



The American Companies

"News Flash"

December, 14th 2009

Update from Washington DC - CBP Trade Symposium – Importer Security Filing Update

Last Week from Tuesday through Thursday Customs Border Protection held's its annual [Trade Symposium](#) in Washington DC. While many topics were covered from C-TPAT to Importer Self Assessment programs, one of the main topics and best attended breakout sessions were the Importer Security Filing (ISF) sessions. With approximately one month left to go until CBP begins the enforcement stages, here are some notable highlights as it relates to comments made by CBP program officials on the Importer Security Filing requirements:

- The rule as it exists now is in its final form regardless of the fact that it is labeled by CBP as an "Interim Final Rule". It was clarified that the only sections of the rule that are considered to be "Interim" is the "Flexible Enforcement Period" which is set to expire on 1/26/2010 and the Flexible Timing and Flexible Range of Response allowances for certain data elements. It is the later flexibilities in timing and range of response where CBP will be assessing whether or not to continue these flexibilities or to eliminate them. A time frame for announcing the fate of these later flexibilities was not mentioned.
 - Beginning January 26th, 2010 CBP will begin to enforce the new rule, and penalties would most likely be limited to those companies who have not made an attempt to file during the flexible enforcement period. It was said that generally for those companies who have made an attempt to file and that have continued to progress in their implementation throughout the flexible enforcement period would most likely see some level of leniency and would not be penalized as long as progress continues.
 - It was mentioned that aggravating factors will certainly trigger a penalty and these factors included such things as: 1) Importer who have not been filing during the flexible enforcement period. 2) Multiple and continued errors. 3) No relief when law enforcement goals have been compromised.
 - The CBP Issued Report Cards are now using ETD less 24 hours for benchmarking purposes. This change went into effect for all report cards issued in December 2009. (Contact your TAC representative for a copy of your report card). It was noted that the report cards only provide a general trend of compliance and are not exact. It was noted that the rule is clear in that the requirement remains that ISF's must be filed 24 hours prior to loading on board the exporting vessel destined to the USA. CBP admitted that they have difficulty in obtaining the load date in a reasonable fashion and as such will use 24 hours prior to ETD as a tool only but not to reflect the actual requirement.
 - "Do Not Load" actions will generally not be used as an enforcement tool unless there is an extreme circumstance or the security of our nation is at risk.
 - CBP states that issuing penalties will NOT be the preferred method of enforcement as the goal is to "get the data". Non-compliance could also result in other enforcement actions such as Domestic Holds and a Higher Frequency of Exams. Where an ISF is not filed, cargo could be detained in what was called "ISF Jail" pending receipt of a filing.
 - CBP also mentioned that they are considering providing some benefits to importers who use the "Unified Filing" feature of filing the ISF at the same time as the Customs Entry (24 hours in advance of loading). Those benefits could be "less" customs exams, and the ability to have CBP process shipments sooner than the 5 days prior to arrival as currently done today.
- If you have any questions regarding your ISF program or if you require assistance please contact your TAC representative or send an e-mail 10plus2@shipamerican.com.

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