



Kentucky World Trade Center

Importer Security Filing (ISF)

U.S. Customs and Border Protection (CBP) enforcement of the 10+2 regulations begins on January 26, 2010. The regulation requires importers and ocean carriers to electronically submit additional data to CBP on shipments destined to the United States.

The ISF 10+2 Importer Security Filing Program is to help prevent terrorist weapons from being transported to the United States and to improve CBP's ability to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security. Importers and Vessel Operating Carriers bringing cargo to the United States will be required to transmit certain information to U.S. Customs and Border Protection (CBP) about the cargo they are transporting prior to lading that cargo at foreign ports of entry.

U.S. Bound Cargo: The ISF-10

For U.S. bound cargo, eight of the ten required ISF data elements must be submitted no later than 24 hours before the cargo is laden aboard the vessel destined for the United States. There is no limit to how far in advance it may be filed. Most agents will ask that importers provide this information at least 72 hours before the cargo is loaded. They are:

- Manufacturer or Supplier name and address,
- Seller name and address,
- Buyer name and address,
- Ship-to party name and address,
- Importer of record number/foreign trade zone applicant identification number,
- Consignee number,
- Country of origin of the goods, and
- Commodity Harmonized Tariff Schedule number (6 digits).
- *Note that the lowest level Bill of Lading number is also required on the ISF, although it's not typically listed as one of the 10 data elements

In lieu of a single specific response, importers may submit a range of responses for each of the following data elements: manufacturer (or supplier), ship to party, country of origin, and commodity HTSUS number. However, the ISF must be updated as soon as more accurate or precise data becomes available, no later than 24 hours prior to the ship's arrival at a U.S. port.

The U.S. bound ISF will also need to include the following two data elements that must be submitted as early as possible, but no later than 24 hours prior to the ship's arrival at a U.S. port. These data elements are:

- Container stuffing/consolidating location (the physical location where the container was loaded or the breakbulk cargo was made 'ship ready.')

- Stuffing party/consolidator name and address (the party who stuffed the container or arranged for the stuffing of the container or for break bulk, the party who made the goods 'ship ready.')

Transit Cargo: ISF-5

The ISF rule requires five data elements for shipments consisting entirely of foreign cargo remaining on board (FROB), shipments consisting entirely of goods intended to be transported in-bond as an immediate exportation (IE), or shipments for transportation and exportation (T&E). Importer Security Filings for IE and T&E shipments must be submitted no later than 24 hours before the cargo is laden aboard a vessel destined for the United States, and any time prior to lading for FROB shipments.

Under FROB, the importer is construed as the carrier. Under IE & T&E, the importer is construed as the party filing the IE or T&E documentation with CBP. The following five data elements must be submitted for FROB, IE and T&E shipments:

- Booking party;
- Foreign port of unloading;
- Place of delivery;
- Ship to party; and
- Commodity HTSUS number.

Filing Times Summary

ISF-10

24 Hours Prior to Lading:

- Seller (Owner) name/address
- Buyer (Owner) name/address
- Importer of record number
- Consignee number

24 Hours Prior to Lading –Range of Responses Allowed:

- Manufacturer (Supplier) name/address
- Ship to Party
- Country of Origin
- Commodity HTS-6

No Later than 24 Hours Prior to Arrival:

- Container Stuffing location
- Consolidator name/address

ISF-5

24 Hours Prior to Lading or Anytime Prior to Lading for FROB:

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

Carriers

No Later than 48 Hours After Departure (or anytime prior to arrival for voyages of less than 48 hours):

- Vessel Stow Plan

Within 24 Hours of Creation or Receipt:

- Container Status Message Data

Description of Each ISF-10 Data Element

Importer of record number / FTZ applicant identification number. Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation. For goods intended to be delivered to an FTZ, the IRS number, EIN, SSN, or CBP assigned number of the party filing the FTZ documentation with CBP must be provided. The importer of record number for Importer Security Filing purposes is the same as “importer number” on CBP Form 3461.

Consignee number(s). Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the individual(s) or firm(s) in the United States on whose account the merchandise is shipped. This element is the same as the “consignee number” on CBP Form 3461.

Seller (or owner) name and address. Name and address of the last known entity by whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided. This is consistent with the commercial invoice reporting requirement for the seller under 19 CFR 141.86(a)(2). A DUNS number is acceptable in lieu of the name and address.

Buyer (or owner) name and address. Name and address of the last known entity to whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided. This is consistent with the commercial invoice reporting requirement for the seller under 19 CFR 141.86(a)(2). A DUNS number is acceptable in lieu of the name and address.

Ship-To Party name and address. Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody. This must be the actual address, not only a corporate address. If unknown, provide the name of the facility where the goods will be unladen or the name and address of the inland distribution center. A DUNS number is acceptable in lieu of the name and address.

Manufacturer (or supplier) name and address. Name and address of the entity that last manufactures, assembles, produces, or grows the commodity, or name and address of the supplier of the finished goods in the country from which the goods are leaving. A DUNS number is acceptable in lieu of the name and address.

Country of origin. Country of manufacture, production, or growth of the article, based upon the import laws, rules and regulations of the United States. This element is the same as the “country of origin” on CBP Form 3461.

Commodity HTSUS-6 number. Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is required to be provided to the 6 digit level. The HTSUS number may be provided up to the 10 digit level. This element is the same as the “H.S. number” on CBP Form 3461.

Container stuffing location. Name and address(es) of the physical location(s) where the goods were stuffed into the container. For break bulk shipments, the name and address(es) of the

physical location(s) where the goods were made “ship ready” must be provided. The scheduled stuffing location may be provided. This may be the same name/address as the manufacturer. If it is a factory load, provide the name and address of the factory. A DUNS number is acceptable in lieu of the name and address.

Consolidator (stuffer) name and address. Name and address of the party who stuffed the container or arranged for the stuffing of the container. For break bulk shipments, the name and address of the party who made the goods “ship ready” or the party who arranged for the goods to be made “ship ready” must be provided. If no consolidator is used, e.g., factory load shipments, provide the name/address of the manufacturer or supplier. A DUNS number is acceptable in lieu of the name and address.

Bill of Lading Number. This should be the bill of lading number at the lowest level. If an NVOCC issues a house bill of lading, which is used by a vessel operating carrier to issue a consolidated master bill of lading, the importer should file the ISF with the house bill of lading number rather than the master bill of lading. The carrier must submit the bill of lading number when the transport booking is confirmed, so they should be able to provide the number to you. For many carriers, the booking number will ultimately become the bill of lading number.

The ISF must be updated, if after the filing and before the goods enter the limits of a port in the United States, there were changes to the information filed or more accurate information becomes available. The requirement to amend an ISF generally terminates when the vessel calls into the FIRST U.S. port.

Description of Each ISF-5 Data Elements

Booking Party Nam/Address. Name and address of the party who initiates the reservation of the cargo space for the shipment. A DUNS number is acceptable in lieu of the name and address.

Ship-To Party. Same as ISF-10 above.

Commodity HTSUS-6 Number. Same as ISF-10 above.

Foreign Port of Unlading. Port code for the foreign port of unlading at the intended final destination. Census Schedule K codes are accepted.

Place of Delivery. City code for the place of delivery. Foreign location where the carrier’s responsibility for the transport of the goods terminates. UN LOC codes and Census Schedule K codes are accepted.

Unified Filing Option

Four of the ISF elements are identical to elements submitted for entry (CBP Form 3461) and/or entry summary (CBP Form 7501) purposes: importer of record number, consignee number, country of origin, and commodity HTSUS number (when provided at the 10-digit level).

An importer has the option of submitting these elements once to be used for both the ISF and entry/entry summary purposes. If so, the ISF and entry/entry summary must be self-filed by the importer or filed by a licensed customs broker through the ABI system in a single transmission to CBP no later than 24 hours prior to lading. In addition, the HTSUS number must be provided at the 10-digit level. The merchandise will not be released by CBP any earlier than it would have without the unified filing option.

Penalties

- Port directors may assess claims for liquidated damages in the amount of \$5,000 per ISF for (a) late filed ISFs, (b) inaccurate ISFs or ISF updates, and (c) failure to withdraw an ISF when required. Penalties may be assessed, with CBP headquarters approval, for serious or repetitive violations.
- Liquidated damages claims for late ISFs or inaccurate ISFs or ISF updates may be canceled, provided CBP determines that law enforcement goals were not compromised by the violation, upon payment of (a) between \$1,000 and \$2,000 (depending on the presence of mitigating or aggravating factors) for the first violation and (b) not less than \$2,500 for subsequent violations.
- Mitigating factors include evidence of progress in implementing the ISF requirement during the flexible enforcement period (i.e., Jan. 26, 2009, through Jan. 26, 2010), small number of violations compared to the number of shipments for which ISFs were required, certification as Tier 2 or Tier 3 member of the Customs-Trade Partnership Against Terrorism, demonstrated remedial action to prevent future violations, and vessel diversion due to factors outside the ISF importer's control. For inaccurate filings, if the importer acquired information from another party in accordance with ordinary commercial practices and can demonstrate that it reasonably believed the information to be true and was not reasonably able to verify the information, this will be considered an extraordinary mitigating factor that may warrant cancellation of a claim without payment.
- Aggravating factors include lack of cooperation with CBP or impeding CBP activity with regard to the case, evidence of actual or attempted smuggling (this may be considered an extraordinary aggravating factor), multiple errors on the ISF, and a rising error rate indicative of deteriorating performance

In addition to these penalties, if an ISF is not filed, CBP could issue a 'do not load' hold in the foreign port, limit the permit to unlade the goods in the U.S., or withhold the release or transfer of the cargo in the U.S. until it receives the required information and has had the opportunity to review the documentation and conduct any necessary examination.

For more information see CBP's Mitigation Guidedlines on page 29 of the Customs Bulletin and Decisions, Vol. 43, No. 28, July 17, 2009:
www.cbp.gov/linkhandler/cgov/trade/legal/bulletins_decisions/bulletins_2009/vol43_07172009_no28/43genno28.ctt/43genno28.pdf.

In CBP's recently published *Guidelines for the Assessment and Cancellation of Claims for Liquidated Damages for Failure to Comply with the Vessel Stow Plan, Container Status Message, and Importer Security Filing Requirements*, it states that C-TPAT status will be considered a mitigating factor when assessing penalties/liquidated damages against ISF Importers (i.e., ISF Importers who are also certified Tier 2 or Tier 3 C-TPAT members will be eligible for additional mitigation of up to 50% of the normal mitigation amount).

Enforcement Issues

During the first 12 months following 1-26-09, CBP will show restraint in enforcing the new rule as long as importers are making a good faith effort and satisfactory progress toward compliance. However, after 1-26-2010, importers who do not comply will have shipments delayed and risk liquidated damages of \$5,000 for each violation, up to \$100,000 per vessel arrival. The

program will carry additional bonding requirements for imports to offset the risk of this kind of violation. The new bond requirement begins on 1-26-2010.

During this first 12 months, Customs will be keeping report cards on corporate compliance, even though they are not issuing penalties. Accurately submitting the ISF during this first 12-month period will be a mitigating factor if violations occur once penalty enforcement begins in 2010. CBP is sending out ISF Performance Reports to filers only, who may redistribute relevant portions to individual importers. In order to receive ISF Performance Reports, a filer must register their information with CBP by sending an email to: progress_report@cbp.dhs.gov. The email must provide the following information: Filer's corporate name; Filer code used for filing Security Filing; Point of Contact; Point of Contact's telephone number; Corporate email address to which to send the Performance Report. For questions, contact Chuck Miller at 703.553.1772.

CBP has stated that the ISF is not customs business, however the ISF is administered and penalties issued by CBP. We therefore recommend keeping a record of the information an importer provides to their ISF agent for a period of 5 years.

Advance Planning

It will require advanced planning to send the data elements to the broker in advance so it can be submitted to CBP in time to meet the deadline and avoid penalties. Importers should take the following steps to prepare themselves:

1. establish good communication with suppliers, manufacturers, and forwarders;
2. determine whether self-filing is appropriate or if someone else will transmit the data on your behalf (e.g.: your customs broker) and establish a procedure to make certain you give them the needed information on time;
3. ensure that ocean carriers/NVOCC's have committed to provide the ocean bill of lading number to you or your agent in time to meet the filing requirements;
4. add a requirement in the sales contract that the supplier provide the container stuffing location and the party providing the stuffing in time to meet the filing requirements; and
5. create an internal database of imported products that links the item, it's HTS code, the contact details of the manufacturer/supplier, and the country of origin.

Rates

Forwarders and brokers typically charge importers \$35 per filing, but others are charging \$50. Some also charge \$25 to make any needed changes for you. To control this cost, importers may want to consider self-filing. This can be done by registering to use the ABI system (see section above on automated systems) or much more easily by using one of the following software services that allow access through AMS:

- Vilden Associates, Nancy Hart, 757 498 0815, www.vilden.com/eisf.htm (set up fee \$200-500 plus \$2 per filing through AMS)
- TRG Direct: (\$5 per filing through ABI – minimum \$250 per year, no set up fee) www.trgdirect.com/index.html (can also provide ABI access for direct filing for \$30 per entry)
- Integration Point Advance Trade Data (10+2) Solution: www.integrationpoint.net/solutions/importmanagement.html
- Management Dynamics: www.managementdynamics.com/html/solutions_library.shtml

Web Resources

*More information about the ISF may be found on:
www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/

*ISF Brochure:
www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/import_sf_carry.ctt/import_sf_carry.pdf

*ISF Interim Final Rule in Federal Register: <http://edocket.access.gpo.gov/2008/pdf/E8-27048.pdf>

*CBP 10+2 PowerPoint Presentation:
http://cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/10_plus_prgm.ctt/10_plus_prgm.ppt

*Pay special attention to the ISF - Frequently Asked Questions
Section: http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/carriers/security_filing/10_2faq.ctt/10_2faq.doc.

*Importer ISF Questions e-mail: security_filing_general@cbp.dhs.gov

*Learn how Leggett & Platt is automating their import processes to prepare for 10+2
www.managementdynamics.com/leggett/cs/

For additional information, please contact

Ying Juan Rogers, Vice President
Kentucky World Trade Center
333 West Vine, ste 1600
Lexington, KY 40507
Phone: 859-258-3139
Fax: 859-233-0658
Email: Yingjuan@kwtc.org