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**NEW MANDATORY DATA SECURITY FILING REQUIREMENTS TO BE  
IMPLEMENTED SOON – “THE 10+2 RULE”**

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**Background**

The SAFE Ports Act of 2006 directed U.S. Customs and Border Protection (“CBP”) to gather additional data elements before goods are shipped to the U.S. to enable CBP to better evaluate the security risk of incoming shipments. After consulting with the trade, CBP issued proposed regulations entitled “Importer Security Filing and Additional Carrier Requirements” in which they outlined a program which requires the submission of additional data elements at least 24 hours before the goods are laden on board an ocean vessel.

The Importer Security Filing (“ISF”) does not replace the 24 Hour Rule transmission which provides CBP with manifest data in advance of the arrival of the cargo. The ISF is intended to provide CBP with additional commercial data elements which will enable CBP to improve its cargo selectivity targeting efforts. Thus, the ISF is viewed by CBP as supplementing the 24 Hour Rule transmission.

CBP is currently in the process of revising their initial proposal in response to more than 200 comments received from interested parties. While there is no definitive date for CBP to issue final regulations, CBP has recently issued programming guidelines to the trade signaling their intent to implement the ISF requirement in the near future.

The Importer Security Filing program will become effective 90 days after notice is published in the Federal Register. CBP has indicated that enforcement of the new program will be phased in over a period of several months. While many of the legal and procedural details have yet to be finalized, it is clear that the ISF will fundamentally alter both the timeline and manner in which import related information is provided to CBP. An outline of the program, as set forth in the notice of proposed rulemaking, is set forth below.

**Basic Requirements**

For merchandise which is destined to be entered or placed into a foreign trade zone in the United States, 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 at least 24 hours before cargo is laden on board an ocean vessel bound for the United States:

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. HTS number (6 digit).

This information must be provided on a “line item level” so that shipments which contain merchandise subject to multiple classifications will require multiple ISF submissions. In addition, the carrier must provide CBP with: (1) Vessel stow plan; and (2) Container status messages. Thus, the ISF requirement is often referred to as the “10+2 Rule.”<sup>1</sup>

All freight which is intended to pass through the territory of the United States is subject to the new Importer Security Filing requirement. Although the data elements are slightly reduced, foreign merchandise which is intended to move in-bond through the United States as well as freight which is intended to remain on board the vessel and merely transit the coastal waters of the United States are also subject to the ISF requirement 24 hours prior to lading. Break-bulk shipments and merchandise which is shipped in bulk are also subject to different ISF requirements.

### **Who May File**

The ten (10) data elements discussed above can be provided by the importer or its agent which could include a customs broker, forwarder, carrier or other properly authorized party. The party providing this data must have access to either the ABI or AMS data systems and there is no requirement that the party making the Importer Security Filing reside within the United States.

The proposal provides that the party who makes the ISF is responsible for the timeliness and correctness of the transmission. Moreover, the party who makes the filing is responsible to utilize its best efforts to verify the correctness of the data and to update the filing if there is any change in the data while the merchandise is in transit to the United States.

The party filing the ISF must secure either a continuous entry bond or an international carrier’s bond. The proposed regulations do not provide for the use of single entry bonds and do not include bond amount guidelines. However, the proposal does provide that both the importer

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<sup>1</sup> Although not stated in the proposal, we believe that Customs will also require master and house bills of lading numbers to coordinate the two data filings.

and the party submitting the ISF can be held liable for liquidated damages equal to the value of the merchandise if the filing is found to be incomplete, untimely or inaccurate.

Although the proposal is silent on this point, it is anticipated that the failure to make a complete Importer Security Filing 24 hours prior to lading will result in a “do not load” message to the carrier which will prevent the cargo from being shipped to the United States.

### **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 in the normal course of events 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 required in each filing.

### **Confidentiality Considerations**

Unlike manifest data which can be retrieved from CBP under the Freedom of Information Act (“FOIA”), the proposed regulations include a provision which would characterize the ISF as 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, the current proposal does not extend this prohibition 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 to keep this information confidential.

### **Conclusion**

The Import Security Filing will dramatically alter the supply chain information requirements. Although some of the required data elements can be obtained from existing purchase order systems, most companies will be required to coordinate information from several different sources to satisfy the ISF requirements.

Decisions must be made with regard to who will make the filing (it may not be uncommon for importers to appoint multiple filers depending upon logistical considerations) and then arrangements must be made to insure that the required information is provided to that party in a timely manner. Similarly, whereas many items are not subjected to classification review until shortly before their arrival in the United States, classifications will need to be assigned much earlier in the product cycle. Importers will also need to insure that the data submitted with the ISF is consistent with the data submitted at the time of entry.

Service providers who may consider submitting the ISF 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. These parties should also carefully monitor developments regarding the new bond requirements.

Importers, brokers, forwarders, sureties and carriers are urged to study the current proposal and consider what changes will be required in current processes to comply with this new regulatory requirement. Whereas CBP has indicated that they will phase-in the ISF requirement, significant decisions must be made well in advance of this new requirement in order to avoid supply chain disruption.

Our office is available to answer any questions and to offer assistance in connection with the new Importer Security Filing requirement.

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