



March 17, 2008

Border Security Regulations Branch
Office of International Trade
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Dear Sir or Madam:

Thank you for the opportunity to provide comments on the Notice of Proposed Rulemaking (NPRM) regarding the Importer Security Filing (ISF) and Additional Carrier Requirements, published under Docket Number USCBP-2007-0077 in the January 2, 2008 issue of the Federal Register. The Joint Industry Group commends Customs and Border Protection (CBP) for its efforts to strengthen national security, and we support its risk management approach to supply chain security. We also thank you for engaging our group in formal discussions during the development of this NPRM, as well as for recognizing the importance of this comment period and extending it by 15 days. Nonetheless, we write today to express significant concerns over several general parameters of the program, note our disappointment that the NPRM lacks adequate explanation in several critical areas, and highlight some of the operational aspects that require clarification before this proposed regulation proceeds.

The Joint Industry Group (JIG) is a coalition of importers, exporters, shippers, carriers, customs brokers, ocean transportation intermediaries, trade associations, service providers and law firms with an active involvement in global commerce. JIG frequently engages Congress and the Administration on a variety of international trade-related issues. We work particularly closely with Congress and the Department of Homeland Security to promote international trade policy that reflects the needs of both government and the private sector.

JIG supports the notion that the proper collection and analysis of information can contribute positively to the security of our nation's borders. The NPRM issued in this case, however, creates tremendous concern within the trade community about the costs associated with implementation of the program, as well as the lack of clarity provided about many of the ISF operational details. Included below is the consolidated feedback offered by JIG members. It begins with our group's overall objections to portions of the NPRM, but it also highlights specific elements within the outlined program for which we seek more information or suggest alternatives.



Program Costs Significantly Burdensome for Trade Community

JIG is concerned that the costs of implementation will impose a large burden on the trade community. CBP states, “While CBP understands that some business practices may need to be altered to obtain the required information at an earlier point, CBP does not anticipate that these changes will be unduly burdensome” (pp. 95-96 IV B). CBP should reconsider its analysis. The basis of CBP’s statement that these changes will not be unduly burdensome is questionable. We are aware of no importer that collects these data at the level required, linked to a bill of lading number electronically or on paper. Complete new processes and systems will need to be developed to collect, send, and correct the data. Unlike the representation made by CBP to OMB that the ISF may create one day of added inventory to supply chains, many companies have stated that several days will be required, and thus the estimated cost should be substantially higher than estimated by the OMB study. This cost creates significant losses, putting small and mid-size businesses in particular at an operating disadvantage as they may not have extensive resources to cope with program implementation.

No Provision of Benefits for Supply Chain Security Investors

JIG also questions if this level of data collection is needed on all shipments from every location around the world. The CBP risk management approach appears based on the premise that all shipments from every location and from and to every party inherently pose the same level of risk. This premise simply is not true and as a result data regarding millions of shipments will repeatedly be collected and resubmitted at a tremendous cost to the government and the trade community. This is not only a poor expenditure of both the government and trade community resources but it also diverts security resources from focusing on known areas of security risk. Importers and other trade community members are currently spending significant resources and effort to make the supply chain secure (e.g., Customs-Trade Partnership Against Terrorism and carrier, marine and port security programs currently in place by CBP, other DHS agencies, the Departments of Transportation, Energy and others). JIG suggests that CBP allow exemptions or account management to trade community parties who have invested in supply chain security. This will allow CBP to better focus its data collection and other security programs on intelligence based risk.

Misalignment with the World Customs Organization

The proposed CBP regulations are misaligned with the WCO, placing a significant burden on the U.S. trade community. CBP states that “CBP is working with the WCO to develop an amendment process that will enable the WCO Framework of Standards to adapt to changes in the international security environment” (p. 95-96 IV B). Most foreign governments believe that the U.S. is hoping to get 150 WCO countries to revise the framework to meet the unilateral requirements of the U.S., endorsing CBP’s unilateral decision after the fact. Cooperation with our foreign trading partners is an essential ingredient to achieving the mutual recognition necessary to close security loopholes. Misaligned data requirements prolong the time during which there will not be a common standard for Security Filings. The absence of a common standard undermines the value of



the ISF in combating terrorism. Inconsistencies between CBP and WCO standards are burdensome to U.S. importers, placing them at a competitive disadvantage. A significant effort should be made to reach security agreements with other national governments and multilateral bodies that provide for the mutual recognition of security programs between governments and the trade community members operating in them.

Assumption of Importer as Most Informed Party

JIG disagrees with CBP's conclusion that the importer should be ultimately responsible for the acquisition of the required data (p. 95 IV B), particularly when the importer may have no direct knowledge of that information. Although in many cases the importer may issue a purchase order to a supplier for a certain amount of material at certain time periods, it is often times a third party that coordinates the stuffing of the container and arranges transportation. The carrier issues the bill of lading number critically linked to the manifest submitted by the ocean carrier. In fact, in some cases the importer is not known 24 hours prior to lading. In those instances, the actual transportation for the specific shipment is handled by freight forwarders and carriers, and information related to a specific shipment is provided to importers of record only after arrangements have been made. Furthermore, depending on the Incoterms,¹ the importer may not be responsible for export from the foreign location, import into the U.S., or transportation. Thus, CBP is putting importers in a position of having liability for the submission of information about which they may have no firsthand knowledge, no certainty that they can obtain the requisite data, and no responsibility in many cases for the movement of the goods. JIG understands that the importer may be the most expedient party for CBP to take action against in case of error, but expediency should not be a deciding factor in declaring that the importer has absolute liability for a defective ISF.

No Allowance for Account Profiles and Templates

CPB states that it will not allow templates to be utilized for any of the data to be submitted (p. 98 IV F). This prohibition allows for typographical errors to occur with the various pieces of information required, and sets back efforts toward customs automation and trade facilitation. Those importers that do not have access to ABI or AMS, and that submit accurate information to their elected agent, should not be responsible for that agent's errors. Instead, the program should build computerized account profiles and develop templates to decrease typographical errors that will result in the misallocation of resources to researching these unnecessary red flags.

No Ability to Review ISF by Importer

Furthermore, importers should be able to audit Importer Security Filings. CBP states that "Under the proposed regulations the party who filed the Importer Security Filing is required to update the Security Filing" (p. 95 IV B). The process must be re-evaluated. As the importer for a particular shipment may change during transit and as an importer may

¹ Incoterms are standard trade definitions most commonly used in international sales contracts



not be aware of a shipment until arrival, it is critical that the importer, or his agent, responsible for filing the entry information to CBP be able to view the Importer Security Filing and submit changes. The notice of proposed rulemaking does not provide a way for the final importer to identify and correct the filing. Once the ISF is filed, the importer is left to guess what information was previously provided, which may lead to the failure to correct errors that might otherwise have been corrected. These avoidable contradictions may lead CBP to conclude that more investigation is needed when mere typographical or clerical errors have occurred.

Linking of Information at Line Item Level

Linking importer name, address, country of origin (COO), and HTSUS at the line item level is too burdensome. For example, if there are two products of the same HTSUS with different COO, would these have to be separately reported? This is data required for entry. If importers do not have a sufficient automated system for gathering the COO, it will be extremely difficult to gather that data more than 24 hours prior to loading. As such, that would likely delay the shipment (p. 94 IV A).

Differing Party Responsible for Document

JIG would appreciate clarification on a scenario in which merchandise originally slated for immediate export is instead the subject of a consumption entry. In this case, which party would be held responsible for seeking permission from CBP (pp. 95 IV B and 98-99 IV I 2)? We also harbor concerns that a shipment initially security-filed as in-bond but changed to a consumption entry would encounter potentially extensive delays as a result of the process.

Need for Clarity of Data Requirements

The NPRM does not provide a sufficient level detail as to the exact parameters of the data requirements. While it adequately explains the general data definition, we ask CBP to provide much clearer detail regarding the specific line item requirements for each element. Currently, it is unclear exactly how each data element should be filed, and this uncertainty will lead to administrative errors that cause unnecessary red flags and closer inspection by CBP officials. By providing clarity on these specifics either in the rule itself or the frequently asked questions section of the website, CBP will facilitate greater compliance from the trade community.

Penalties

The proposed imposition of liquidated damages in connection with the ISF is not reasonably related to the national security goal of the ISF and is also unnecessary. JIG believes it should be replaced by realistic and targeted enforcement measures more clearly tied to the purpose and aim of the ISF. JIG recommends the administration of penalties in a manner that varies with the severity of the infraction. This would allow CBP to punish – and more importantly deter – intentional violators, while minimizing punishments for accidental errors. Distinctions in severity of violation should be clearly set forth in advance and assessments should comport with the actual infractions.



Maintain Separation of Security and Commercial Information

The information submitted through a Security Filing should not be used for commercial purposes. The NPRM in fact acknowledges this responsibility in a reference to the Tariff Act of 2002. Although the notice of proposed rulemaking states the information will be used only for security purposes, we believe that CBP is treading dangerously close to this prohibition. For example, the NPRM states only that CBP will not use for commercial-enforcement purposes “the data required by this rule” (pp. 101-02 V D); the NPRM does not state, however, the purposes for which CBP might use any data voluntarily submitted “in addition to those required by the proposed regulations” (p. 93 III B). There needs to be a bright line, outlined in detail by CBP, which assures the private sector that their data will not be used for commercial purposes now or in the future.

Lack of Detail on Systems

JIG strongly encourages CBP to work with organizations that have members with tremendous operational and systems knowledge, such as COAC, CESAC, and the TSN, when defining the detailed systems and operational parameters. Such cooperation has proven valuable to CBP in the development of its ACE computer system. Further, these organizations would provide knowledgeable advisory bodies during testing, implementation and ongoing operations.

Need for Full-Scale Pilot Program

The notice of proposed rulemaking released no information on how this ISF process will actually be implemented. Before formally introducing and enforcing the ISF program, JIG supports a full-blown pilot program to test all data elements and systems requirements with a select number of volunteer companies. A genuine, full-scale pilot program will allow CBP and the trade community to gauge ISF costs and challenges in a more comprehensive manner.

Need for Phased Implementation and Enforcement

JIG recommends that CBP implement the ISF in a phased manner. We believe this phased approach should not only pertain to implementation of the program, but also to enforcement. The phased approach will allow both CBP and the trade community to make adjustments as necessary, and it will also heighten cooperation and compliance by importers.

Publication as an Interim Final Rule

JIG also requests that after receipt and analysis of comments on the NPRM there be an interim final rule published regarding the Security Filing. This would give CBP the opportunity to publish technical specifications for communicating the Security Filing through ABI and AMS. That, in turn, would give the trade the information needed to complete initial programming to perform the filing when the final regulations go into effect.



JIG understands the need by CBP to increase information requirements to protect the nation's borders. While the goals of the ISF are commendable, further dialogue with the trade community is needed to create a program that accommodates the requirements of the government without overwhelming the businesses upon which this country and its struggling economy rely. JIG has been extremely pleased with the open dialogue CBP has maintained with the trade community throughout development of the ISF to date, and we hope this process will continue. If CBP continues working with the trade to develop a program that meets our business needs, JIG members will prove to be valuable participants in achieving the proper implementation and execution of the ISF.

Best Regards,

Mary K. Alexander

Mary Alexander, Chair
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