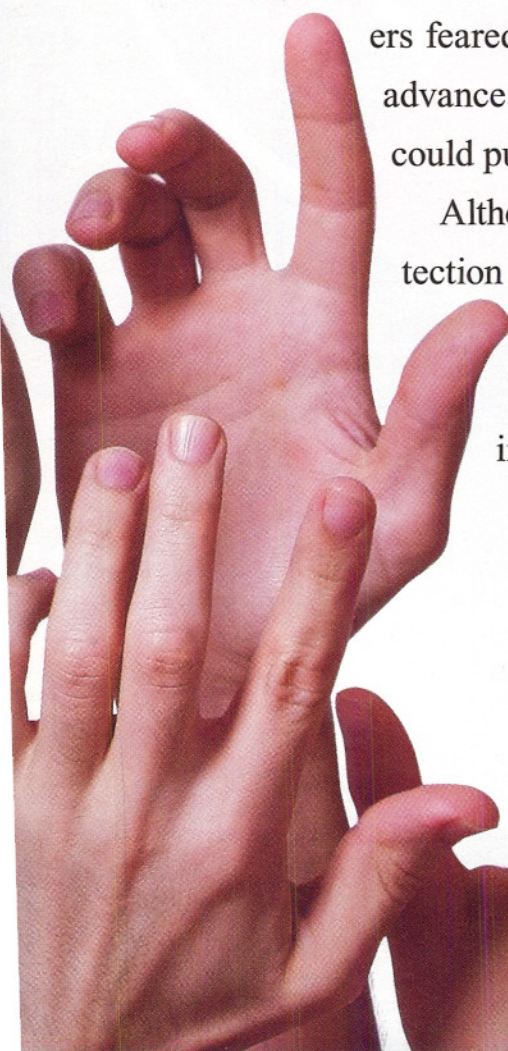




# Reaching the little guy

*'10+2' compliance  
poses special challenge  
for small importers*

BY ERIC KULISCH



**L**ong before U.S. Customs implemented in January its "10+2" rule for cargo security purposes, small and medium-size importers feared complying with the stringent advance import data filing requirements could put them out of business.

Although Customs and Border Protection officials are encouraged that smaller-type importers have actually proven to be the most involved sector during the initial

months of the Importer Security Filing (ISF) program, trade specialists on the front lines of ocean freight transportation say the numbers gloss over how vulnerable these companies will be when the current grace period ends and the agency goes to full enforcement in January.

Major challenges are that small businesses do not have representatives or contacts in foreign countries to track down the necessary information, are hampered by working in a different time zone, and in many cases do not even know the primary manufacturers used by the wholesale buyers with which they place orders.

Many mom-and-pop retailers are still not aware of the requirement or mistakenly believe their customs broker will take care of the documentation without any effort on their part, according to industry officials. Also of concern is the potential cost of information technology systems and filing fees.

Rose-Marie Miller, owner of Atlanta-based JRM International Forwarding Inc., said she's worried whether small importers will be able to cope with the new regulation, and how her company will be effected if they decide sourcing products from foreign destinations is no longer worth the hassle.

"I'm on the side of Customs. I understand the initiative and I don't want it to fail. But the initiative itself makes it very difficult for small importers to provide the information in a timely manner, especially if they use an NVO (non-vessel operating common carrier), because often the vessel has sailed before you get the information.

"And the NVOs are maybe not as motivated to take care of these little importers" who book 25 to 50 containers or less per year, she said.

ISF requires importers or their agents to electronically transmit, 24 hours prior to vessel lading in a foreign port, 10 types of data identifying where a container originated, the cargo contents, the consolidator and buyer. Carriers subsequently must provide two additional data fields—hence "10+2."

CBP is not issuing penalties for inaccurate or late filings during the first year to allow industry to develop the infrastructure and process for gathering and filing the data. It has urged importers to start filing ISFs, even if they don't have all their systems in place, so that companies can learn from their mistakes.

Contrary to expectation, the vast majority of companies filing ISFs so far are small and medium-size enterprises (SMEs). Of the 52,000 importers, brokers and freight forwarders that have submitted an ISF, about 50,000 have come from the small to mid-size business category, according to CBP figures.

ISF Program Manager Richard DiNucci,



at a May 6 meeting of the Commercial Operations Advisory Committee (COAC), attributed the good participation so far to the agency's extensive number of educational seminars at various U.S. ports, as well as appearances at industry conferences, and the likelihood that smaller companies have less of a compliance challenge because their supply chains are not complex.



**DiNucci**

CBP's results are consistent with the findings of a recent survey of more than 220 companies conducted by *American Shipper* and trade compliance consultant BPE.

In fact, the study shows that smaller companies are managing to file all their ISFs, while large companies are struggling to do so. The survey also indicated that smaller companies have a higher confidence level in the timeliness, accuracy and completeness of their filings right now, but express less certainty about their ability to meet the 2010 enforcement deadline compared to their larger brethren.

"The concern is if this is the best they can do," BPE President Beth Peterson said. An importer that is able to successfully file ISFs for three-quarters of its shipments, for example, can expect penalties on the remaining shipments once enforcement begins.



**Peterson**

"Then they're out of business. If they have to pay a penalty of \$5,000 for every import they do, how can a small company survive?" she said.

How one defines a small-to-medium-size company can also color results. Small companies were labeled in the survey as having less than \$100 million in annual revenue, while mid-size firms were characterized as having less than \$1 billion in revenue. Some consider a small business as one that has 500 employees or less. CBP categorizes an importer's size based on its volume of customs entries and ISF submissions, a spokesperson said.

COAC member Karen Lobdell, director of trade security and supply chain services for Chicago-based law firm Drinker Biddle & Reath, cautioned that most small trading firms complying so far probably have their documentation filed by agents who are active in trade associations or large trade management firms who stay on top of customs issues and have engaged their customers to prepare for "10+2."

"I think what we're seeing is that small and mid-market companies that are currently filing are doing so because they work with brokers who are larger and traditionally have been proactive on trade compliance and regulatory issues. They've been doing outreach to their customers and as a result those businesses are being pulled into the ISF filing.

"When the larger brokers have pretty much exhausted their outreach efforts to their existing small business base, I think we'll see those numbers level off. Then all those small and mid-size companies that don't work with proactive filers, those are the ones that are going to be problems come January," she said after the meeting.

The difficulty is that no one knows how many importers and brokers are still in the dark because the traditional channels for outreach don't work for them.

To reach further down and increase awareness among small brokers and importers that are not as engaged in regulatory matters, CBP plans to distribute brochures and hang posters about the pending "10+2" deadline at customs houses where brokers often walk in to manually submit import declarations, DiNucci said.

The brochures, which were undergoing internal review as of early June, spell out the requirements in simple, concise terms that are easy to understand and contain contact numbers to obtain further information.

Lobdell suggested that CBP should also collaborate with the Small Business Administration, which has traditionally focused on exports, small business trade

associations and World Trade Centers located in some cities, to help get out the word about "10+2."

"You have to look at where these people get their information and start developing new channels. It will take time, but you need to be creative," she said.

Susan Kohn Ross, international trade counsel for Mitchell Silberberg & Knupp, said in an interview that small and mid-size enterprises are "completely beholden to whoever their service provider is," compared to large companies that can develop their own information technology links and often have their own representatives in the city of origin. ISF success for any company largely depends on the quality of the broker's or forwarder's overseas agents, and how well they communicate with each other.

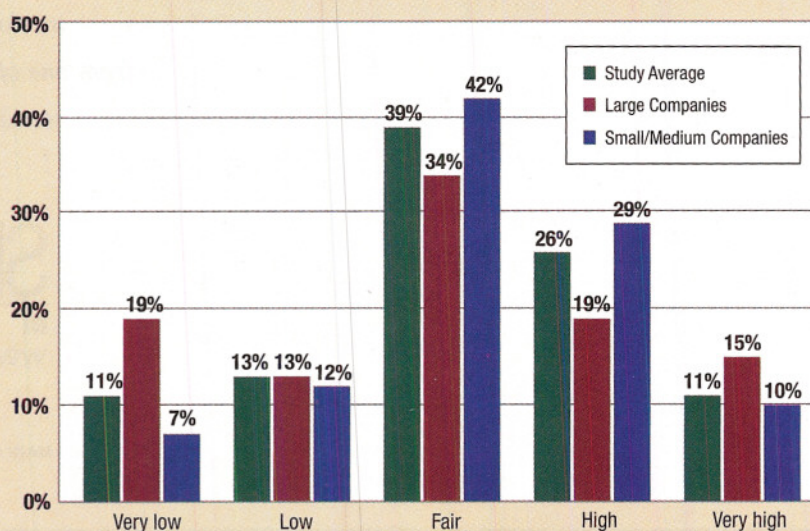
One recommendation making the rounds, she said, is for CBP to follow the model of the Census Bureau's Foreign Trade Division, which has a Web-based data entry alternative for transmitting electronic export information to its Automated Export System called AES Direct; and the Food and Drug Administration's Web-based PNSI system for shippers to provide prior notice of food imports.

Companies currently file the ISF through the agency's Automated Broker Interface or Automated Manifest System. As with AES, the systems require the regulated entity to create a computer program to interchange electronic data between their computers and Customs.

Ultimately, the responsibility to be aware

**Figure 1**

### Level of confidence ISF filings are timely, accurate and complete



197 total respondents

Source: *American Shipper*-BPE-ICPA ISF Benchmark Survey, 2009



of any rule changes lies with the importer who wants the privilege of bringing goods into the country, DiNucci said a week later at the Virginia Maritime Association's annual conference in Norfolk, Va.

Miller, the broker-forwarder whose client base mostly comprises small shippers, has attended outreach seminars but said she is concerned that there is no help desk or way to get procedural questions answered.

"A lot of people are trying to comply, but I've got importers coming to me saying that, 'Until Customs starts to take fines I can't deal with this.' It's too daunting and they don't want to begin to attack it," she said.

"They're not used to speaking to their suppliers in such intimate terms until maybe monies have been exchanged to pay for the goods. When the goods have been produced, packed, shipped and are on the water, then they talk," Miller explained.

Don Woods, brokerage division manager for UPS Supply Chain Solutions, agreed with CBP in an interview that small to medium-size importers have less of a compliance challenge than big shippers who have to integrate data from multiple manufacturers, transactions, trade lanes, freight forwarders and carriers.

More than half the data required on the ISF is already contained on the commercial invoice and there are many Web-based tools available to help small companies collect additional pieces of information and pull them all together for the filing, he said.

A less complex supply chain is a benefit — to a point — Peterson observed. The dilemma for the small business, she noted, is that it has no leverage with foreign suppliers who do not understand the regulatory requirement or don't care to do the extra work to help their customer. Large companies, by comparison, are putting clauses in their contracts requiring foreign manufacturers and other vendors to supply their missing data elements in an accurate and timely manner or face monetary penalties or loss of the contract.

And many small companies still do not have a good grasp of their supply chains, their process flows or the source of required information, such as the container stuffing location or harmonized tariff code.

Miller said one of her customers who supplies Pottery Barn constantly changes suppliers in China and India to keep merchandise fresh, and is hard pressed to provide origin information in a timely manner.

She questioned the validity of CBP figures showing high participation and on-time filing rates of about 50 percent.

"We see the truth. We're getting the information, but it's always late. And some importers have discovered that it's so dif-

## ISF software for small importers

Several trade management and customs software vendors have developed tools to specifically help smaller companies comply with the Importer Security Filing (ISF) program.

Boston-based TradeMerit recently announced a basic Web-based service that allows importers to fill in a template with the required data elements, maintain a master parts database and receive updates on their ISF status for 99 cents per filing. Customers can also make amendments to the filing when more accurate data becomes available for no extra charge. Premium services, such as a platform where multiple trading partners can enter some elements for the importer, are available at extra cost.

The rules allow importers to update four types of information, such as the ship-to party and country of origin, indefinitely and two pieces of data (consolidator and container stuffing location), until 24 hours before arrival in the United States. Customs and Border Protection officials say that most companies not taking advantage of that flexibility and instead are filing complete documents the first time.

Sandra Scott, TradeMerit's vice president of trade compliance, said one possible reason for the low number of amendments is that many third-party systems providers don't have the capability in place yet to do amendments, and are requiring their customers to enter all 10 data elements up front. Many providers also charge a fee to file amendments.

Bryn Heimbech, president of Trade Tech, said his company can act as the on-scene facilitator for small U.S.-based brokers and infrequent importers that don't have the overseas presence, language skills or compatible office hours to round up the necessary ISF information from local vendors.

Trade Tech, headquartered in Bellevue, Wash., specializes in logistics software

and service for non-vessel-operating common carriers. It has offices in Shanghai, China; Hong Kong, Taipei, Taiwan; Hamburg, Germany; Lyon, France; and Genoa, Italy. The staff in those cities pulls together the loose strands of information that don't reside on the purchase order and send it onto data input stations in Vietnam and India, which have already keyed in the necessary data elements from the carrier booking. The information is combined and sent onto Customs.

"Our offices work with the shipper, get the information, get it into the system and then the broker has access to the data through work flow technology. They review it, classify it, add anything they need to and file it," Heimbech said.

"The broker continues to be the agent for the importer. We're just providing a front office for them."

Other companies offering ISF software include:

- **Descartes.** The Waterloo, Ontario-based company has a basic ISF service that allows customers to enter data via the Web and then files it directly to CBP. Other tiers of service are set up to handle electronic data interchange transmissions.

- **TRSDirect.** Another cost-effective software product geared to smaller business entities with infrequent shipments. The company promotes direct filing as a way for the importer to make sure information filed is timely and accurate. The ISF is not considered "customs business" by CBP and therefore requires no license or special filing code to participate.

- **Management Dynamics.** The company has an ISF component within its automated import management product, and has designed a smaller ISF application for manual filers. The key benefit is the customer can download it and work offline without having to be connected to the Internet while preparing the ISF form, according to Nathan Pieri, senior vice president of marketing and product management. Users can prepare multiple ISF files and submit them all together in a batch. The program will then connect online to Customs and transmit the file.



Scott

ficult that they've completely given up," she said.

Importers and logistics providers are paying brokers and forwarders an average of about \$30 in transaction fees to compile and file the ISF, with some fees reported in

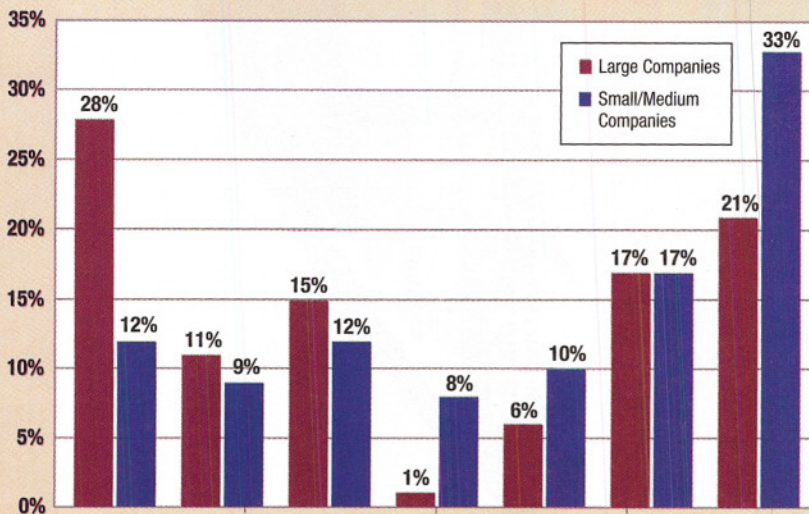
the \$50-to-\$100 range, according to a wide range of industry feedback. Those additional costs have a greater impact on smaller companies that operate on thin profit margins.

The American Association of Exporters and Importers, in comments recently



Figure 2

## Percentage of ISFs filed for ocean imports by company size



232 total respondents

Percentages do not add up to 100% due to rounding.

Source: American Shipper-BPE-ICPA ISF Benchmark Survey, 2009.

filed with CBP as part of the interim final rulemaking process, expressed its belief that filing fees will increase as more small and mid-market companies participate in the ISF process.

"SMEs do not have the leverage to negotiate pricing with their service providers as the larger companies do. Also, since they tend to have smaller shipments in volume and dollar value, these fixed costs will hit SMEs much harder and be debilitating much more quickly than they will for the larger importers," the pro-trade organization said.

But AAEL and others note that filing fees are a minor cost of compliance compared with programming computer systems, manually tracking down overseas data and data entry. The biggest cost of all, they say, could be from self-imposed delays or slowdowns in the supply chain as cargo shipments are held up to make sure all the data elements are available to file a complete ISF.

CBP has indicated it plans to deal with inaccurate, incomplete or late ISF filings through the penalty process, but depending on the risk assigned to a shipment or the ISF compliance history of a shipper, CBP could issue "do not load" messages to carriers for certain containers once full enforcement kicks in next January.

"We're worried about what's going to happen next year," Miller lamented. "We had two importers who decided to source locally instead of import from China because getting the information was too difficult. Their profit margins went down. Every single initiative — the 24-hour (manifest) rule, clean truck programs — have come

almost at the same time to impact the marketplace. They said between the economy and Customs' demands they've decided to do something else.

"So it's very sad for a small company like ours because we need all of our customers to survive," she said.

The interim rule's flexibility allowing importers to submit a range of acceptable responses for data elements, such as the manufacturer and ship-to-party, is critical for smaller importers, according to Cindy Allen, director of the National Customs Brokers and Forwarders Association of America's Educational Institute.

Importers are required to update their filings as soon as more precise information is available.

The extra time is important because small importers typically use third and fourth-party suppliers, making it difficult to track down the actual manufacturer.

"If they (CBP) don't maintain that flexibility it's going to impact sourcing patterns, which will have huge commercial ramifications in the end," she said.

CBP has not yet clarified what customs bond requirements it will impose on importers to guarantee proper ISF filing. The agency has waived the bond requirement for the first year, but officials have indicated that companies can cover their ISF activity with existing continuous bonds. An infrequent importer that uses a single entry bond likely will need to obtain a special ISF bond.

Continuous bonds are purchased to cover a company's entire importations for a full

year to make sure duties, penalties and other charges are paid. Small volume shippers tend to secure a bond for each customs entry transaction because it is cheaper.

Miller said customers who bring in eight to 10 shipments per year don't want to switch to a continuous bond.

"Small importers feel pressured as if the government is coming down on them and saying, 'Hey, we don't want you to import,'" she said.

JRM has decided to help some customers, in spite of their indifference, by gathering information behind their back and filing an ISF to keep them in compliance, Miller confided. If an e-mail confirming shipment is received she uses the track-and-trace capabilities of ocean carrier booking systems to find the master bill of lading for the container holding the shipment, but often can't find the house bill of lading with the specific shipment details. Even when successful, the information about the shipment consolidator and location of the warehouse that packed the container is still missing. Complicating that effort is the fact that many customers use data-rich letters of credit (which often have bills of lading and commercial invoices attached) to finance their shipments, but banks often don't release copies of the documents until after the goods have been shipped.

"Right now I've got three files and the vessel sails today," Miller said. "I've got all the information I need, except the house bill, so I can't identify the portion of the container with my 100 cartons. And, therefore, I can't file the ISF. I asked the importer for the house B/L, and his supplier can't provide it to him. So the lack of communication with the supplier is a problem."

The ISF filing has strained the small brokerage company, which drops other tasks such as preparing customs entries to file the ISF because by the time it gets all the necessary information the goods are already moving toward the port, she explained.

Miller says she charges her customers for the ISF work even if they aren't commissioning such service.

"If I have to play Sherlock Holmes, I'm going to charge more. It's their job. I'm doing them a favor. I want my importers to be in compliance.

"My importers come here and there's a place in the market for us because we hold their hands, and we teach them what it takes. We have the patience to get them to comply with all the initiatives. A bigger broker may not have all the time," she said.

**The Importer Security Filing Benchmark Study, co-produced by American Shipper, BPE and ICPA, is available at [www.AmericanShipper.com/ISF](http://www.AmericanShipper.com/ISF).** ■