

TRADE ALERT: CBP Publishes 10+2 “Interim Final Rule”

The Department of Homeland Security, Customs and Border Protection published the Importer Security Filing “Interim Final Rule” in the Federal Register published November 25, 2008. The effective date of this “Interim Final Rule” is January 26, 2009. Enforcement will be delayed for 12 months (January 26, 2010) “so long as importers are making satisfactory progress toward compliance and are making a good faith effort to comply.”

Additionally, this “Interim Final” rule allows for a “structured review” that includes a comment period on 6 data elements for which CBP is providing some type of flexibility (Container stuffing location, Consolidator (stuffer), Manufacturer (or supplier), Ship to party, Country of origin, and Commodity HTSUS number]. These comments are due by June 1, 2009.

Although the basic requirements outlined in the January 2, 2008 Notice of Proposed Rulemaking (NPRM) remain unchanged, today’s notice contains several important changes and clarifications.

FLEXIBLE REPORTING: Among these are flexibility in reporting four data elements: Manufacturer (or supplier), Ship to party, Country of origin, and Commodity HTSUS number). CBP now will permit importers, in their initial filing, to provide a range of acceptable responses based on facts available to the importer at the time, in lieu of a single specific response (which may become known to the importer only at a later time). Importers will be required to update their filings with respect to these elements as soon as more precise or more accurate information is available, “in no event less than 24 hours prior to arrival at a U.S. port” (Emphasis added)

CBP also has added similar flexibility for the Container stuffing location and Consolidator (stuffer) elements by requiring submission “as early as possible”, and in any event “no later than 24 hours prior to arrival in a U.S. port.” (Emphasis added)

LOWER PENALTY AMOUNTS: The liquidated damages amount for violations of the Importer Security Filing requirements are changed from the value of the merchandise, as originally proposed, to \$5,000 for each violation.

DATA ELEMENTS CLARIFIED: The party required to submit the Importer Security Filing is now defined as the “ISF Importer” and is construed as the owner, purchaser, consignee, or agent such as a licensed customs broker. The agent must have a power of attorney in English and retain that Power of Attorney for five years, although no particular format is mandated.

The “Manufacturer (or supplier)” is defined to mean the “party supplying “the finished goods in the country from which the goods are leaving and that this party does not necessarily need to be the actual manufacturer (except where specifically required by current entry procedures (e.g. Apparel)). The manufacturer can be construed to refer to the invoicing party or parties, as permitted under existing Entry and Entry Summary procedures.

Importer Security Filing (“10+2”)

Customs and Border Protection (CBP), Department of Homeland Security (DHS) Proposes to amend the Customs Regulations to require both importers and carriers to submit entry information 24 hrs **before ocean cargo destined the United States is laden on a vessel.**

This is a fundamental change to existing processes.

The date that must be transmitted before export are:

1. Manufacturer Name & Address
2. Seller Name & Address
3. Container Stuffing Location
4. Consolidator Name & Address
5. Buyer Name & Address
6. Ship to Name & Address
7. Importer of Record number
8. Consignee number
9. Country of Origin
10. Six Digit HTSUS number

How Should IMPORTERS PREPARE?

At a minimum, the importer must know the HTS classification of each line item on every invoice, at least to the 6 Digit level **before** the goods are exported.

This HTS number should be listed on the Purchase Order and the vendor instructed to begin putting the HTS number on for each item on the commercial invoice.

Vendors should be instructed to have the commercial invoice and packing list prepared 72 hours before cargo cut-off.

Unlike present practice, the seller cannot wait until the after the ship sails. Late documents will delay lading or cause missed-sailings.

The ISF is intended to intercept terrorist weapons of mass effect destined for the United States by targeting high risk shipments for examination.

Certification in other Government Supply Chain Security programs such the US Customs-Trade Partnership Against Terrorism (C-TPAT) or the EU Authorized Economic Operator(AEO) lowers an importer’s risk profile