

Importer Security Filing – The Legal Implications

By

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10+2 - Basic Facts

- SAFE Port Act 2006
- Interim Final Rule Effective 01/26/09
- CBP publishes FAQ 01/09 (Updates?)
- CBP conducts out-reach (on-going)
- Flexible Enforcement Period
- Comments due 06/01/09
 - Restricted to:
 - Six “flexible” data elements
 - Regulatory Flexibility Analysis (cost of compliance, impact of flexibilities in rule, barriers to timely submission of ISF data)

Reporting Obligations

■ IMPORTERS

✓ Elements

- IOR Number
- Consignee Number
- Seller (Name/Address)
- Buyer (Name/Address)
- Ship to Party (Name/Address)
- Mfg (Supplier) (Name/Address)
- Country of Origin (c/o)
- Stuffing Location (Name/Address)
- Consolidator (Stuffer) (Name/Address)
- HTS (6-digit/10 digit if unified entry)

■ CARRIERS

✓ Elements

- Stow Plan
- Container Status Messages

Structured Review (Flexibility)

- Allows flexible timing for two ISP elements (Container Stuffing Location, Consolidator/Stuffer Name/Address)
 - No later than 24 hours prior to arrival in U.S.
- Allows flexible interpretation for four ISF elements (Mfg/Supplier, Ship to, C/O, HTS)
 - Report 24 hours prior to vessel loading
 - Filers may provide “range” of acceptable responses based on best available information
 - ISF update required no later than 24 hours prior to U.S. arrival

Legal Exposure

- Enforcement Period (Liquidated Damages) begins 01/26/10
 - Bonding
 - ISF filer \$5,000 per violation
 - Carrier Stow Plan \$50,000 per vessel arrival
 - Carrier Status Messages \$5,000 per violation (max \$100,000 per vessel arrival)

Mitigation

- Guidelines?
- Satisfactory Progress toward Compliance
- Good Faith Effort to Comply with Rule

Other Penalty Exposure

- 19 USC 1595a(b)
- 19 USC 1436

Other Considerations

- Do Not Load Message
- Indemnification

Recommendations

- Continue or Start Filing
- Obtain Ruling if Unusual Circumstances
- Submit Comments by 06/01/09
- Keep Records
 - Training
 - POA's Issued
 - Internal ISF Policy & Procedures
 - "Report Cards" from CBP

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