



NCBFAA

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

NCBFAA Responses to Member Inquiries Regarding ISF FAQ #1

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.

Starting with these, the NCBFAA will provide Q&As on a regular basis during the phase-in of this new rule. Members and others are strongly encouraged 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.

POWER OF ATTORNEY QUESTIONS

Is a separate ISF Power of Attorney required?

No. 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.

Can I issue a Sub-Power of Attorney for an ISF filing?

Yes, with one caveat. If issuing the sub-power of attorney with authority based on the standard copyrighted NCBFAA POA, the sub-power may only be extended to other U.S. Customs Broker entities. The standard copyrighted NCBFAA POA does not authorize you to appoint other types of agents or foreign freight forwarders for ISF purposes. If you are utilizing a custom POA, it is recommended that your counsel review the language in the POA.

BOND QUESTIONS

Is the importer required to have a bond to cover the ISF?

At this time, CBP has suspended the

Can I transmit the bond information in the 10+2 filing if my ISF importer has a continuous bond in place?

Yes, you may transmit the bond information.

OTHER QUESTIONS

Will 10+2 report cards be issued for filers and importers?

Yes, the reports cards will be issued to both filers and the importers to determine the progress of compliance over the phase in period.

When will unified filing be available for RLF entries?

Filing 10+2 with an RLF entry as a unified filing has been identified as an issue with CBP at this time. This is in part due to the tie in with the entry summary in both ACS and the scheduled ACE functionality. It is anticipated that the programming changes are extensive and therefore not easily addressed. There is no current estimate for this to be addressed. In the meantime, separate filings are required for RLF entries.

What action is the NCBFAA taking to

requirement for an ISF importer to have a surety bond in place for the filing. The NCBFAA is in the process of establishing a workgroup with CBP to further clarify the bond requirements and process, including the use of a single entry bond.

Is the ISF filer required to have a bond in place to act as a filing agent?

No. The only time a filer would require a bond to secure an ISF filing is when the filer serves as the ISF Importer. However, the bond requirement will not go into effect until January 26th, 2010.

address member questions?

NCBFAA is establishing a work group with CBP on 10+2. We anticipate that this forum will be utilized to further clarify open questions and issues, such as the above mentioned bond process. We encourage member questions and issues to be sent to eid@ncbfaa.org for compiling into a master question and issue document. This will be utilized in the continued conversations that the NCBFAA team will have with top CBP officials. Answers and clarifications will be shared with the membership on a regular basis during this phase in period.

FAQ #2

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

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

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.

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

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:

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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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.

FAQ #3 2/26/2009

This is the third in our series of Q&As on the implementation of the Importer Security Filing (ISF) or "10+2." Our membership and the industry at large continue to raise many questions and voice their concerns about the effects of these new requirements. As a service to our members, National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) subject matter experts (SME) working with senior managers at Customs and Border Protection have continued to consider these issues as they arise and prepare responses to them.

The NCBFAA is still pursuing answers to many of the questions that you have raised but has completed work on the attached member inquiries and will continue to provide Q&As during the critical phase-in of this new rule.

Members and others are strongly encouraged 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.

If the transmission did not complete on an original ISF, when it is resent to CBP filers are receiving rejections due to duplicate filings of the House or Straight Bill of Lading. Why is this?

When will further instructions be out for the different transaction type codes?

These remain a work in progress. Outreach to other entities that are affected by the different transaction type codes is currently

CBP has indicated that in these circumstances the filings were actually being captured in the system; however no security filing (SF) transaction number was sent back to the filer due to a back end issue. This has since been resolved with a software update by CBP. Please let the NCBFAA know if this is still an ongoing issue eid@ncbfaa.org.

The ISF importer is responsible to file the ISF. Some ocean carriers say they cannot provide the Bill of Lading far enough in advance for the importer to insure timely filing. Is there anything that can be done?

The World Shipping Counsel has been working with CBP to ensure that all carriers are issuing the bill of lading numbers in a timely manner to ensure a compliant ISF. If there are specific carriers with which the trade is continuing to experience this problem, CBP has indicated that they will contact the carrier to speak with them regarding resolution of the issue. If you are experiencing issues with the timing of the bill of lading, please also send this information to eid@ncbfaa.org.

When error message 117 Duplicate ISF Transaction is received - the output message does not indicate which Bill of Lading it applies to. Has the whole transaction been rejected? Can CBP identify in their response which bill(s) have the duplicate response?

Currently the entire transaction is rejected, when one or more of the bill of lading numbers have duplicate records. CBP has indicated that they will look to determine which of the bills are duplicated and send back a message indicating which bill is rejected. Please note that this will require a software update by CBP.

If the actual "delivered to" distribution center warehouse is not determined until after the sailing, are filers to transmit all possible warehouse locations and amend the information when it becomes known? Is this true even if it is after arrival?

Right now the "shipped to" party is one of the flexible elements in the rule. Filers can provide all possible locations and then update and refine the data as decisions are made regarding the delivery point. Amendments will be necessary in these instances. As well, CBP has recognized that after the structured review period is over this may continue to be an issue.

being conducted. It is anticipated that further information will be published within the next month or so.

What is the correct timing for filing Ro-Ro cargo? Is it 24 hours prior to lading aboard the vessel, or 24 hours prior to arrival?

Most Ro-Ro cargo is required to be filed 24 hours prior to lading aboard the vessel. The timing issue seems to be due to the fact that some carriers have timing exemptions for the filing of the manifest in regard to the Trade Act of 2002. This exemption allows the carrier to file the manifest 24 hours prior to arrival, instead of 24 hours prior to lading. Importers who utilize the carriers with a manifest exemption can request an exemption for the ISF timing as well. This will allow the importers to mirror the ISF filing timing with the carrier manifest timing. Please check the www.CBP.gov website for additional information regarding an exemption request. Importers will need to file the request directly, and apply for the exemption on a cargo specific basis.

Who will be the "responsible party" for in bond cargo if an ISF is not filed at all, or is filed incorrectly?

In January 26, 2010, in bond cargo may not be allowed to proceed in bond if the ISF is not filed. Customs will look at all of the parties involved in the transaction to evaluate the circumstances and base their actions on that information.

If a shipment ISF isn't filed and no one takes responsibility for the import, who will CBP ultimately hold responsible for failure to file? In the most recently published FAQ document, CBP simply responds it is the party that causes the goods to enter the country. But if no one assumes the role of ISF Importer, who will CBP hold responsible for non-compliance?

Again, CBP will look at all of the parties involved. If there is a pattern of repeated willful non-compliance, there are a number of options that CBP will explore including the Do Not Load option. Samples received that were not ordered will be looked at in a situational manner, but CBP reminds importers of the fact that all of their suppliers should be notified of these new requirements.

There is a problem with type 03 (HHG/PE)

The ISF does not need to be amended after the cargo arrives.

Originally I sent an ISF using the Master Bill of Lading, as the House Bill of Lading for the shipment was not transmitted in AMS. Later I received arrival information from the carrier and discovered that the carrier transmitted their own House Bill of Lading in AMS. My question is can I update the original ISF by removing the Master Bill of Lading and replacing it with the House Bill of Lading as transmitted in AMS?

Yes, using the replace function with the SF number, what was transmitted as a straight bill (in this case the master bill of lading number) can be replaced with a house bill.

When will the first progress reports be issued? This may assist the trade in understanding that CBP is currently looking at the attempted filings.

It is expected that the first progress reports will be issued in Mid-March. CBP has indicated that they anticipate publishing best practices information with the reports. Also please note that the progress reports will be issued to filers only at this time.

shipments - if the importer does not have a SSN or EIN, you can use the passport for the importer, but not for the consignee. The FAQ page 17 says that the passport information will be accepted as the consignee number but there is no qualifier on the SF30 record for passport number. The only acceptable numbers for the consignee are the ones listed in the SF30 record.

This has been identified as an issue by CBP, and they are working on a fix to the issue.

Can a non-resident importer be the ISF importer? In DDP business, this is common on the entry summary.

Yes.