

ISF (10+2) Flexible Enforcement Period Ends in One Week (1/26/2010)

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Those of you who are importers should already be familiar with the Customs and Border Protection (“CBP”) regulation implementing what is commonly known as the “10+2” initiative. The 10+2 initiative 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 and section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002, for non-bulk cargo shipments arriving into the United States by vessel.

The flexible enforcement period is ending imminently on January 26, 2010. Hopefully, you have already successfully used the Importer Security Filing (“ISF”) process with your ocean non-bulk shipments. CBP allowed one year from January 26, 2009 for importers to test their, or their agent’s, ISF transmissions. During this first year, CBP has monitored all ISF submissions for timeliness, accuracy and completeness and has promised to work with any non-complying ISF filers in order to help them adhere to the new requirements.

CBP has also commented that an entity’s progress in the implementation of the rule during the delayed enforcement period will be a mitigating factor in any enforcement action following the delayed enforcement period starting January 26, 2010.

After January 26, 2010, CBP will enforce the ISF, vessel stow plan, and container status message requirements through the assessment of liquidated damages in addition to penalties applicable under other provisions of law. The following are the required elements for ISF:

Importer Requirements

U.S.-bound cargo, including FTZ and IT, requires the electronic filing of an Importer Security Filing (ISF) comprising 10 data elements 24 hours prior to vessel lading:

1. Importer of Record Number
2. Consignee Number
3. Seller (Owner) Name/Address
4. Buyer (Owner) Name/Address
5. Ship To Party*
6. Manufacturer (Supplier) Name/Address*
7. Country of Origin*
8. Commodity HTS-6*
9. Container Stuffing Location**
10. Consolidator (Stuffer) Name/Address**

Transit Cargo (FROB, IE and TE) requires the electronic filing of an ISF comprising five data elements:

1. Booking Party Name/Address
2. Ship To Party
3. Commodity HTS-6 Number
4. Foreign Port of Unlading
5. Place of Delivery

Carrier Requirements (in addition to existing carrier requirements):

1. Vessel Stow Plans
2. Container Status Messages

Carriers are required to submit a vessel stow plan for vessels destined for the U.S. For voyages longer than 48 hours, carriers are required to transmit the stow plan so CBP receives it no later than 48 hours after the carrier's departure from the last foreign port. For voyages less than 48 hours, CBP must receive the stow plan prior to the vessel's arrival at the first port in the U.S. Carriers are required to submit Container Status Messages for certain events relating to any containerized cargo destined for the U.S., provided the carrier already crates or collects that information in its equipment tracking system. If this applies, carriers are required to submit the information no later than 24 hours after the message is entered into the carrier's equipment tracking system.

There are other provisions in the ISF. Liquidated damages for violations have been modified to \$5,000 for each violation. Liquidated damages for violations of advance cargo information requirements are capped at \$100,000 for vessel carriers. Powers of Attorney must be in English. Bond requirements have changed.

The following is some additional practical information for all ISF importers:

- Successful ISF importers are using qualified agents to handle ISF electronic transmissions. It all starts with having accurate data on your purchase order and possessing the ability to transmit the required accurate data elements electronically to your agent. All ISF filings are to be done electronically via vessel Automated Manifest System (AMS) or the Automated Broker Interface (ABI).
- No paper forms are permitted (e.g., CBP Form 3461 equivalent).
- CBP is not creating an internet-based web portal to accept the ISF filings. However, some service providers allow self-filers indirect access to CBP systems.
- The ISF Importer is ultimately responsible for the timely, accurate and complete submission of the ISF filing.
- The ISF Importer, as a business decision, may designate an authorized agent to file the Importer Security Filing on the ISF Importer's behalf.

- If an agent is used for ISF purposes, a power of attorney (POA) is required.
- The filing of an ISF does not constitute “customs business”. However, one exception to this rule is that a “Unified Entry” filing must be completed by a licensed customs broker.
- The Vessel Operating Carrier (VOC) may hire a Non-Vessel Operating Common Carrier (NVOCC), or another party, to be its agent for ISF purposes.
- In order to avoid supply chain disruption, and if you work with a vendor or supplier that is the importer of record, you must confirm that vendor or supplier’s compliance with the ISF program as well.

As the importer of record, you are responsible for any and all penalties after January 26, 2010. These liquidated damages can add up as they can be imposed for each and every transaction you are engaged in, so ensure your compliance with the ISF program today!

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*These elements are still required 24 hours prior to vessel lading. Importers, in their initial filing, will be permitted to provide a range of acceptable responses based on facts available at the time, in lieu of a single specific response. Importers will be required to update their filings as soon as more precise or more accurate information is available.

**ISF Importer must file this data as soon as possible, but no later than 24 hours prior to U.S. arrival.

Reference: CBP Website(www.cbp.gov) - ISF/10+2 Presentation and FAQ