



## INTERNATIONAL TRADE NEWSLETTER

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#### **ISF (Importer Security Filing) or 10+2**

**Department of Homeland Security (DHS), Bureau of Customs and Border Protection Importer Security Filing and Additional Carrier Requirements**

Federal Register, Vol. 73, No. 1,  
<http://edocket.access.gpo.gov/2008/pdf/E7-25306.pdf>

### **Dear Importer,**

DHS and CBP have issued the start date for 10+2 compliance. The start date will be January 26<sup>th</sup>, 2009.

Within this document we will highlight 10+ 2 and provide answers to commonly asked questions.

10+2 // ISF is an additional electronic document that will be required to be presented to U.S. Customs 24 hours prior to Laden on Board of the Vessel for ocean import.

We have received a clear direction from our the providers in our industry:

- Insurance underwriters
- Legal Counsel
- Penalties
- NCBFFAC – National Customs Broker Freight Forwarding Association
- Software providers

Each element of the shipping process has to come together and agree on how their elements will be reported.

### **BONDING:**

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All ISF filings will be required to be bonded, similar to a Continuous Bond. **If you have a current Continuous Import Bond you do NOT need to purchase an additional bond.**

**You are compliant at this point.**

***What about my bond rates:***

Currently the surety companies and U.S. Customs have not decided to make any changes to the bond amount. This may change later in the year and you may be required to take out a higher bond. It will depend on what U.S. Customs forecasts to be the risk and penalties.

***What if I do not have a Continuous Bond?***

If you do not have a Continuous Bond then there will be other alternatives.

BDG has always suggested that all of our customers have Continuous Bonds so that the importer has the best service. Most of our clients have them. If you feel that you did not need one or have cancelled your bond but you will still import next year, please call us and we will process your bond right away.

Warning – the current processing time at U.S. Customs is 15 days for a bond. There may be a backlog in bond applications due to the ISF regulations.

***Do I have to buy a Continuous Bond or are there other choices?***

An ISF bond will be available if your exporter wants to his own ISF filings.

Based on the fact that most exporters do not even want to pay an AMS fee and they normally make the USA Company pay the AMS fee, I doubt that the supplier will want to take on this cost and liability.

***Can I use my forwarders bond?***

Using your forwarders bond for a Customs Entry or an ISF is not considered good business practice. If you are a serious importer you will have your own bond.

Some forwarders will offer to carry the bond and sell the service with their bond. At this point they are taking on full liability of the filings and if they are found to have errors this would be extremely expensive in fines. \$5000 per ISF filing and if they had filed 45 shipments with incorrect information in a year this equals \$225,000. So anyone offering this should be questioned on the reason why they would accept this liability.

## **PROTECTION:**

You can buy special type of insurance to protect you, if you are fined from the government. This is different from the Continuous Bond, the Marine Insurance, and all of your other Business insurance. It is Regulatory Defense Contract. This many times is not sold through your general insurance provider. Plus you probably want to know exactly how it works.

We can explain to you the exact ins and outs of this insurance.

The Regulatory Defense Contract is a coverage that will offer what we call FIRST DEFENSE. This insurance will not pay the penalty, but pay for the legal defense to hopefully reduce the penalty. Thus you may have to pay the penalty but you will not have to pay for the defense costs, which can exceed the penalty.

The attorneys will then try to mitigate the costs down and hopefully save you thousands of dollars in penalties.

***Why do I need this insurance now versus before?***

Actually it has always been a good idea to have this insurance, and it is not that expensive. It is a product

that has not been marketed out there and has been considered a once in a lifetime coverage.

A good Customs attorney costs between \$300 - \$500 per hour. So the insurance can actually save a lot of money. Plus there are other benefits that we can discuss if you are interested. Call BDG we can put together a proposal for you.

10+2 requires that your supplier to provide exact correct information. If they are incorrect or are fraudulent you are still liable for the information. This is also why you will want to have a very good contract with your supplier.

## LEGAL COUNSEL:

It is recommended that each importer have legal counsel that specializes in International Transportation and Customs Law.

BDG will provide advice and suggest when you may need an attorney. However, it is good to have an attorney outside of your company who can be consulted when you want to verify information and audit your own processes.

### *Does BDG offer Consulting Services?*

BDG offers consulting services. We will audit your process and work with you to improve your import procedures. There is a charge for this depending on the work involved.

### *When should I use an attorney?*

*There are many reasons to go to a customs attorney. Please give us a call and we can discuss your issues.*

### *Have your Purchase Order Contract reviewed and updated.*

An attorney should be used when writing up your purchase order agreement with your overseas supplier

so that you know you have all the elements in your contract that you need.

Purchase order contracts provide a document trail for ISF. It is very important that you take the time to go through these and have them reviewed by an attorney who understands International Transportation and U.S. Customs law.

We can provide referrals on several attorneys in the USA who specialize in this.

Your basic general attorney is normally not qualified to handle Customs Law, and you should not hire him to figure out but have direct contact with your own Customs Attorney. Going through your general attorney just adds cost.

## DEADLINE:

The Federal Register is requiring that the ISF filings start Jan 26<sup>th</sup> 2009. They are providing a one year and one day trial period.

During this time we are required to enter the data, and test the systems. There will not be any penalties in the first year. And cargo will continue to move in the first year even if the filing is not processed.

### *Can I wait until 2010 to file the ISF?*

Importers will be provided this grace period to use the system and implement it throughout the supply chain. The U.S. government will monitor if there is progress. Those who are not trying the system and improving each week will be on the list of first audited.

Someone mentioned that those who do not comply will have the scarlet letter A for Audit on their shirt. This will show up in the systems and they will be scrutinized.

## LIABILITY:

As mentioned before, the penalty for a bad ISF filing

will be \$5000 per filing.

These penalties will not be accessed in the first year.

***How will the ISF filings be related to the importer?***

Just like filing a Customs Entry your IRS / EIN number will be used in order to file the ISF. Your IRS /EIN number will be connected to your Continuous Bond number.

When filing the ISF the company whose bond is used is liable for the information. It is smart for you to know your Customs Broker, have a person you can talk with, and make sure that they have all the proper insurances and processes in place.

It is said that your biggest issue will be to control your supplier's information.

We can provide to you instruction sheets to explain what you need, have our agent overseas audit their supplier documents prior to shipping. But no one will know if the information is fraudulent or not.

It is recommended that your supplier facilities are inspected. The importer or an independent inspection firm can complete inspections.

We can recommend some inspection companies if you are considering this.

**POA (POWER OF ATTORNEY):**

Any one completing an ISF on your behalf will have to have a POA. The industry accepted Customs POA will meet the need. There may be an addl POA that is designed just for ISF only.

The current BDG POA will cover the ISF processing. It is possible that the Customs Brokerage industry changes some wording to

encompass the ISF processing. They have not come out with a final decision on this. If they do, we will update our POA.

**10+2 Documentation**

All of the data elements required by 10+2 are required to be completed on a typical customs entry.

10+2 does not affect airfreight.

10+ 2 must be filed 24 hours prior to the vessel departure.

***What does this mean in the real world of shipping?***

Looking at FCL first, this means that the ocean line will stage its containers for loading prior to the vessel arriving. The vessel arrives they will unload it, then load it with the outgoing cargo.

Prior to loading the vessel they stage the cargo according to where it will be placed on the vessel. Under deck will be first, then heavy containers on the bottom of the stack and in the middle then light containers on the side and the top. The carrier may take 2000-8000 containers per vessel. So you can imagine that 24 hours prior to sailing – they better know that that ISF is done.

Realistically the ISF will have to be filed 96-72 hours prior to sailing. This will give the ocean line time to verify that the ISF is completed and stage the cargo.

If the cargo is staged and the ISF is not done, there may be ocean line penalties to take it out of the staging, and if the cargo is LOADED then they realize that the container does not have an ISF they will have to pick out of the stacks the container.

This will cost a lot of money in ocean line penalties to the party responsible for the ISF.

Most likely the ocean line will not move the container if they do not have a 100% confirmation that the ISF is complete.

***How does the ocean line know an ISF has been file?***

There is an ISF number that will be used to verify data.

Customs is not requiring the number to be placed on the bill of lading. The industry will most likely come to a solution by placing this number on the bill of lading.

**What if the ocean line receives the ISF number and something is wrong?**

If the ISF is done in advance, hopefully this will also allow the ocean line time to report that there is a problem. Then it can be fixed and still make the sailing. However, if there is a problem the ocean line may reprioritize the cargo and it may miss a sailing anyhow.

***What could cause an error?***

Assuming that all data is correct from the supplier and everyone has done their job along the way. The system could fail.

This is why there is a one-year grace period.

Other errors can be in the bill of lading numbers, carrier names, container numbers and piece count. These are the most common problems in the AMS system now.

***Will my freight miss it's sailing in the first year?***

The carriers may have their own internal challenges that cause them to delay a container.

In the first year Customs is stating that no containers will be delayed due to this system. They will leave it up to the industry to figure out how to make it work.

So this then is left to the carrier to make that decision.

**SYSTEMS:**

Our current software is undergoing final upgrades to accept the additional data elements required in 10+2.

Final testing and implementation of the updated software is scheduled for late December 2008.

**SUPPLIER:**

You are required to know your supplier!!!

Know what you are purchasing, from whom and at what time. Know where it is coming from and who is involved in your transaction. This is your responsibility.

You should have a signed purchase order contract where you hold them responsible for correct information, on time documents, and itemized invoices.

As a broker we see a lot of documents and we can verify that many times the full name and addresses are NOT on the invoice.

We have to call to confirm addresses and we have requested that the importer request the exporter to update their invoices with the best information. This has been a challenge for the brokers and a challenge for the importers to have compliance.

**COMMERCIAL INVOICE:**

The 10 additional data elements include:

- Manufacturer (or supplier) name & address
  - Seller name & address
  - Buyer name & address
  - Ship to name & address
  - Container stuffing location
  - Consolidator name & address
  - Importer of record identification number (IRS, EIN, SSN, or CBP assigned number)
  - Consignee number (IRS, EIN, SSN, or CBP assigned number)
  - Country of origin
  - Commodity HTSUS number – will accept 6 instead of 10 digits
- The Manufacturer, Seller and Supplier should be listed with their full name and address. For the first year. Customs will allow us to enter the Seller or the Supplier in Lieu of the Manufacturer. However the goal is that all parties are listed.
  - The buyer 's full name and address must be listed. If the buyer is different from the importer of record then it is good to show both parties and their full name and address.
  - The consignee, many times is not the importer of record. Customs want the ULTIMATE CONSIGNEE IRS number. Anyone who knows me "Lisa Waller" knows that I have been requesting this for years.

The ship to party must be listed with their full name and address. If it is a USA company we recommend that you obtain

their IRS number. This will make the processing much easier.

- Country of origin per line item
- First six Htsus digits of each line \*
- Stuffing location full name and address. If your supplier is stuffing the container then they need to provide the address where it is being stuffed. This we think will be the most difficult challenge. If the supplier has a headquarter office in Hamburg Germany, and the container is stuffed in some small town in Southern Germany – the ISF is required to show the STUFFING LOCATION. \*\*

\*The HTSUS number is recommended to be placed on your purchase order. Please do not let the companies overseas classify your product. Most of them do not have the new 2008 tariff and they are wrong. We can classify your parts, or you can send us your P.O. and we can classify it as you are purchasing. We recommend that you then maintain a list in your office and have it integrated in your system. HSTSUS numbers do change so please make sure you can edit it.

HTSUS number ...

You are still required to have compliance on the HTSUS number and if it is found to be wrong it need to be corrected in the customs entry and the ISF.

\*\* If the shipper is not stuffing the container and it is being stuffed at a warehouse hired by the forwarder or the exporter then this warehouse will have to be reported.

If the cargo is LCL the stuffing location will always

be where the container was loaded. When we heard this we were pretty happy that for years we have been always controlling the LCL suppliers used. We have a very tight control over our ocean freight service and who is loading the containers when we are responsible for this.

## CORRECTIONS:

The U.S. government will allow corrections. If a correction is needed to be done it is allowed to be corrected 24 hours prior to arrival into the port of entry. This is not quite defined yet, but one can assume they mean the OCEAN PORT not the inland port.

Even though corrections are allowed. Our policy has always been to get it right the first time. We will work with our customers to have accurate data the first time around.

If it is found that we need more data or a correction. The importer will have to act on this immediately and supply the information.

A common problem is confirmation of the Ultimate Consignee. Cargo can change destinations, change owners, change terms; change pc count after an error is found.

Once this is discovered there will be a race to correct the information prior to the cargo arriving.

### *What if the vessel shows up early?*

Vessel skips a port due to strike, weather whatever – now it is a day early.

Let's all not try to depend on the 24 hours prior to arrival for anything.

## COMMENTS:

Comments from the desk of Lisa V Waller:  
For BDG, compliance has always been an important element in order to protect our customers, BDG and the USA.

We pride ourselves in maintaining a high level of compliance and excellent statistics with Customs. We do not budget penalties, we work that we and our customer never has to pay them. We do our best to question our customers and make sure that the questions are answered with the best of everyones abilities.

Thank you for your business and your time. If you are not a client, we welcome your consideration to look at a company that takes its customers serious and takes compliance serious.

Your comments are welcome. Send them to [lisaw@bdginternational.com](mailto:lisaw@bdginternational.com)

Please give it the subject of 10+2.

We will keep you updated with more details as they come out.

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