibility for late, incomplete and/or erroneous data transmissions. ISF Filers who chose to post their bonds to secure the ISF should consider that they are assuming primary responsibility for the correctness of the data elements. Importers, brokers, forwarders and ISF service providers are encouraged to utilize the flexible enforcement period to develop supply chain solutions and to identify potential difficulties in complying with this new regulatory requirement.



10+2 and ECU Worldwide. – Although the security filing is not mandatory January 26, 2009, ECU Worldwide will be contacting all current customers during the month of January to secure details of how our customers want to proceed. ECU Worldwide's AMS systems have been updated to latest ABI / ACS requirements for the 10+2 and 5+2 filing requirements and will continue to be updated as customs updates their programming requirements. We are recommending to our customers that they begin making arrangements for either their current Customs Broker and or their current Carrier (NVOCC or VOCC) to begin ISF filings as soon as possible as customs is giving highest flexibility early on in the project to allow all parties to encounter all the types of situations needed to test before going into full implementation.

Please contact the manager of our local ECU Worldwide office if you would like to receive the latest CBP power point on the subject or you may email: imports@ecuworldwide.us. Please kindly reference " 10+2 " in your Subject of the email.