

What's new with 10+2?

Highlights from the Importer Security Filing (ISF) Interim Final Rule

- **Interim Final Rule** was published to the federal register on Tuesday, November 25th, 2008.
- **The implementation date is January 26th, 2009 with full compliance scheduled for January 26th, 2010.** Between these two dates, Customs expect importers to “making a good faith effort to comply with the rule to the extent of their current ability”
- **The rule shows flexibility on the reporting on several data elements.** For the data elements “manufacturer”, “ship-to party”, “country of origin”, and “HTSUS number”, U.S. Customs states that it will be OK for importers to supply timely information based on the info known at the time, so long as they in turn update their filings as soon as more precise or accurate information becomes available. The “container stuffing location” and “consolidator (stuffer)” may be provided as soon as possible and up to 24 hours prior to arrival at a US port.
- **Penalties are \$5,000 per violation (rather than value of merchandise).** Mitigation is possible but U.S. Customs says it will be the exception, not the rule.
- **Importer:** The proposed rule defined “importer”, and the interim final rule makes some clarification by defining, instead, “importer security filing importer”. The ISF importer is the goods’ “owner, purchaser, consignee, or agent such as a licensed customs broker”. U.S. Customs says this will usually be the IOR, but “depending on the terms of the transaction and the parties involved...this party may be a party other than the importer of record (e.g., for ‘to order’ shipments).” The ISF importer is required to have a bond, against which any damages would be applied.
- **The ISF filer does NOT need a bond. The ISF importer DOES need a bond.** (If the filer and the ISF Importer are the same party, that party DOES need a bond, and an agent may post its own bond on behalf of the ISF importer). The bond needed is any one of the following:
 - basic import and entry bond (same kind needed for an IOR on an entry)
 - basic custodial bond
 - international carrier bond
 - FTZ operator bond
 - An Importer Security Filing bond

For the first four options, basic bond conditions have been added to cover ISF activity. U.S. Customs is not increasing the bond amounts required for these bonds. For the ISF-only bond, the format for the bond is set out in the new Appendix D of part 113 of the regulations.

U.S. Customs states that continuous bonds will be accepted. As for single entry bonds, requests for these “will be evaluated on a case-by-case basis consistent with current practices”.

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- **Party identification:** For “seller”, “buyer”, “manufacturer”, “ship-to party”, container stuffing location”, and “consolidator”, the definitions were changed to indicate that “a widely recognized
- **U.S. Customs states that it will NOT accept a MID as an alternative to complete name and address of the manufacturer.** D&B DUNS may be accepted though.
- **U.S. Customs wants the first deliver-to party after U.S. Customs release for the ship-to party.** So, “A container freight station can be the ship to party if...it is the first place of delivery after the goods have been released from customs custody”. FIRMS code for such a party may be an acceptable identification method.
 - Note that the “ship-to party” and the “consignee number” party may be two different parties. For “consignee number”, U.S. Customs clarifies that they want the same party as required on U.S. Customs form 3461.
- **Container numbers are optional**, and if submitted do not have to be linked to a particular stuffing location.
- **U.S. Customs notes that it will compare the HTSUS data submitted in the ISF with the HTSUS data submitted in the entry**, to analyze and assess risk and to validate the ISF data.
- **U.S. Customs indicates it will not issue DNL for missing ISF until the ISF time period has passed.** We are not yet clear if this means that the carrier will get a message prior to loading, or not. U.S. Customs notes that the AMS filer of the manifest could add a “secondary notify party” in their transmissions and DNLs would be sent to that secondary notify party as well. The filer of the bill of lading (the carrier) will be notified via AMS that an ISF has been received for the bill of lading.
- **Bulk vs. Break Bulk shipments:** One of the important points that CBP specifically talks to is the exemption of bulk cargo from the importer security filing (ISF) requirements. Bulk cargo is defined “homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. * * * Specifically, bulk cargo is composed of either: (1) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or) handled by dumping; or (2) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.”
- **Break bulk cargo as well as roll on roll off cargo is not exempt from the ISF requirements.** This even applies to chemicals that are stored in ISO tanks. In US Custom’s mind those tanks are still a container and they want information on it.

For more information on how SmartBorder can help you manage your ISF (10+2) Import Security Filings online or to arrange an on-line demonstration contact us today.

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