



NCBFAA

The National Customs Brokers & Forwarders Association of America, Inc.

With the recent startup of the Importer Security Filing (ISF) or "10+2", our membership and the industry at large have raised a number of questions concerning implementation of these new requirements. As a service to the members, National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) subject matter experts (SME) working with senior managers at Customs and Border Protection will review these issues and will prepare responses to them.

While there are many questions that the NCBFAA is still pursuing answers to, in this second installment the NCBFAA continues to provide Q&As during the critical phase-in of this new rule.

Members and others are strongly encouraged to continue to forward any questions they have or issues they encounter regarding implementation of the ISF to eid@ncbfaa.org for resolution. Once the NCBFAA's SMEs have vetted these, the results will be shared with all and will become part of a master list of questions and answers posted on-line.

Bill of Lading/Carrier Questions:

I have been told by carriers that they must file the AMS before I can file an ISF. Is this correct?

No. The ISF may be filed at any time, irrespective of the timing of the AMS filing. Currently the AMS filing must be completed 24 hours prior to the lading of the vessel. Waiting until the AMS is filed may result in a late filing of the ISF.

Do I have to have the Bill of Lading number to file an ISF, or can I file it with the booking number?

CBP has stated in their FAQ's that the house bill of lading or the straight bill is required to be transmitted in the ISF as this provides the linking to the AMS filing as well as to the entry. This has created an open issue for many carriers, as some do not normally issue these numbers until later in the transaction. This issue has been identified and is being addressed through conversations between the carriers and CBP.

Will Do Not Load messages be issued after January 26th, 2010 for failure to file the ISF?

If there is an identified security threat, CBP may issue a Do Not Load (DNL) message. After 2010, if an importer or filer has established a pattern of non-compliance or a willful intent to avoid filing data in accordance with the ISF regulations, the failure to file an ISF may be considered to be a security threat in and of itself. CBP has indicated that the report card of compliance during the phase in period will be taken into account when reviewing each of these situations after 2010.

What should I do if I receive a warning message in response to the ISF filing?

At this time CBP has confirmed that all warning messages should be disregarded. These are a result of protocol testing of the function itself. It is anticipated that warning messages and the actions expected as a result of these messages will be further outlined later in the phase in period.

If I have problems or questions regarding the transmission of data, who should I contact?

For technical issues, CBP has indicated that the proper contact would be your ABI Client Representative. For questions about the data itself or implementation issues, please continue to send questions to the ISF email address listed on the CBP website. The NCBFAA also requests that you continue to send questions in to EID@ncbfaa.org.

What should I tell importers who do not want to begin testing until later?

Early indications are that most parties require some orientation period before they are able to seamlessly transmit the ISF. The longer that a broker or importer waits to file data, the less time each will have to refine the process internally. CBP has also announced that it will issue ISF compliance report cards during the phase in period and these report cards may impact the willingness of CBP to consider mitigation in the event of future violations.

Other Questions:

Bond Questions:**When will bonds be required to secure the ISF, and how will these work?**

CBP has indicated that bonds will not be required to secure the ISF until 2010. In a recent meeting with NCBFAA representatives, CBP outlined an expected 6 month phase in period for bond requirements prior to the January 26th, 2010 deadline. As indicated in the FAQ's, CBP will work the trade community, including NCBFAA, to identify the issues and further develop the bond process with specific attention on how single transaction bonds will function.

Terms and Conditions & Power of Attorney Questions:**Will the NCBFAA Terms and Conditions that I currently utilize require amendments to cover ISF services that I provide to my clients?**

The NCBFAA Terms and Conditions were reviewed and revised by counsel, and subsequently accepted by the Board of Directors at the June 2008 meeting. The revisions included specific language to address services that may be provided by our members in regard to the ISF program. Older forms of the NCBFAA Terms and Conditions have now been rendered obsolete. It is recommended that each company review the current terms and conditions to ensure the most recent form is in use.

Does the current NCBFAA Power of Attorney extend authority to file the ISF on behalf of my client?

Yes, the language of the standard copyrighted NCBFAA Power of Attorney is broad enough to include the authority to file the ISF on behalf of your clients. If you are utilizing a customized POA, you are advised to have the language reviewed by your counsel.

Other Questions:**If I don't have all of the required information, or the filing would be considered untimely, should I still file the ISF?**

CBP has recommended that importers and filers transmit information for the ISF based upon best available information during the phase in period. This will not only create a history of attempted compliance with the rule, but will also enable CBP to identify any issues with the filing process itself. As well, the longer each entity waits to file the ISF data, the shorter the time for those parties to identify issues within their internal supply chain process. CBP has indicated on a number of occasions that the record of compliance/attempted compliance during the phase in period will be considered in evaluating security risks and may also impact future mitigation decisions in the event that liquidated damages are issued after January 26, 2010.

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