The Honorable Jim Nussle
Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

September 16, 2008

Dear Director Nussle:

We write to you to express our concern over the Customs and Border Protection (CBP) rule "10+2." We collectively represent businesses and importers from every industry, every sector and every business size in the United States and account for the vast majority of imports entering the United States each year. Our members depend heavily on imported parts, components and finished products to compete not only in the U.S. marketplace, but also in foreign markets as well. Our members are also dedicated to national security and have taken substantial steps to secure their supply chains and the U.S border.

As we expressed repeatedly during CBP rulemaking processing, we are very concerned that the 10+2 rule will decrease the competitiveness of United States by significantly increasing the cost of doing business, while also diverting attention away from the shipments that pose the greatest risk. We believe that CBP's initial cost-benefit analysis grossly underestimated the impact on industry and failed to consider many of the costs that manufacturers will have to shoulder to implement the proposed rule. Industry estimates that the rule will have a collective impact of over $20 billion annually.

In particular, we believe CBP has not met the requirements of E.O. 12866 by failing to:

- Provide a cost estimate that represents the true impact on industry;
- Examine the impact on small businesses; and
- Consider other viable alternatives to achieve the mandate of the Safe Port Act of 2006.

We respectfully request the Office of Management and Budget (OMB) to review thoroughly the extent to which CBP evaluated the impact of and alternatives to the proposed rule. We believe that the proposed rule is not the most efficient and effective way to collect advanced data. We have continuously raised these concerns with CBP. Attached to this letter, we have provided information on each of the three concerns listed above.

We respectfully urge OMB to return the rule to DHS for further review. During your review of the 10+2 rule, we are available to provide any further information you may require to determine the impact on industry. We remain committed to increasing the national security of the country and have provided alternative methods to achieve that end goal without unduly burdening legitimate trade.

Thank you for your attention to this very important issue.

Respectfully,

The Adhesive and Sealant Council, Inc.
AeA (formerly American Electronics Association)
Air Movement and Control Association International
Alliance of Automobile Manufacturers
American Apparel & Footwear Association (AAFA)
American Architectural Manufacturers Association
American Association of Exporters and Importers (AAEI)
American Petroleum Institute (API)
American Trucking Associations (ATA)
The Association for Manufacturing Technology (AMT)
The Association for Suppliers of Printing, Publishing and Converting Technologies (NPES)
Association of International Automobile Manufacturers, Inc.
Association of the Nonwoven Fabrics Industry (INDA)
Automotive Trade Policy Council (ATPC)
Coalition for Employment Through Exports (CEE)
Coalition of New England Companies for Trade (CONECT)
Computing Technology Industry Association (CompTIA)
Consumer Electronics Association (CEA)
Detroit Regional Chamber
Distilled Spirits Council of the U.S.
Emergency Committee for American Trade (ECAT)
Information Technology Association of America (ITAA)
Information Technology Industry Council (ITI)
International Housewares Association
Joint Industry Group (JIG)
Metal Treating Institute
Motor and Equipment Manufacturers Association (MEMA)
National Marine Manufacturers Association
National Association of Manufacturers (NAM)
National Foreign Trade Council (NFTC)
Pacific Coast Council of Customs Brokers and Freight Forwarders (PCC)
Pacific Northwest Asia Shippers Association (PNASA)
Responsible Industry for a Sound Environment (RISE)
The Telecommunications Industry Association (TIA)
Travel Goods Association (TGA)
The U.S. Business Alliance for Customs Modernization (BACM)
U.S. Chamber of Commerce

NYDIA M. VELAZQUEZ, NEW YORK
CHAIRWOMAN

STEVE CHABOT, OHIO
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

September 9, 2008

The Honorable Jim Nussle
Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

RE: Importer Security Filing and Additional Carrier Requirements, Notice of Proposed Rulemaking, 73 Fed. Reg. 90 (January 2, 2008) [the "NPRM" or "10 +2 Rule"].

Dear Director Nussle,

As Chairwoman of the Small Business Committee, I am writing to you today regarding the impact of the 10 + 2 Rule on small firms. Among other areas, the House Small Business Committee has jurisdiction over the Regulatory Flexibility Act ("RegFlex"). RegFlex was enacted to respond to concerns that uniform application of federal regulations imposed disproportionate burdens on small businesses. In order to minimize the burden of rules on entrepreneurs, RegFlex mandates that federal agencies consider the potential economic impact of regulations on small entities.

Customs and Border Protection (CBP) has failed to meet its obligations under RegFlex to properly analyze the economic impact of the 10 + 2 Rule on small entities. OMB must ensure that CBP meets the requirements of RegFlex.

RegFlex requires each initial regulatory flexibility analysis (IRFA) to "contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities."[1] CBP has simply dismissed this important requirement by stating: "CBP does not identify any significant alternatives to the proposed rule that specifically address small entities."[2] The agency is obligated under RegFlex to describe alternatives to the 10 + 2 Rule which minimize significant economic impacts on small firms.

[1] 5 U.S.C. § 603.
[2] 73 Fed. Reg. 107.

Additionally, the IRFA fails to discuss the type of professional skills necessary for the filing of the information required by the 10+2 Rule.[3] RegFlex mandates that CBP include this information in the IRFA.[4]

CBP has stated that the rule "likely affects a substantial number of small entities."[5] However, the agency claims that "due to data limitations, we cannot determine if these effects will be significant on a per-entity basis."[6]

The NPRM will indeed have a significant economic impact on a substantial number of small entities. CBP should consider that small firms will face substantial costs in implementing the 10 + 2 Rule as a result of:

**Increased Inventories:** While CBP estimates that implementation of the 10 + 2 Rule will require only a one-day increase in inventories, some small businesses are predicting that up to five days in additional inventory may be needed to ensure collection and filing of the data required by the NPRM. Small firms will face significant costs in maintaining this additional inventory. These costs include paying for greater storage capacity and incurring depreciation charges.

**Charges for Waiting Time:** As a consequence of the NPRM, cargo could sit at the port of export for as long as several additional days while the importer collects the 10 data elements required by the rule. Particularly in the early stage of implementation, a significant percentage of containers sent to port for shipment will be delayed because data elements are not available for filing. These containers will be subject to substantial additional charges at container yards. Small businesses will bear major costs as a result of these delays.

**Infrastructure and IT System Upgrades:** The requirements for collecting additional data will require small firms to make expensive modifications and upgrades to existing IT and data processing systems. Small businesses may lack the resources to make these upgrades.

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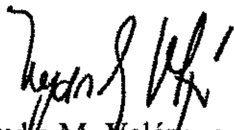
[3] Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Notice of Proposed Rulemaking, Importer Security Filing and Additional Carrier Requirements, Cost, Benefit and Feasibility Study as Required by Section 203(c) of the Safe Port Act, Industrial Economics, Inc. (December 3, 2007).
[4] 5 U.S.C. § 603.
[5] 73 Fed. Reg. 107.
[6] Id.

Studies show that small businesses bear a disproportionate share of the federal regulatory burden. A recent study conducted for SBA found that regulatory costs for small businesses are 45 percent greater than for larger firms.[7] I strongly urge you to ensure CBP fully considers the economic impact of the 10 + 2 Rule on small firms and works to minimize it.

Sincerely,



Nydia M. Velázquez
Chairwoman
Committee on Small Business

cc: The Honorable W. Ralph Basham, Commissioner, U.S. Customs and Border Protection, Department of Homeland Security

cc: The Honorable Susan E. Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

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[7] W. Mark Crain, The Impact of Regulatory Costs on Small Firms p. 56 (Sept. 2005).

Congress of the United States
Washington, DC 20515

Mr. Michael Chertoff
Secretary, Department of Homeland Security
NAC Building 17170
Washington, DC 20393

Mr. Ralph Basham
Commissioner, US Customs and Border Protection
1300 Pennsylvania Avenue. NW
Washington, DC 20229

August 1, 2008

*In re*: Development of a pilot program should precede implementation of the proposed Customs 10+2 rule.

Dear Secretary Chertoff and Commissioner Basham:

Customs and Border Protection (CBP) states as part of its mission the dual goals of securing and facilitating trade. Questions raised by a variety of stakeholders over the proposed Customs 10+2 rule, which was promulgated as a result of enactment of the Safe Ports Act of 2006, suggest to us that those dual goals may be out of balance and in need of recalibration by CBP.

The Safe Ports Act required CBP to develop an advanced data collection system for shipments coming into US ports. The proposed 10+2 rule creates such a system, but it also creates delays in the import supply chain. These delays undermine the agency's trade facilitation objective. Additionally, the proposed rule treats all importers the same, regardless if they are trusted shippers, members of Customs Trade Partnership Against Terrorism (CTPAT), or first-time shippers.

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Estimates vary regarding the amount of delay caused by the proposed rule. CBP estimates a 24-hour delay for the first year, dropping to a 12-hour delay thereafter. The business community, however, has documented that applying the rule in real time to company supply chains will delay cargo by 2-5 days depending on the complexity of the supply chain. For example, implementation of the existing 24-Hour Manifest Requirement imposes delays of 72 hours—not 24 hours—because of practical requirements, as ocean carriers gather, review for accuracy, and communicate manifest information to CBP, which in turn requires 24 hours to clear the cargo for lading. These delays have a negative impact on just-in-time supply chains (and hence on import dependent US manufacturing), while exposing cargo to risk while being delayed in foreign ports.

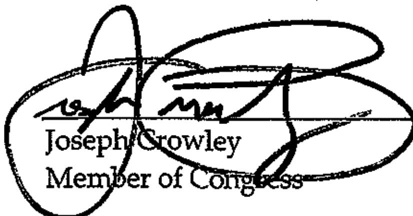
In light of these reasonable concerns, we suggest that Customs consider enacting a real time pilot program with a small but diverse group of volunteer importers before full scale implementation of the rule. We also believe that Customs should give some consideration to those companies that have validated supply chains through the CTPAT program.

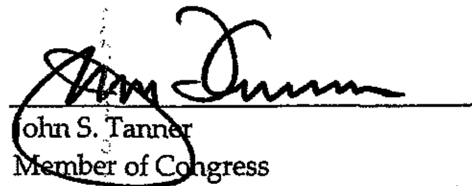
We look forward to working with you on this proposed rule and any new initiatives to improve national security while facilitating trade. Thank you for your attention in this matter.

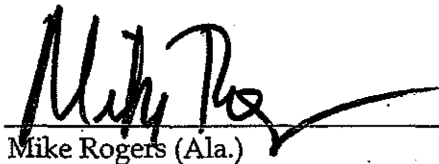
Very truly yours,

Earl Blumenauer
Member of Congress

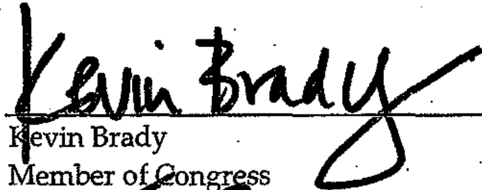
Ron Kind
Member of Congress

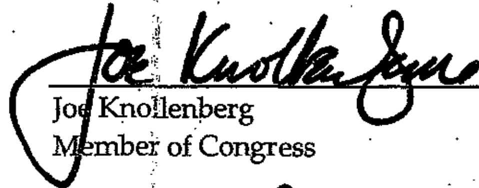

Joseph Crowley
Member of Congress


John S. Tanner
Member of Congress

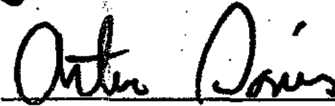

Mike Rogers (Ala.)
Member of Congress

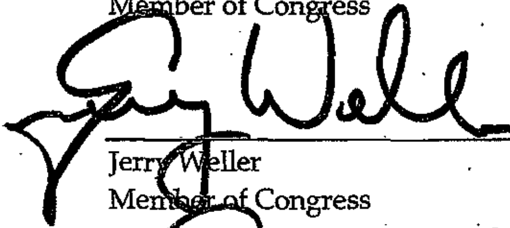
David L. Hobson
Member of Congress

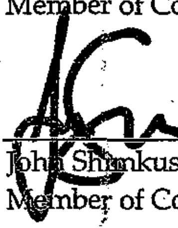

Kevin Brady
Member of Congress

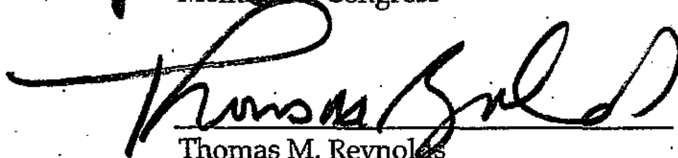

Joe Knollenberg
Member of Congress

Ken Calvert
Member of Congress

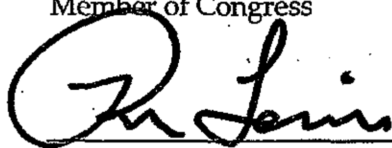

Artur Davis
Member of Congress

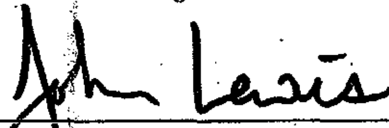

Jerry Weller
Member of Congress


John Shimkus
Member of Congress

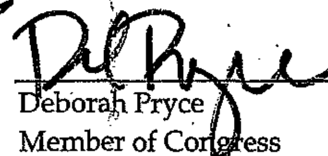

Thomas M. Reynolds
Member of Congress

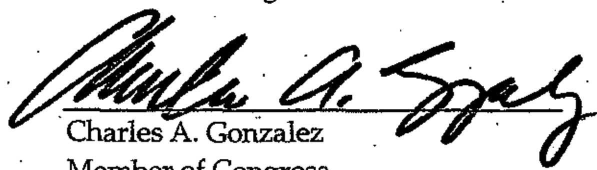
Mike Thompson
Member of Congress

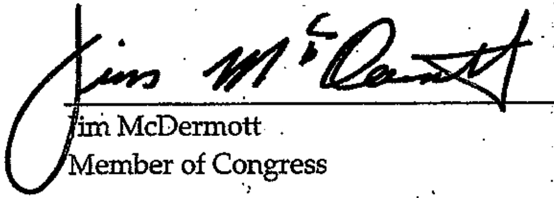

Ron Lewis
Member of Congress


John Lewis
Member of Congress

Phil English
Member of Congress


Deborah Pryce
Member of Congress


Charles A. Gonzalez
Member of Congress



Jim McDermott
Member of Congress

## Executive Order 12,866 Requirement to Consider Costs to Industry

An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs. *See* E.O. 12866, Sec. 6(a)(3)(C)(ii).

## Cost of the Delay Created for U.S. Manufacturers

- U.S. Manufacturers estimate that the proposed rule will create an estimated delay of two to five days before cargo can leave the foreign port of export. Brokers have stated that they will require receipt of the information three days prior to submitting the ISF. This could provide further delays in the supply chain.

- CBP estimates were based on the premise that only consolidated containers would be delayed. Their premise is incorrect. Consolidated and unconsolidated containers alike will face delays.

- Each day of delay is equal to $8.5 billion annually[1] for U.S. manufacturers.

- CBP incorrectly states that the delay will decrease over time. CBP states that for the first year importers will face 24 hours of delay and 12 hours the second. Industry doesn't understand how a 24 hour rule becomes a 12 hours rule.

- CBP incorrectly states that the 24-Hour Manifest Rule for carriers did not create delays in the supply chain. As a business practice, carriers require importers to submit the manifest information 72 hours prior to lading not 24 hours. This business practice remains in effect years after implementation of the 24-hour rule.

- Importers are not able to begin processing the Importer Security Filing until the container door is sealed. Only at that point does the importer know what products were placed in which container.

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[1] A Purdue University and USAID study independently estimated that each day of shipping time saved is worth 0.8 percent ad-valorem tariff for manufactured goods. Based on the value of total manufactured imports carried by sea vessels in 2007 ($1.04 trillion) a one-day delay would collectively increase the costs for U.S. manufacturers by $8.5 billion annually. Manufacturers estimate at least a two-day delay or $17 billion annually.

## Costs per Company to Implement 10+2

- There are many other costs associated with the proposed rule in addition to the $8.5 billion per day cost for a delay in shipping. The costs below represent what each company will have to invest in order to comply with the proposed rule.
    - Importers must develop new IT systems to manage, collect and submit the ISF to CBP. This is a costly endeavor that requires both time and trained technicians. One NAM company estimates that it will cost $142 million to develop the new IT systems to meet the requirements of the NPRM. Others estimates are between $5 to $100 million per company.
    - Containers must be stored for 2-5 days before being loaded on the vessel. Currently, vessels are loaded immediately before setting sail. Infrastructure does not exist to store hundreds of thousands of containers. This cost was not included in the CBP study. The NAM estimates that it will cost industry $500,000 a day to store containers at the port.
    - Importers will have to hire new personnel to store and provide security for the cargo in storage. This cost was not included in the CBP study.
    - Importers currently operate under the "Just in Time" model—manufactured goods are ordered, produced, loaded in a container and sent to the port just in time for export. In order to operate under the proposed rule, importers will have to create 2-5 days of additional inventory, storage and warehouses for this inventory. These costs were not included in the CBP study. NAM members estimate that this will cost between $3.7 and $4.2 million per company annually.
    - Importers will have to switch to air transport in order to keep factories from going offline. Expedited shipment via air is costly. NAM estimates that expedited shipment will cost an additional $3.7 million per company annually.
    - Global companies import from countries in various time zones. Since it will be critical that ISF information gathered in foreign location be coordinated with the USA importer to meet sailing deadlines in the foreign location global companies will be required to hire personnel to work on the ISF 24 hours a day/7 days a week. These costs were not included in the CBP study. The NAM estimates this will cost between $1.9 and $3.9 million per company annually.
- These additional costs, on top of the $8.5 billion per day delay, will greatly undermine the competitive advantage of U.S. manufacturers and will have a negative affect on the U.S. economy. The CBP study grossly underestimated the costs and does not account for any of the factors identified by the NAM and our member companies.

# Impact on Small Businesses

**Executive Order 12,866 and Regulatory Flexibility Act Requirements for Small Business**

E.O. 12866 directs each agency to "tailor its regulations to impose the least burden on...businesses of different sizes." See E.O. 12866 §1(11).

Regulatory flexibility analysis needs to "contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." See 5 U.S.C. § 603.

**Impact on Small Businesses not Considered**

CBP has failed to meet its obligations to analyze the economic impact of the proposed rule on small manufacturers even though CBP has stated that the rule "likely affects a substantial number of small entities." See 73 Fed. Reg. 107.

First, CBP has not considered alternatives to minimize the impact on small manufacturers. CBP in its initial report stated "it [had] not identify any significant alternatives to the proposed rule that specifically address small entities." See 73 Fed. Reg. 107. The RegFlex requires CBP to identify alternatives.

Second, CBP has not tailored the rule to be least burdensome on small manufacturers. Instead, CBP claims that "due to data limitations, we cannot determine if these effects will be significant on a per-entity basis." See 73 Fed. Reg. 107. If CBP were to conduct a pilot program on the proposed rule, it would have more data to use to determine the impact on small businesses. CBP should be held accountable and required to determine the impact on small businesses.

The proposed rule will have a significant economic impact on a substantial number of small businesses. CBP should consider that small firms will face substantial costs in implementing the 10 + 2. Most small businesses do not use sophisticated supply chains like those developed by the large companies-- many use paper entries, source from mom and pop shops abroad and do not have immediate access to their suppliers abroad. This will make complying the 10+2 data requirements that much more difficult. Additionally, small businesses will face the same set of new costs explained to implement the rule.

Customs Brokers have stated that they will not be able to provide services to small businesses for the ISF. This will significantly impact the ability of small businesses to comply with and file the ISF.

# Alternatives to the Importer Security Filing

## Executive Order 12,866 Requirement to Consider Viable Alternatives

An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable non regulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives. *See* E.O. 12866, Sec. 6(a)(3)(C)(iii).

## Alternatives Considered by CBP and Presented to OMB

The only alternatives considered by CBP focused on expansion of the proposed rule. No alternatives to the timing, sequencing or elements were considered.

1. **Alternative 1 (the chosen alternative):** Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is exempt from the Importer Security Filing requirements;
2. **Alternative 2:** Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is **not** exempt from the Importer Security Filing requirements;
3. **Alternative 3:** Only Importer Security Filings are required. Bulk cargo is exempt from the Importer Security Filing requirements; and
4. **Alternative 4:** Only the Additional Carrier Requirements are required.

## Alternatives Proposed by Industry Not Evaluated by CBP

1. Allow C-TPAT members to maintain an account profile of the importer security filing (ISF) data elements in lieu of submitting individual ISFs. C-TPAT member would submit new information if they import outside of the data elements included in their data profiles. The account profile should be limited the universe of ISF data elements.
2. Allow importers to submit the ISF based on the "header" information of a shipment as opposed to line item entry for each container.
3. Allow C-TPAT members to file the FROB requirements for the ISF.
4. Allow importers to submit the ISF after lading but prior to arrival in the United States
5. Allow importers to submit their 7501 form prior to arrival at a United States port in lieu of the ISF.
6. Allow importers to submit their ISF prior to arrival at a United States port.
7. Allow importers members to submit their ISF minus the HTS # and the country of origin (COO) prior to lading. The HTS # and COO would be submitted with the 7501 entry form.
8. Allow importers to submit the ISF prior to lading minus the HTS# and COO, which would be submitted after lading but prior to arrival in the U.S.

## 24 Hour Rule (Carriers) vs. 10+2 (Importers)

| | **Ocean AMS Manifest -24 Hr Rule** | **Importer Security Filing (ISF)** |
|---|---|---|
| **Data Collection** | Customs first started collecting carrier manifests in 1789 | The ISF has never been collected and is a new entry |
| **Data Set** | Ocean manifest data was collected prior to the 24 hr rule | ISF data set was not collected prior to 10+2 rule |
| **Information Required** | Data/level of detail similar to old manifest. Basic carrier manifest information has remained unchanged since 1789 | ISF is a completely new data set where individual fields must be gathered from various sources; very specific/detailed information required |
| **Technology needed** | AMS programming actively used prior to the new rule being implemented. Customs began collecting electronic manifest in the 1980's. | New programming needed for trade and CBP to send ISF via ABI and AMS |
| **Responsible Party** | Party responsible to file old manifest is the same party that sends the 24 hour manifest | New party responsible to send ISF; importer does not currently send this data to CBP |
| **Timing** | Electronic manifests were accepted by Customs 5 days prior to arrival in port. Rule change made manifest reportable 24 Hrs prior to lading | 24 Hrs prior to lading |
| **Business Practice to enable compliance (supply chain delay)** | Carrier requires importer/3rd party to send shipping data 72 hours prior to lading in order to comply with 24 hour AMS rule | Importers will have to delay containers by 2-5 days in order provide the necessary data to comply with the ISF. This is in addition to the 72 hours for the 24 hour rule. |

# 10+2 Pilot Program vs. CBP's "Dry Run" and Phased-In Enforcement

| | Pilot Program | ATDI/CBP "Dry-Run" | Phased-In Enforcement |
|---|---|---|---|
| **Overview** | A representative set from small, medium and large companies from multiple sectors and diverse supply chains submitting the ten data elements to the specifications of the NPRM in real time | Small set of companies/brokers submitting the ten data elements ***after lading;*** not tested to the specifications of the NPRM nor are the technical data sets being used | All importers implement 10+2 at the same time without testing the feasibility of companies to comply with the NPRM and without testing CBP's systems ability to handle the volume of ISFs submitted for review |
| **Timing** | 24 hours prior to lading | After lading; not in real time | 24 hours prior to lading |
| **Issuance of "Do Not Load" orders** | Yes | No | No |
| **CBP conducts Exams Abroad** | Yes | No | No |
| **Test run of the computer systems** | Yes | No | No |
| **Requires all 10 pieces of data before lading** | Yes | No | No |
| **Evaluates the impact on inventory and supply chain** | Yes | No | No |
| **Published results for others to use** | Yes | No | No |
| **Ability to change the NPRM after "test"** | Yes | Unknown | No, the rule is final |