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SUPPLY CHAIN SECURITY

CBP Has Made Progress
in Assisting the Trade
Industry in Implementing
the New Importer
Security Filing
Requirements, but Some
Challenges Remain



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Why GAO Did This Study

Cargo containers present significant security concerns given the potential for using them to smuggle contraband, including weapons of mass destruction. In January 2009, U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), implemented the Importer Security Filing (ISF) and Additional Carrier Requirements, collectively known as the 10+2 rule. Collection of cargo information (10 data elements for importers, such as country of origin, and 2 data elements for vessel carriers), in addition to that already collected under other CBP rules, is intended to enhance CBP's ability to identify high-risk shipments. As requested, GAO assessed, among other things, (1) the extent to which CBP conducted the 10+2 regulatory assessment in accordance with Office of Management and Budget (OMB) guidance, (2) how CBP used information it collected and assessed to inform its efforts to implement the 10+2 rule since January 2009, and (3) the extent to which CBP has used the additional 10+2 data to identify high-risk cargo. GAO analyzed relevant laws, OMB guidance, and CBP's 10+2 regulatory assessment, and interviewed CBP officials.

What GAO Recommends

GAO recommends that CBP should, if it updates its regulatory assessment, include information to improve transparency and completeness, and set time frames and milestones for updating its national security targeting criteria. DHS concurred with these recommendations.

View [GAO-10-841](#) or key components. For more information, contact Stephen L. Caldwell at (202) 512-8777 or caldwells@gao.gov.

SUPPLY CHAIN SECURITY

CBP Has Made Progress in Assisting the Trade Industry in Implementing the New Importer Security Filing Requirements, but Some Challenges Remain

What GAO Found

CBP's 10+2 regulatory assessment generally adheres to OMB guidance, although greater transparency regarding the selection of alternatives analyzed and a more complete analysis could have improved CBP's assessment. CBP's regulatory assessment addresses some elements of a good regulatory assessment, as required by OMB, such as the need for the proposed action and evaluation of the benefits and costs. However, the assessment lacks transparency in that it does not explain how the four alternatives considered for the rule—variations in what and how many data elements are to be collected—were selected or how the preferred alternative was chosen. OMB guidance states that regulatory analyses should clearly explain the assumptions used in the analysis. If, as CBP officials stated, an update might be published in the future, greater transparency could help justify the scope of alternatives analyzed in the regulatory assessment and provide insight into CBP's decision making. Further, a more complete analysis of the uncertainty involved in estimating key variables used to evaluate costs and benefits could have improved CBP's regulatory assessment by providing better information about the circumstances under which benefits justify costs. CBP officials said that to the extent that data are available, this information could be added to an updated regulatory assessment to improve its completeness.

CBP is using information it has collected, assessed, and shared with the trade industry to monitor and help improve compliance with and implementation of the 10+2 rule. For example, CBP collects daily information on the ISF compliance of importers' shipments at each U.S. port to monitor the status of ISF implementation, as well as data on vessels arriving in U.S. ports for which carriers did not supply information such as the position of each cargo container (stow plans). CBP data indicate that in July 2010, approximately 80 percent of shipments were ISF compliant, and CBP officials said that most carriers had submitted stow plans. CBP publishes answers to frequently asked questions on its Web site and has conducted outreach sessions with the trade industry to discuss errors in ISF submissions and help improve compliance.

The 10+2 rule data elements are available for identifying high-risk cargo, but CBP has not yet finalized its national security targeting criteria to include these additional data elements to support high-risk targeting. CBP has assessed the submitted 10+2 data elements for risk factors, and according to CBP officials, access to information on stow plans has enabled CBP to identify more than 1,000 unmanifested containers—containers that are inherently high risk because their contents are not listed on a ship's manifest. CBP has conducted a preliminary analysis that indicates that the collection of the additional 10+2 data elements could help determine risk earlier in the supply chain, but CBP has not yet finalized its national security targeting criteria for identifying high-risk cargo containers or established project time frames and milestones—best practices in project management—for doing so. Such efforts could help provide CBP with goals for finishing this project, thus better positioning it to improve its targeting of high-risk cargo.

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United States Government Accountability Office
Washington, DC 20548

September 10, 2010

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate

The Honorable Sander M. Levin
Chairman
The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
House of Representatives

The Honorable Charles B. Rangel
House of Representatives

The economic well being of the United States is dependent on the expeditious flow of people and goods through the U.S. transportation system, which moves millions of passengers and tons of freight each day. The extensiveness of the transportation system, as well as the sheer volume of passengers and freight moved, makes it both an attractive target and challenging to secure. Ports, waterways, and vessels are part of an economic engine handling more than \$1 trillion in merchandise annually, and an attack on this system could have a widespread impact on global shipping, international trade, and the global economy. Cargo containers present significant security concerns, as individuals have exploited vulnerabilities associated with the world's supply chain—the flow of goods from manufacturers to retailers—by using cargo containers to smuggle narcotics, stowaways, and other contraband. Given these vulnerabilities, there is a threat that terrorists could use a cargo container to transport a weapon of mass destruction into the United States. Within the federal government, U.S. Customs and Border Protection (CBP), part of the Department of Homeland Security (DHS), is responsible for administering container security and reducing the vulnerabilities associated with the supply chain. Balancing security concerns with the need to facilitate the free flow of people and commerce, part of CBP's mission, remains an ongoing challenge for the public and private sectors alike.

In response to a requirement in the Security and Accountability for Every Port Act of 2006 (SAFE Port Act)¹ that DHS collect additional data to identify high-risk cargo for inspection, in January 2009 CBP implemented the Importer Security Filing (ISF) and Additional Carrier Requirements,² collectively known as the “10+2 rule.” The rule mandates that importers (who order containerized and break bulk³ goods to be shipped from foreign sources to the United States via oceangoing vessel) and vessel carriers (who physically transport international goods from foreign ports to the United States) submit additional cargo information, such as country of origin, to CBP before the cargo is loaded onto a U.S.-bound vessel.⁴ Collection of the additional cargo information (10 data elements for importers and 2 data elements for vessel carriers) and their incorporation into CBP’s Automated Targeting System (ATS)⁵ are intended to enhance CBP’s ability to identify high-risk shipments and prevent the transportation of potential terrorist weapons into the United States. CBP estimates that about 250,000 importers and 1,000 vessel carriers could be affected by the rule.

The provisions in the rule are final, with the exception of certain interim provisions that apply to the timing and content for submitting certain data elements, such as allowing information on the location where a container is packed with cargo to be provided after the initial submission of the data elements but at least 24 hours prior to arrival at a U.S. port. These interim provisions are known as “flexibilities,” or the “flexible filing” options, and they were included in the 10+2 interim final rule to allow DHS to conduct a

¹Pub. L. No. 109-347, § 203(b), 120 Stat. 1884, 1904 (codified at 6 U.S.C. § 943(b)).

²Importer Security Filing and Additional Carrier Requirements, 73 *Fed. Reg.* 71,730 (Nov. 25, 2008) (to be codified at 19 C.F.R. pts. 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149, 178, & 192).

³Break bulk cargo includes commodities such as bound lumber or goods stacked on wooden pallets. These pallets, or other holders, can be separated or broken apart.

⁴Under other requirements which preceded the 10+2 rule, importers are also required to provide customs entry information, and carriers are required to provide cargo manifest information under the 24-hour rule.

⁵The Automated Targeting System (ATS) is a computer model that CBP uses to analyze shipment data for risk factors and target potentially high-risk oceangoing cargo containers for inspection. For more information on ATS, see GAO, *Cargo Container Inspections: Preliminary Observations on the Status of Efforts to Improve the Automated Targeting System*, [GAO-06-591T](#) (Washington, D.C.: Mar. 30, 2006) and GAO, *Homeland Security: Summary of Challenges Faced in Targeting Oceangoing Cargo Containers for Inspection*, [GAO-04-557T](#) (Washington, D.C.: Mar. 31, 2004).

review of compliance difficulties and limit the burden on the trade industry.⁶ CBP's final regulatory assessment estimates that annualized costs of the rule's implementation could range from \$890 million to \$7 billion. These estimates include costs incurred by importers and carriers to collect, coordinate, and electronically transmit the required data to CBP; losses to U.S. importers arising from potential delays in the supply chain; and U.S. government implementation costs.

CBP is conducting a review to analyze, for those data elements subject to flexibilities: (1) compliance costs for various trade industry entities; (2) the impact of the flexibilities provided for in the rule, based on data on the extent to which importers have used the flexibilities and trade industry comments; (3) the challenges to submitting the additional data elements 24 hours prior to loading; and (4) the benefits of collecting the additional data elements. The corresponding analysis is intended to inform the decision to eliminate, modify, or maintain the requirements subject to flexibilities under the interim final rule. CBP expects to complete its review in the fall of 2010, at which point DHS plans to review CBP's analysis before making any changes to the flexibilities in the publication of the final rule.

In response to your request, we reviewed certain aspects of the 10+2 regulatory assessment and the 10+2 rule. Specifically, this report addresses the following objectives:

- To what extent did CBP conduct the 10+2 regulatory assessment in accordance with Office of Management and Budget (OMB) guidance?
- How has CBP used information it collected and assessed to inform its efforts to implement the 10+2 rule since January 2009?
- To what extent have importers used the flexibilities when submitting their Importer Security Filings since January 2009?

⁶The current regulation is published as an interim final rule, in which the flexibilities are the only interim component of the rule. All other components of the rule are final, and the publication of a final rule will eliminate, modify, or maintain the existing flexibilities, depending on the results of a DHS review of the interim final rule. CBP refers to this review as a structured review. For the purposes of this report, we refer to the 10+2 interim final rule as the 10+2 rule.

-
- To what extent has CBP used 10+2 data to identify high-risk cargo for inspection and enhance cargo security while minimizing the impact on trade flow?

To answer these four objectives, we reviewed legal documentation, including the 10+2 rule and the SAFE Port Act, which requires DHS to consider the cost, benefit, and feasibility of the rule and consult with stakeholders.⁷ Additionally, to address the second, third, and fourth objectives, we interviewed CBP officials from CBP's 10+2 program office, which is responsible for overseeing implementation of the 10+2 rule; the National Targeting Center-Cargo, which is responsible for targeting high-risk shipments for inspection; and the Office of Intelligence and Operations Coordination, which is responsible for adjustments to ATS to incorporate the 10+2 data. We interviewed officials from these offices to discuss the status of CBP's efforts to integrate the 10+2 data elements into its targeting strategy.

We also interviewed representatives of four industry associations that CBP identified as involved in 10+2 outreach—the American Association of Exporters and Importers (AAEI), the National Association of Manufacturers (NAM), the National Customs Brokers and Forwarders Association of America (NCBFAA), and the World Shipping Council (WSC). Further, we interviewed representatives from 30 importers and 2 carriers, as referred to us by the industry associations we met with and the trade co-chair of CBP's Commercial Operations Advisory Committee (COAC) ISF Subcommittee.⁸ Our interviews with trade industry associations, importers, and carriers solicited views on the flexibilities in the 10+2 rule and CBP's consultation with the trade industry in developing and implementing the 10+2 rule. The AAEI and NAM representatives we met with identified representatives of 27 importer member companies who were knowledgeable about their companies' policies and procedures for filing ISFs. For the purposes of this report, we refer to these individuals as importers. We conducted interviews with these importers in group settings. This interview format allowed us to determine consensus and also identify and examine instances where viewpoints differed among importers. As a result of the group settings, we do not explicitly identify

⁷6 U.S.C. § 943(c)(1).

⁸COAC advises the Secretaries of the Departments of the Treasury and Homeland Security on the commercial operations of CBP and related DHS and Treasury functions. Its ISF Subcommittee has a government co-chair and a trade co-chair.

the number of importers who expressed particular views. Rather, we express these views as those of some of the importers we interviewed. The trade co-chair of COAC's ISF Subcommittee referred us to representatives of 3 importers, whom we interviewed individually. These interviews specifically addressed the importers' use of the flexibilities when filing ISFs and whether their companies have experienced any trade flow delays as a result of CBP's use of the additional data elements, including CBP's use of the data to identify high-risk containers and use of enforcement measures for noncompliance with the 10+2 rule. We selected 2 carriers to interview based on a recommendation from the World Shipping Council. Our interviews with representatives of trade industry associations, importers, and carriers were based on a nonprobability sample, so while they are not generalizable to the maritime trade industry as a whole, they provide insights into the ongoing implementation of the 10+2 rule, including reasons for using or not using the flexibilities, and the impact of the 10+2 rule on the trade industry, including any trade delays resulting from CBP enforcement of compliance with the 10+2 rule.

In addition to the above steps, which involved multiple objectives, we also performed audit work specific to each of the four objectives. To evaluate the extent to which CBP's regulatory assessment adhered to OMB guidance, we analyzed CBP's *Regulatory Assessment and Final Regulatory Flexibility Analysis for the Interim Final Rule*,⁹ and compared it to criteria in OMB Circular No. A-4, which provides guidance to federal agencies on the development of regulatory analyses, as required under Executive Order 12866 (Regulatory Planning and Review).¹⁰ To determine how CBP has used information it collected and assessed, we reviewed CBP reports and analyses for monitoring ongoing implementation of the 10+2 rule since January 2009, such as daily compliance reports, and information regarding CBP's consultation with and outreach to the trade community, including presentations to importers

⁹Industrial Economics, Inc., *Regulatory Assessment and Final Regulatory Flexibility Analysis for the Interim Final Rule, Importer Security Filing and Additional Carrier Requirements: Cost, Benefit, and Feasibility Study as Required by Section 203(c) of the SAFE Port Act*, prepared at the request of Customs and Border Protection, Department of Homeland Security (November 2008).

¹⁰Office of Management and Budget, *Regulatory Analysis*, Circular A-4 (Washington, D.C.: Sept. 17, 2003).

and the program's Frequently Asked Questions (FAQ) document.¹¹ To determine the extent to which importers have used the flexibilities, we analyzed CBP data from September 13, 2009—the date on which CBP implemented a capability to collect data—through June 14, 2010, on importers' election to use the flexibilities when filing their ISFs.¹² We assessed the reliability of these data by reviewing CBP's data management practices and determined that the data are sufficiently reliable to demonstrate overall trends in use and improper use of flexibilities. To determine how CBP has used the additional 10+2 data elements to identify high-risk cargo for inspection while minimizing the impact on trade flow, we reviewed CBP analysis from 2006 of the potential impact of new data on targeting efforts. We also visited the National Targeting Center-Cargo to observe a demonstration of ATS and how it incorporates the 10+2 data elements into the targeting process. To assess the extent to which CBP has enhanced cargo security based on the additional 10+2 information, we compared CBP's progress in integrating the 10+2 data elements into its targeting strategy to best practices for project management.¹³ For the purposes of this objective, we limit our discussion of the impact on trade flow to the impacts resulting from CBP's use of the data elements, specifically targeting and compliance enforcement. We did not explore how the requirement to provide the additional data elements to CBP in advance of container loading may have impacted trade flow because CBP has separately addressed this issue in its regulatory assessment of the impacts of the regulation.

We conducted this performance audit from March 2010 to September 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹¹For the purposes of this report, compliance refers to importers' and carriers' timely submission of the required data elements. Implementation refers to a broader set of related issues, such as importers' use of the flexibilities or technical errors in submitting ISFs.

¹²CBP data on flexibility use are not available for January 26, 2009, through September 12, 2009, because the electronic format for filing the ISF did not allow filers to indicate their intent to use the flexibilities.

¹³Project Management Institute, *A Guide to the Project management Body of Knowledge*, 4th ed. (Newtown Square, Pa. Project Management Institute, Inc., 2008).

Background

Supply Chain Entities

A number of entities are involved in the supply chain. These entities include the following:

- **Importers:** Bring articles of trade from a foreign source into a domestic market. Importers are responsible for providing ISF data, but an importer may designate an authorized agent to file the ISF on the importer's behalf.
- **Carriers:** Transport goods from a foreign port to a U.S. port. For foreign cargo remaining on board,¹⁴ the carrier is considered the importer and is required to submit the ISF for the shipment.
- **Licensed customs brokers:** Clear goods through customs by preparing and filing proper entry forms, advising importers on duties to be paid, and arranging for delivery of imported goods to the destination. They also may act as the designated agent for importers in filing their ISFs.
- **Shippers:** Supply or own the commodities that are being shipped.
- **Freight consolidators:** Accept partial container shipments from individual shippers and combine the shipments into a single container for delivery to the carrier.
- **Non-vessel operating common carriers:** Buy shipping space on a vessel, through a special arrangement with an ocean carrier, and resell the space to individual shippers.

Supply chain entities may participate in CBP's Customs-Trade Partnership Against Terrorism (C-TPAT), a voluntary program designed to improve the security of the international supply chain while maintaining an efficient flow of goods. Under C-TPAT, CBP officials work in partnership with private companies to review their supply chain security plans to improve members' overall security. In return for committing to making

¹⁴Foreign cargo remaining on board (FROB), also known as freight remaining on board, refers to cargo that is loaded aboard a vessel in a foreign port and is to be unloaded in another foreign port with an intervening vessel stop in one or more ports in the United States. While the vessel and the FROB cargo enter the limits of a U.S. port, the FROB cargo is not discharged while in the United States.

improvements to the security of their shipments by joining the program, C-TPAT members may receive benefits, such as reduced numbers of inspections or shorter border wait times for their shipments. Within 1 year of a member's initial certification into the program, CBP is to conduct a validation to ensure that the security measures outlined in the certified members' security profiles and periodic self-assessments are reliable, accurate, and effective. As of July 8, 2010, 4,416 importers were members of C-TPAT.¹⁵

Development of the Importer Security Filing and Additional Carrier Requirements (10+2 Rule)

In June 2004, CBP launched the Advance Trade Data Initiative with the goal of identifying information about shipments in advance of their arrival in the United States for improving the targeting of containers that could be used by terrorists to transport dangerous cargo. In the process of identifying such information for the Advance Trade Data Initiative, CBP consulted with its Trade Support Network in 2005 and formed a Cargo Targeting Task Force in March 2006 to review the initiative and to make recommendations for improving targeting of high-risk oceangoing cargo. Figure 1 shows a portion of the millions of cargo containers that are shipped to the United States each year that CBP is to screen for potential threats.

¹⁵For more information on C-TPAT, see GAO, *Supply Chain Security: U.S. Customs and Border Protection Has Enhanced Its Partnership with Import Trade Sectors, but Challenges Remain in Verifying Security Practices*, [GAO-08-240](#) (Washington, D.C.: Apr. 25, 2008).

Figure 1: Container Vessels Carry Millions of Cargo Containers to the United States Each Year That Could Be Used by Terrorists to Transport Dangerous Cargo



Source: GAO.

In October 2006, the SAFE Port Act was enacted, which requires CBP to collect additional data related to the movement of cargo through the international supply chain and analyze these data to identify high-risk cargo for inspection prior to cargo loading at foreign seaports. The additional data elements were to include appropriate elements of customs entry data as determined by the Secretary of Homeland Security. The SAFE Port Act requires CBP to adhere to the parameters in section 343(a) of the Trade Act of 2002, including provisions requiring consultation with a broad range of affected trade industry entities and restricting the use of information to security purposes, in developing the regulation.¹⁶ In 2007, CBP distributed to trade industry groups a Proposal for Advance Trade Data Elements, which proposed the data elements that later became

¹⁶See 6 U.S.C. § 943(d); Trade Act of 2002, Pub. L. No. 107-210, div. A, § 343(a)(3), 116 Stat. 933, 981.

known as the 10+2 data elements, and posted the proposal on its Web site with a request for comments from the public. In January 2008, CBP published a notice of proposed rulemaking and, in November 2008, CBP issued its interim final rule to require the submission of these additional data elements. The interim final rule went into effect on January 26, 2009, and provided a 1-year flexible enforcement period.

Importers are responsible for submitting data elements for the ISF, and the required data elements differ depending on the cargo's destination. For cargo containers that are bound for the United States as the final destination, the rule requires importers to submit 10 data elements to CBP 24 hours prior to loading. Four of these 10 data elements are identical to elements submitted later for customs entry purposes.¹⁷ For cargo containers that are transiting the United States but for which the United States is not the final destination, the rule requires importers to submit 5 data elements to CBP prior to loading.¹⁸ (See table 1 for the required ISF data elements.)

¹⁷The importer of record number, consignee number, country of origin, and commodity Harmonized Tariff Schedule of the United States number are required for both the ISF and customs entry purposes. The Harmonized Tariff Schedule of the United States is the primary resource used by CBP for determining tariff classification for goods imported into the United States. It classifies a good by assigning a 10-digit tariff classification number, based on such things as its name and use, providing CBP detailed information to identify items entering the United States. It is based on the international Harmonized Commodity Coding and Classification System (Harmonized System) 6-digit code, which has been established by the World Customs Organization and is used as the basis for the tariff schedule for most countries. Importers are required to supply the 6-digit Harmonized Tariff Schedule number on ISFs.

¹⁸In-transit cargo includes foreign cargo remaining on board (also known as freight remaining on board), immediate exportation shipments, and transportation and exportation shipments. Immediate exportation shipments arrive and are unloaded at a U.S. port but are to be immediately exported from that same port without payment of duties. Transportation and exportation shipments include merchandise that arrives at a U.S. port and is allowed to be transported through the United States and exported from another U.S. port without the payment of duties. Because foreign cargo remaining on board is frequently loaded based on a last-minute decision by the carrier, the ISF for foreign cargo remaining on board is required any time prior to loading. The ISF for immediate exportation and transportation and exportation shipments is required 24 hours prior to loading.

Table 1: Required ISF Data Elements

Containerized U.S.-bound cargo	Containerized in-transit cargo
<p><u>Seller</u>: Entity selling or agreeing to sell the goods.</p> <p><u>Buyer</u>: Entity to whom the goods are sold or agreed to be sold.</p> <p><u>Importer of record number</u>: Assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation.</p> <p><u>Consignee number</u>: Number assigned to the individual(s) or firm(s) in the United States on whose account the merchandise is shipped.</p> <p><u>Manufacturer</u>: Entity that last manufactures, assembles, produces, or grows the commodity.</p> <p><u>Ship to party</u>: First deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.</p> <p><u>Country of origin</u>: Country of manufacture, production, or growth of the article.</p> <p><u>Commodity Harmonized Tariff Schedule of the United States number</u>: Category for type of merchandise, as defined by the Harmonized Tariff Schedule, being imported into the United States.</p> <p><u>Container stuffing location</u>: Physical location(s) where the goods were packed or loaded into the container.</p> <p><u>Consolidator</u>: Entity who loaded the container or arranged for the loading of the container.</p>	<p><u>Booking party</u>: Entity who initiates the reservation of the cargo space for the shipment.</p> <p><u>Foreign port of unloading</u>: Port code for the foreign port of unloading at the intended final destination.</p> <p><u>Place of delivery</u>: Foreign location where the carrier's responsibility for the transport of the goods terminates.</p> <p><u>Ship to party</u>: First deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.</p> <p><u>Commodity Harmonized Tariff Schedule of the United States number</u>: Category for type of merchandise, as defined by the Harmonized Tariff Schedule, being imported into the United States.</p>

Source: Importer Security Filing and Additional Carrier Requirements, 73 Fed. Reg. 71,730 (Nov. 25, 2008), and CBP.

In addition to data already provided by carriers under the 24-hour rule, which requires that carriers submit cargo manifest information—a list of cargo carried in a container—to CBP 24 hours before U.S.-bound cargo is loaded onto a vessel at a foreign port, carriers are required to provide the Additional Carrier Requirements, which include the following two data elements:

- **Vessel stow plan:** No later than 48 hours after departure from the last foreign port, carriers must submit information to include the vessel operator, voyage number, the stow position of each container, hazardous material code (if applicable), and the port of discharge. For a voyage of less than 24 hours (short haul), CBP requires that the stow plan be provided any time prior to arrival at the first U.S. port. For an example of a vessel stow plan see figure 2.
- **Container status messages (CSM):** CSMs report terminal container movements, such as loading and discharging the vessel, and report the change in the status of containers, such as if they are empty or full.

CSMs also report conveyance movements, such as vessel arrivals and departures. Carriers must supply CSMs daily for certain events relating to all containers laden with cargo destined to arrive within the limits of a port in the United States by vessel.¹⁹

Figure 2: Example of a Vessel Stow Plan, Which Identifies the Location of Containers on a Vessel and Can Expedite the Removal of High-Risk Containers for CBP Inspections



Source: CBP.

Note: The image above is a portion of information available to CBP officers through the vessel stow plan module in ATS. The left portion of this figure provides CBP officers with a general idea of the total number, location, and origin of the containers. Colors designate containers loaded at the same ports. The right portion of this figure represents a cross section of the ship and shows the layout of containers for each bay and level on the ship. Other information accessible to CBP officers through the vessel stow plan module includes summary information for the vessel—for example, last foreign port and departure date, destination port, number of containers—and information about containers individually or in groups—for example, CBP officers can view information about all unmanifested containers or all containers loaded at the same foreign port.

ISF Flexibilities

For U.S.-bound cargo, the interim final rule provides two types of flexibilities with respect to certain data elements (see table 2). These flexibilities do not apply to the ISF filings for in-transit cargo. The purpose of the flexibilities is to allow CBP to conduct a review of the data elements, including an evaluation of any specific compliance difficulties that the trade industry may be encountering with respect to these data elements.

¹⁹Carriers are not required to create or collect any container status message data other than those which the carrier already creates or collects on its own and maintains in its electronic equipment tracking system. A carrier must submit these messages no later than 24 hours after the message is entered into the carrier's equipment tracking system.

Table 2: Flexibilities for U.S.-Bound Containerized Cargo

Type of flexibility	Applicable ISF data elements	Flexibility provided
Timing	<ol style="list-style-type: none"> 1. Container stuffing location 2. Consolidator 	These data elements may be omitted from the initial filing and filed at a later time, but no later than 24 hours prior to arrival at a U.S. port.
Range	<ol style="list-style-type: none"> 1. Manufacturer 2. Ship to party 3. Country of origin 4. Commodity Harmonized Tariff Schedule of the United States number 	For these data elements, importers may provide a range of acceptable responses, based on facts available to the importer at the time of submission, in lieu of a single specific response. Importers must provide more precise or more accurate information as soon as it becomes available to them, but no later than 24 hours prior to arrival at a U.S. port.

Source: Importer Security Filing and Additional Carrier Requirements, 73 *Fed. Reg.* 71730 (Nov. 25, 2008).

Note: Importers may use both types of flexibilities when filing their ISFs.

In order to ensure that importers always provide CBP with the most updated and accurate 10+2 data, CBP allows importers to alter their ISF submissions through an amendment process that is not related to the flexibilities. Under this standard amendment process, the importer is obligated to provide an amended ISF as soon as better information is discovered or if there are changes to the shipment—for example, if merchandise is sold in transit—up until vessel arrival in the first U.S. port. Using this standard amendment option, importers can amend any data element included in an ISF submission, regardless of whether the flexibilities were used, before a shipment’s arrival at a U.S. port. In addition, CBP allows for these standard amendments to be provided after vessel arrival at the first U.S. port even though the importer is not generally obligated to make amendments to the ISF when better information or changes to the shipment occur after vessel arrival in the first U.S. port.

ATS Targeting

The collection of these additional 10+2 data elements is intended to improve high-risk targeting efforts. ATS incorporates two types of targeting rules—tactical and strategic—to identify risk factors in shipment data.

- **Tactical rules:** Rules that identify risks posed by specific intelligence or threats. Tactical rules typically identify threats based on the specific entries for one or more shipment data elements. Tactical rules are updated with minimal delay to react to the immediate and specific nature of the intelligence.

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- **Strategic rules:** Rules that identify more generalized intelligence or threats or that identify relationships between different data elements within a single record or across multiple records. The process to update strategic rules involves iterations of testing to ensure that rules have their intended effect.

Within ATS, CBP develops combinations, or sets, of these two types of rules and assigns numerical weights to the rules in a set to determine overall risk scores for particular threats, such as narcotics trafficking or national security threats. CBP uses one such weighted rule set—the national security weighted rule set—as targeting criteria to assess the national security risk posed by maritime cargo. TECS²⁰—a set of tactical rules that compares 10+2 data to known violators of federal law—contributes, along with other strategic and tactical rule sets, to risk scores generated by the national security weighted rule set. Based on these risk scores, as well as CBP targeters’ analyses of shipment data, CBP is to take actions to mitigate the threats.

CBP assesses the risks posed by shipments repeatedly throughout the transit process. CBP reviews shipment records prior to the loading of the cargo onto a U.S.-bound vessel, as well as during shipment transit, to identify potential threats and determine if additional action, such as cargo inspection, is required. When shipment record data elements are updated with additional or amended information, ATS could identify new risks or mitigate previously identified risks. Therefore, a shipment’s overall risk score could change while the shipment is in transit.

The Federal Rulemaking Process and CBP’s Regulatory Assessment and Final Regulatory Flexibility Analysis

Regulatory agencies have authority and responsibility for developing and issuing regulations. The basic process by which all federal agencies develop and issue regulations is spelled out in the Administrative Procedure Act.²¹ Among other things, the act generally requires agencies to publish a notice of proposed rulemaking in the *Federal Register*. After

²⁰TECS is a computerized information system designed to identify individuals, businesses, and vehicles suspected of, or involved in, a violation of federal law. TECS is also a communications system permitting messages between law enforcement offices and other federal, state, and local law enforcement agencies. TECS is constantly updated based on intelligence information from other agencies and data gleaned from CBP’s ongoing operations.

²¹5 U.S.C. § 553.

giving interested persons or entities an opportunity to comment on the proposed rule by providing “written data, views, or arguments,” the agency may then publish the final rule.²²

OMB is responsible for the coordinated review of agency rulemaking to ensure that regulations are consistent with applicable law, the President’s priorities, and the principles set forth in executive orders, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. Under Executive Order 12866, executive branch agencies must conduct a regulatory analysis for economically significant regulations (generally those rules that have an annual effect on the economy of \$100 million or more).²³ OMB also provides guidance to agencies on regulatory requirements, such as OMB Circular No. A-4, which provides analytical guidelines for agencies to use in assessing the regulatory impact of economically significant regulations. Circular No. A-4 is designed to assist analysts in regulatory agencies by defining good regulatory analysis and standardizing the way benefits and costs of federal regulatory actions are measured and reported.

CBP published its *Regulatory Assessment and Final Regulatory Flexibility Analysis*, referred to in this report as CBP’s regulatory assessment, as part of the rulemaking process for the 10+2 rule. This assessment was prepared for CBP by an outside contractor. CBP conducted this assessment to address (1) the requirement to conduct a regulatory analysis for economically significant actions; and (2) the SAFE Port Act of 2006, which requires DHS to consider the cost, benefit, and feasibility of the rule. CBP published its initial regulatory assessment in December 2007 and a revised regulatory assessment in November 2008, which is discussed later in this report. The regulatory assessment contains a “break-even” analysis that determines how many times a West Coast port shutdown, a nuclear attack, or a biological attack would need to be prevented through use of the data in order for the benefits to equal the costs. For example, the regulatory assessment concludes that the benefits would exceed the costs of the rule if one West Coast port shutdown due to

²²In addition to the requirements under the Administrative Procedure Act, an agency may also need to comply with requirements imposed by other statutes.

²³Regulatory analysis, such as a benefit-cost analysis, is a tool regulatory agencies use to anticipate and evaluate the likely consequences of rules.

a terrorist attack were prevented over a period of 3 months to 2 years, assuming that the rule only reduces the risk of a single such event.²⁴

Implementation of the 10+2 Rule

Although the effective date of the 10+2 rule was January 26, 2009, the rule allowed for a 1-year flexible enforcement period. Since the end of the flexible enforcement period, CBP has stated that it has been applying a “measured, common sense approach” to enforcement, which includes exercising the least punitive measures necessary to obtain full compliance, evaluating noncompliance on a case-by-case basis, and continuing to provide outreach and guidance to trade industry entities.

During the enforcement period, which began January 26, 2010, CBP plans to first focus on importers who have not filed ISFs for shipments by issuing warning letters and possibly subjecting some of these shipments to nonintrusive inspections, such as taking x-ray images of cargo containers. Data from the ISFs must be matched to other data sources to determine compliance, including whether each required shipment has an ISF on file and whether the ISF was filed in a timely manner. ISFs are matched to manifest data using the bill of lading number—an alphanumeric code issued by a carrier that references an individual cargo shipment in a manifest—and then the matched ISF becomes part of a shipment record that includes manifest information and the International Maritime Organization number of the vessel on which the cargo is shipped.²⁵ Using this vessel number, the shipment can be matched to a vessel departure message, which carriers are required to supply to CBP. CBP also matches the ISF and manifest information to customs entry data.

Results in Brief

CBP’s regulatory assessment generally adheres to OMB guidance, although greater transparency regarding the selection of alternatives analyzed and a more complete analysis could have improved CBP’s assessment. CBP’s regulatory assessment addresses some elements of a good regulatory

²⁴Because the regulatory assessment presents a range of cost estimates, the time period for preventing an event is also a corresponding range.

²⁵The bill of lading is a contract between a shipper and carrier listing the terms for moving freight between specified points. A bill of lading includes the name of the shipping line, importer, consignee (recipient of the shipment), and manufacturer. The bill of lading also identifies the commodity being shipped, the date the shipment was sent, the number of containers used to transport the shipment, the port where the containers were laden on the U.S.-bound vessel, and the country from which the shipment originated.

assessment, as stated in OMB guidance, such as the need for the proposed action and evaluation of the benefits and costs. It is also generally transparent in citing sources, such as third-party studies regarding the costs associated with a potential terrorist attack; explaining how estimates were derived; and providing supporting documentation and analysis. The assessment, however, lacks transparency in that it does not explain how the four alternatives considered for the rule were selected for the analysis, or how one of the four was selected as the preferred option. OMB guidance states that regulatory analyses should be transparent and, in particular, that such analyses should clearly explain the assumptions used in the analysis. CBP officials said that more information could be provided in a future update to the regulatory assessment, if an update is published, to provide more information about the 10+2 rulemaking process, specifically the selection of the 10+2 data elements. Greater transparency regarding the selection of alternatives could have improved the assessment by justifying the limited scope of the alternatives analyzed in the regulatory assessment and providing insight into CBP's decision making. Further, a more complete analysis of the uncertainty involved in estimating key variables used to evaluate costs and benefits and additional information regarding some costs to foreign entities—also requirements in OMB guidance—could have improved CBP's regulatory assessment by providing better information about the circumstances under which benefits justify costs. CBP officials said that to the extent that data are available, this information could be added to the regulatory assessment to improve the completeness of the assessment if CBP updates its regulatory assessment.

CBP is using information it has collected, assessed, and shared with the trade industry to monitor and help improve compliance with and implementation of the 10+2 rule. For example, CBP collects daily information on the ISF compliance of importers' shipments at each U.S. port to monitor the status of ISF implementation, as well as data on vessels arriving in U.S. ports for which carriers did not file vessel stow plans. CBP data indicate that in July 2010, approximately 80 percent of shipments were ISF compliant, and CBP officials said most carriers have submitted vessel stow plans. CBP is also communicating information about ISF submissions, such as the number of ISFs accepted and rejected, to importers, or their filers, through monthly progress reports. Additionally, CBP receives questions from the trade industry about the 10+2 rule's requirements and CBP responds to them through public outreach events, correspondence, and publication of a "Frequently Asked Questions" document posted on its Web site. Further, CBP has conducted

outreach sessions with trade industry entities to discuss common errors occurring in ISF submissions in an effort to eliminate such problems.

Importers' use of flexibilities has declined over time and has remained low since January 2010 when CBP began enforcement of the 10+2 rule. From the beginning of the flexible enforcement period on January 26, 2009, through September 13, 2009, CBP did not have a mechanism to collect data on importers' intent to use flexibilities. However, CBP's analysis of filings submitted during this period led it to conclude that relatively few importers were using the flexibilities. Over the portion of the flexible enforcement period for which CBP has collected data (September 13, 2009, through January 25, 2010), about 5 percent of ISFs (100,252 out of 1,909,523) indicated the use of flexibilities. According to CBP data, the use of flexibilities on ISFs declined over this period, from 11 percent each week in September 2009 to 2 percent each week in January 2010. The use of flexibilities on ISFs over the enforcement period, beginning January 26, 2010, through June 14, 2010, has remained at about 2 percent (67,429 of 3,647,476). Additionally, CBP data on ISFs for which importers indicated their use of flexibilities show that importers consistently claimed flexibilities incorrectly or unnecessarily at rates of around 70 percent or greater for range flexibilities and 60 percent or greater for timing flexibilities. CBP officials and some importers we spoke with cited various motivations for using, or not using, flexibilities. CBP officials noted, for example, that its standard ISF amendment process offers greater flexibility and a potential cost savings compared to the flexibilities because it does not require importers to commit to updating their ISFs, while use of the flexibilities does. Additionally, some importers we interviewed stated that use of flexibilities would not be financially beneficial for them because (1) of the potential increase in filing fees, (2) it could be detrimental to their corporate image due to potential perceptions of unfamiliarity with supply chain processes, or (3) they are unnecessary because importers are able to collect the 10+2 data elements prior to the submission deadline. CBP officials stated that the limited overall use of flexibilities, as well as the high rates of incorrect use, will be considered in determining whether to eliminate, modify, or maintain the existing flexibilities associated with the 10+2 rule.

The 10+2 rule data elements are available for identifying high-risk cargo, but CBP has not yet finalized its targeting criteria—the national security weighted rule set—to identify risk factors in 10+2 data. Further, in the view of both CBP officials and trade industry representatives we met with, CBP's use of inspections and shipment holds to enforce 10+2 rule compliance has not impacted overall trade flow. CBP has made some

progress to assess submitted 10+2 data elements in its targeting system for risk factors that could indicate a shipment is high risk. For example, CBP compares 10+2 data to certain high-risk national security threats through the TECS rules. Additionally, according to CBP officials, access to information on vessel stow plans has enabled CBP to identify more than 1,000 unmanifested containers—containers that are inherently high risk because their contents are not listed on a ship’s manifest—on ships bound for U.S. ports. However, CBP has not yet finalized its national security weighted rule set to identify risk factors in 10+2 data, but it has conducted a preliminary analysis that indicates that the collection of the 10+2 data could improve the determination of risk scores earlier in the supply chain process. In particular, the analysis demonstrated that risk scores assigned in transit based on manifest data may differ from risk scores assigned at arrival based on customs entry data and that the difference in scores may affect actions CBP takes to mitigate potential threats. Because the process to update the national security weighted rule set involves iterations of testing, CBP officials said they will not be able to determine when the 10+2 data will be integrated with the existing national security weighted rule set until testing is complete. We recognize that the results of such testing could require adjustments to tasks that make it difficult to adhere exactly to established dates for completing a project. However, establishing project time frames and milestones—best practices in project management—could help guide CBP staff in such testing and provide CBP with goals for completing interim steps and finishing this project, thus better positioning it for targeting high-risk cargo, which is the purpose stated in the SAFE Port Act for collecting the additional data elements. Additionally, CBP officials and trade industry representatives reported that CBP’s 10+2 compliance enforcement efforts, which include holding cargo for inspection when the importer has failed to submit an ISF, have not resulted in measurable impacts to overall trade flow. While CBP does not collect data on enforcement actions specific to 10+2 compliance, such as cargo inspections, CBP officials stated that they have not received any complaints from the trade industry regarding 10+2 enforcement actions. Additionally, none of the importers we spoke with said they have experienced delays in trade flow as the result of CBP’s enforcement of 10+2 compliance.

We are recommending that, if CBP publishes an update to its regulatory assessment, CBP include additional information in the updated regulatory assessment to improve the transparency and completeness of the assessment. We are also recommending that CBP establish milestones and time frames for updating the ATS national security weighted rule set to provide CBP with goals for conducting interim steps and completing the

project to better position it to effectively target high-risk container shipments. In written comments regarding a draft of this report, DHS stated that it concurred with these recommendations. DHS's comments are reprinted in appendix I. CBP also provided technical comments, which we incorporated as appropriate.

CBP's Regulatory Assessment Generally Adheres to OMB Guidance, but Could Have Been Improved by Additional Information

CBP's regulatory assessment generally adheres to OMB guidance by including required elements—such as a statement of the need for the proposed action, an examination of alternative approaches, and evaluation of the benefits and costs. However, the regulatory assessment lacks transparency regarding the selection of alternatives for analysis and support for the selection of the preferred alternative. Greater transparency on this topic could have improved CBP's regulatory assessment. Additionally, a more complete analysis of the uncertainty involved in estimating key variables used to evaluate costs and benefits, and additional information regarding some costs to foreign entities, could also have improved CBP's regulatory assessment.

CBP's Regulatory Assessment Generally Adheres to OMB Guidance

CBP's regulatory assessment addresses the three basic elements of a good regulatory assessment, as defined by OMB:

- **Statement of the need for the proposed action:** The assessment includes a statement that the regulation was based on a statutory requirement (SAFE Port Act, Section 203(b)).
- **Examination of alternative approaches:** The assessment presents four alternatives for analysis. Each of the four alternatives has different components, and table 3 outlines the requirements of each alternative analyzed in the regulatory assessment. For example, alternative 1 requires importers to submit an ISF (bulk cargo shipments are exempt from the requirement) and carriers to submit the Additional Carrier Requirements.
- **Evaluation of the benefits and costs:** In accordance with OMB guidance, because the benefits could not be quantified, the assessment includes a “break-even” analysis. For example, the analysis concludes that the benefits of the rule would equal the costs if the rule avoids a

nuclear attack once in 60 to 500 years, assuming that the rule only reduces the risk of a single such event.²⁶

Table 3: Alternatives Analyzed in CBP’s Regulatory Assessment

Alternative	Components required in alternatives considered for analysis		
	ISF (10 data elements)	ISF exemption for bulk cargo shipments ^a	Additional Carrier Requirements (2 data elements)
Alternative 1	✓	✓	✓
Alternative 2	✓		✓
Alternative 3	✓	✓	
Alternative 4			✓

Source: Industrial Economics, Inc., in an assessment prepared for CBP.

^aBulk cargo is shipped loose in the hold of a ship, not in packages or containers. For example, grain, coal, oil, and chemicals are usually bulk cargo.

Additionally, the regulatory assessment is generally transparent in citing sources and explaining how estimates were derived. Where the analysis relied on third-party data sources, the regulatory assessment provides references to those data sources. For example, third-party sources are cited for estimates regarding the cost to importers for each day of delay and the costs associated with a potential terrorist attack. The regulatory assessment also provides explanations for how some of the estimates used in the assessment were developed. For example, the assessment explains that the initial one-time costs to adjust business practices to implement the 10+2 rule were based on information from a COAC survey and the recurring costs for transmitting ISF data were based on interviews with representatives from the shipping, importing, and customs brokerage industries.

The regulatory assessment also contains supporting documentation and analysis, including an uncertainty and sensitivity analysis, as called for by

²⁶The range for the time (60 to 500 years) it would take for costs of the 10+2 rule to equal the benefits of a potential nuclear attack is large due to the wide range of the cost estimates for the 10+2 rule (\$890 million to \$6.6 billion, using a 3 percent discount rate). If the actual costs are in the low end of that range (closer to \$890 million), fewer attacks need to be prevented in order for the costs to equal the benefits (e.g., one attack every 500 years); alternatively, if the costs are in the high end of that range (closer to \$6.6 billion), more attacks need to be prevented in order for the costs to equal the benefits (e.g., one attack every 60 years).

OMB guidance.²⁷ The assessment addresses limitations and key sources of uncertainty for each of three sections of the analysis that produced estimates: (1) the baseline shipping analysis, which estimates shipping trends (such as number of importers, carriers, and U.S.-bound shipments) in absence of the rule; (2) incremental costs (such as up-front costs per importer to adapt to the rule and costs per filing) and economic impact (such as losses from potential delays); and (3) potential benefits (such as the costs avoided by preventing a terrorist attack). It also includes an uncertainty analysis for the industry's total estimated costs and welfare losses. The sensitivity analysis analyzes the effects of variables' uncertainty on the results of the analysis and concludes that the uncertainty associated with the initial, up-front costs to importers has the greatest effect on the results of the analysis. As a result of the sensitivity and uncertainty analysis, the assessment concludes that the likelihood of reaching the higher end of the cost range is low.

Additional Information Could Have Improved CBP's Regulatory Assessment

Our review of the regulatory assessment found that CBP was not transparent regarding how it selected the four alternatives for analysis. According to CBP officials, CBP selected the alternatives that the contractor analyzed in the regulatory assessment. However, based on our review, there is little variation in the alternatives analyzed. Each of the alternatives is a combination of including or excluding three components—the 10 ISF data elements, an exemption for bulk cargo shipments from filing the ISF, and the two data elements for the Additional Carrier Requirements—and the regulatory assessment does not discuss whether other alternatives may have met the requirements of the SAFE Port Act. Moreover, the regulatory assessment does not discuss other potential alternatives with additional or fewer data elements or why such other alternatives were not included in the analysis. For example, it does not discuss a range of other alternatives, such as requiring 15 data elements for the ISF or only one of the two carrier data elements. According to CBP officials, the regulatory assessment does not discuss other alternatives because CBP identified the current 10+2 data elements—in consultation with trade industry stakeholders, as data

²⁷OMB Circular No. A-4 states that the important uncertainties connected with regulatory decisions—both the statistical variability of key elements underlying the estimates of benefits and costs and the incomplete knowledge about the relevant relationships—need to be analyzed and presented as part of a regulatory analysis. Sensitivity analysis refers to an analysis of whether, and to what extent, the results of the assessment are sensitive to plausible changes in the main assumptions and numeric inputs.

elements that would significantly increase CBP's ability to make better informed targeting decisions—prior to the SAFE Port Act requirement to collect such data.

Greater transparency regarding the selection of alternatives could have improved the assessment by justifying the limited scope of the alternatives analyzed in the regulatory assessment and providing insight into CBP's decision making. According to OMB guidance, regulatory analysis provides a way of organizing the evidence on the key effects—good and bad—of the various alternatives that should be considered in developing regulations. The motivation is either to learn if the benefits of an action are likely to justify the costs or to discover which of various possible alternatives would be the most cost-effective. According to OMB guidance, a good regulatory analysis is designed to inform the public and other parts of the government (as well as the agency conducting the analysis) of the effects of alternative actions. Including a discussion of the full scope of feasible regulations could have enhanced transparency about the regulatory assessment's usefulness for informing decision making. In response to our findings, CBP officials acknowledged that more information about the 10+2 rulemaking process, specifically the selection of the 10+2 data elements, could be added in a future update to the regulatory assessment, if an update is published, to provide greater context about the decision making involved in developing the 10+2 rule.

The regulatory assessment also lacks transparency regarding the final selection of alternative 1 as the preferred alternative. OMB guidance states that regulatory analyses should be transparent, and in particular that such analyses should clearly explain the assumptions used in the analysis. Three of the alternatives (alternatives 1, 2, and 3) have almost identical costs and, therefore, the number of events (terrorist attacks) that would need to be avoided to justify the costs are almost identical. Absent supporting documentation, it is not clear why, based on the information and analysis in the regulatory assessment, CBP selected alternative 1 over the other alternatives. For example, the assessment does not explain how alternative 1 may be more likely to achieve benefits, specifically prevention of terrorist attacks, than the other alternatives to justify the selection of alternative 1. The assessment states that alternative 1 was favored over alternative 2 because the impact of requiring the ISF for bulk cargo—alternative 1 exempts bulk cargo from the ISF requirement, while alternative 2 requires an ISF for all cargo—is expected to be slight given that the number of bulk cargo shipments is small compared to the number of nonbulk shipments. Furthermore, according to CBP officials, the exemption for bulk cargo was selected to mirror the requirements of the

24-hour rule—which requires that carriers submit cargo manifest information for containerized cargo but allows certain timing exemptions for bulk cargo submissions. The assessment states that alternatives 3 and 4 were rejected based on CBP’s judgment that the ISF and Additional Carrier Requirements should work in tandem to be effective. However, the regulatory assessment does not describe or analyze how or why CBP made this judgment. For example, it does not describe how the ISF and Additional Carrier Requirements are used jointly to target for risk to support the requirement to provide both types of data to CBP. In response to our findings, CBP officials acknowledged that more information could be added to the regulatory assessment to provide greater transparency on this topic.

The regulatory assessment acknowledged uncertainty for the cost to importers for a day of delay and the value of statistical life,²⁸ but these variables were not addressed by the assessment’s uncertainty analysis. OMB guidance states that the important uncertainties connected with regulatory decisions need to be analyzed and presented as part of the overall regulatory analysis. Uncertainties with respect to these two variables may have influenced the results of the assessment. For example, if the assessment’s estimate for the value of statistical life was too low, the resulting conclusion would be that more terrorist attacks using cargo containers would need to be prevented in a particular time period to justify the costs of the regulation and the analysis would favor a less costly alternative. The quantitative uncertainty analysis includes the number or percentage of containers that may experience delays and the length of the potential delays in the supply chain, but the assessment does not address the impact of the uncertainty associated with the estimate for the dollar cost of delay. A more complete analysis of these variables’ uncertainty could have more fully addressed the elements in OMB guidance and,

²⁸In CBP’s regulatory assessment for the 10+2 rule, the value of statistical life is used to estimate the benefits of the 10+2 rule by calculating the value of avoiding fatalities resulting from potential terrorist attacks caused by a weapon of mass destruction smuggled via a cargo container. The value of statistical life refers to the aggregate estimated value of reducing small risks across a large number of people and is based on how the people themselves would value reducing these risks. For example, if a government policy affects 100,000 people and reduces the risk of premature death by 1 in 100,000 for each individual, summing these individual risks across the entire affected population results in 1 life “saved” by the policy. If each of the 100,000 people were willing to pay \$500 for this reduction in risk, the total willingness to pay would be \$5 million (i.e., 100,000 multiplied by \$500). For this situation, the value of statistical life would be \$5 million for the 1 life “saved” by the policy.

therefore, could have improved the regulatory assessment. CBP officials recognized that these estimates were not addressed in the uncertainty analysis and they acknowledged that more information could be added to improve the assessment's discussion of uncertainty.

The regulatory assessment notes that lost producer surplus, or profits, which were assumed to be borne by foreign entities, are not estimated in the assessment. OMB Circular No. A-4 states that, when evaluating a regulation that is likely to have effects beyond the United States, the effects to foreign entities should be reported separately. Because the assessment does not evaluate lost producer surplus, the costs to foreign entities are not fully reported. According to the regulatory assessment, these costs are not addressed because the regulatory assessment focuses on impacts to the U.S. economy. CBP officials acknowledged that, to the extent data are available on these costs, this information could be added to the regulatory assessment.

These officials also said that CBP is conducting additional analyses to determine the impact of delays resulting from the rule and to review public comments solicited in the publication of the 10+2 rule. Depending on the results of these analyses, CBP may update its regulatory assessment. If CBP publishes an update to its regulatory assessment, additional information, such as a discussion of how the alternatives were selected for analysis, an uncertainty analysis for the cost to importers for a day of delay and for the value of statistical life, and estimates for lost profits borne by foreign entities, would improve the transparency and completeness of the assessment.

CBP Has Collected, Assessed, and Shared Information with the Trade Industry to Monitor and Help Improve Compliance with and Implementation of the 10+2 Rule

CBP has collected and assessed a variety of information, such as daily compliance reports, and has shared information with the trade industry, through importer progress reports and outreach events, to help improve compliance with and implementation of the 10+2 rule. CBP is also using information it has collected to monitor and help improve implementation of the rule, for example, by posting a "Frequently Asked Questions" document on its Web site that addresses some common problems.

CBP Has Collected and Assessed a Variety of Information to Help Improve Compliance with and Implementation of the 10+2 Rule

CBP is tracking the daily level of ISF compliance at each U.S. port to determine the overall level of compliance with the 10+2 rule. For all shipments scheduled to arrive at a U.S. port within 2 days, CBP assesses the percentage of shipments that have ISFs filed. For example, for shipments scheduled to arrive in the United States on April 18, 2010, a report generated on the morning of April 16, 2010, indicated that 22,310 of 26,348 shipments (85 percent) had ISFs filed. CBP also monitors data on arriving vessels that have not submitted vessel stow plans, based on data for ships that are due to arrive in port within 96 hours. CBP forwards these reports to the local port officials who then contact the carriers who have not filed stow plans to obtain the necessary information. CBP has also collected and analyzed information about the use of flexibilities in filing ISFs. (Information on importers' use of flexibilities is discussed later in this report.) To gauge issues trade industry entities may have in understanding or implementing the ISF requirement, CBP has also reviewed and analyzed data on ISF errors and rejections, including determining the most common errors that result in rejections. According to a CBP analysis, which examined ISFs submitted from January 26, 2010, through March 28, 2010, 22,257 of 81,435 rejected ISFs (27 percent) were rejected because they were duplicates of ISFs already on file.²⁹ This was the most common error that led to rejections. Other types of errors, such as not supplying the ISF importer number, each accounted for less than 5 percent of rejected ISFs.

While the data that CBP has collected to date provide information on the most common errors or reasons for rejecting ISFs for importers who are trying to comply with the rule, the data provide limited information about the reasons for noncompliance among other importers. According to CBP officials, CBP can identify a shipment for which an ISF has been filed, but it is difficult to determine the importer responsible for filing the ISF and possible reasons for why an ISF was not filed or was not matched to the shipment. For the purposes of filing the ISF, the importer for a shipment may be one of several entities involved in the supply chain, such as the owner or purchaser of the goods, and it is left to the various supply chain entities involved with a shipment to determine who will be responsible for filing the ISF. Furthermore, a shipment lacking an ISF may appear to be noncompliant if the importer makes an error in submitting the ISF, such as

²⁹CBP determines the prevalence of errors based on error messages generated by CBP's system. CBP's system allows for a filer to submit an initial filing ("add") and to update that filing ("replace"). An error message for a duplicate ISF occurs when a filer tries to add an ISF where one already exists for that shipment.

providing the incorrect bill of lading number. In April 2010, CBP began sending letters to importers who appeared to be noncompliant, based on CBP's review of data collected from ISFs and other data such as customs entries, to notify these importers of possible noncompliance and encourage them to contact CBP about any concerns they may have. CBP officials said that they have been pleased with importers' responsiveness to these letters.

CBP Has Shared Information with the Trade Industry to Help Improve Compliance with and Implementation of the 10+2 Rule

CBP is providing compliance and implementation data—specifically data on the number of ISFs that were (1) accepted, (2) rejected, and (3) timely³⁰—for each importer's filings in the form of monthly progress reports sent to the importer's filer or directly to the importer in the case of validated C-TPAT members.³¹ According to CBP officials, providing the information directly to the importer requires a manual process to set up accounts for individual importers and, therefore, this service is only offered to validated C-TPAT members as a benefit of participating in the program. For other importers, filers can register to receive a monthly progress report with the data for each importer they represent. The data in the progress reports for the other importers are aggregated for each month. For example, a progress report will indicate the number of rejected ISFs for an importer, but it does not provide transaction-level data, such as which particular ISFs were rejected. Although CBP officials recognize some importers' concerns that progress reports lack transaction-level data for importers who are not validated C-TPAT members, they said that CBP has no plans to include transaction-level data for progress reports other than for validated C-TPAT member importers. According to some importers we interviewed, the lack of transaction-level data may make it difficult for an importer to identify causes of discrepancies between its own internal data and the information presented in CBP's progress report. However, according to CBP officials, importers or their filers already receive information for each transaction, such as messages regarding errors in the ISF or confirmation that the bill of lading number was matched to other data.

In addition to the monthly progress reports, CBP has also conducted outreach sessions for members of the trade industry and has received and

³⁰The 10+2 rule requires that the ISF be submitted 24 hours prior to loading for cargo other than FROB and prior to loading for FROB cargo.

³¹Filers and C-TPAT importers must register with CBP to receive these progress reports.

responded to questions and comments about the 10+2 rule. From December 2008 through December 2009, CBP sponsored 35 town hall events across the country and has conducted additional outreach sessions through trade industry associations. In April and May 2010, CBP conducted Web-based seminars targeted to reach and inform small and medium importers.³² CBP also responds to questions and comments from the trade industry it receives through a dedicated e-mail address as well as phone calls and e-mails to program officials and has posted a “Frequently Asked Questions” (FAQ) document on its Web site. However, some importers we interviewed expressed concern that, rather than publish its policies informally through its Web site and FAQ, CBP should publish its policies in a document that is legally binding, such as a notice in the *Federal Register*. In particular, one concern is that CBP has not legally obligated itself to treat its current proxy for measuring ISF timeliness (24 hours prior to vessel departure) as meeting the rule’s requirement of 24 hours prior to loading. According to CBP officials, the regulation must require the data to be submitted prior to loading because the SAFE Port Act establishes this aspect of the requirement. CBP officials said they recognize that there is no existing metric for measuring the time of loading and, therefore, CBP plans to use the proxy measure in enforcing the rule. CBP also solicited public comments regarding the flexibilities and final regulatory assessment. According to CBP officials, comments that were directly relevant to the flexibilities or the regulatory assessment will be taken into consideration in developing the final rule. CBP officials stated that some comments that were not relevant to the interim aspects of the rule were addressed in the FAQ.

CBP Is Using Information It Has Collected to Monitor and Help Improve Implementation of the 10+2 Rule

CBP officials said that CBP is generally satisfied with the status of ISF implementation, based on CBP data that indicate that approximately 80 percent of shipments in July 2010 were compliant with the ISF requirement. CBP officials noted that this measure of 80 percent compliance includes ISFs for U.S.-bound and in-transit cargo, and compliance rates for in-transit cargo are lower than for U.S.-bound cargo. In July 2010, 646,016 of 748,780 U.S.-bound shipments (approximately 86 percent) had submitted ISFs, whereas 20,811 of 84,170 in-transit shipments (approximately 24 percent) had submitted ISFs. CBP officials stated they

³²For the purposes of ISFs, CBP considers small importers to be those who import fewer than 10 ISF shipments per year and medium importers to be those who import at least 10 but fewer than 100 ISF shipments per year.

have a goal of increasing compliance to about 95 percent by fall 2010. As a result, CBP is monitoring performance to identify areas to improve implementation and compliance. CBP has identified issues with the implementation of the ISF for in-transit cargo, such as lack of clarity regarding the party responsible for filing the ISF for two types of in-transit cargo (immediate exportation and transportation and exportation) shipments, and CBP officials said that they plan to revise the requirements through future rulemaking.

To help correct problems CBP has identified through its monitoring of ISF data, CBP has conducted further outreach efforts to members of the trade industry. For example, after identifying duplicate ISFs as the most common error and reason for rejecting ISFs, CBP officials determined that some filers or importers were resubmitting ISFs if they had received a message from CBP that the ISF had not been matched to a bill of lading. In some cases, this was occurring because the ISF preceded submission of manifest information containing the matching bill of lading number. As a result, according to CBP officials, CBP has conducted outreach sessions through trade industry associations and posted information on its FAQ to reduce the number of such resubmissions. In April 2010, CBP also began identifying importers who may not be complying and sent letters to these importers notifying them of possible noncompliance and encouraging them to contact CBP about any concerns they may have. In general, representatives of the four industry associations we spoke with said they have been satisfied with CBP's outreach efforts during implementation of the rule.³³

In addition to its other outreach efforts, CBP is also working to address concerns regarding the information contained in ISF progress reports, specifically the number of ISFs that cannot be measured for timeliness.³⁴ In order to determine if an ISF was submitted on time, CBP must match

³³As mentioned in the discussion of our scope and methodology, these four associations are the American Association of Exporters and Importers, the National Association of Manufacturers, the National Customs Brokers and Forwarders Association of America, and the World Shipping Council.

³⁴An earlier format for CBP's progress reports relied on a timeliness measure that compared the time the ISF was submitted to the time the bill of lading was submitted. Although carriers must submit bill of lading information 24 hours prior to loading, which is the same as the deadline for the ISF, if the bill of lading information was submitted earlier, an ISF filed on-time might be measured as untimely based on this proxy measure. As a result, CBP altered its measure of timeliness to compare the time of ISF submission against 24 hours prior to vessel departure.

the ISF to the vessel departure message supplied by carriers.³⁵ According to CBP data, about 50 percent of the ISFs it analyzed for the May 2010 progress reports could not be assessed for timeliness because they could not be matched to vessel departure messages. For example, an ISF may not be matched to a vessel departure message if the bill of lading number on the ISF does not match a bill of lading associated with cargo on a vessel for which CBP has received a departure message. In order to improve the number of ISFs that can be matched to vessel departure messages, CBP is making adjustments to the system used by importers and their filers to submit ISFs, the Automated Broker Interface, to allow filers to query bill of lading numbers in the system. According to CBP officials, this will enable importers and filers to ensure that the bill of lading information is correct before submitting an ISF. Under the 10+2 rule, importers are required to submit complete and accurate information, and fewer errors in the bill of lading information will improve CBP's ability to match ISF data to other data sources and monitor compliance. CBP officials also said that CBP does not make enforcement decisions based on the information in the progress reports.

With respect to carriers' implementation, CBP officials said that while there have not been many instances of major carrier companies failing to submit vessel stow plans, some smaller companies may have had trouble adapting to the requirement because they had not previously maintained vessel stow plan information. According to CBP officials, CBP has developed a spreadsheet format that smaller carriers can use to submit vessel stow plan information, rather than submitting it through specialized stow plan software.

³⁵The rule requires that the ISF be submitted 24 hours prior to loading for cargo other than FROB and prior to loading for FROB. CBP does not collect data on the time of loading; therefore, CBP is using vessel departure as a proxy measure for the time of loading.

Importers' Use of Flexibilities Has Declined over Time and Has Remained Consistently Low for a Variety of Reasons

The number of ISFs indicating use of flexibilities—provisions that allow importers flexibility in the timing and content of submission for certain data elements—has declined over time—from 11 percent of filings in September 2009 to less than 2 percent in June 2010. CBP officials stated that the decrease in flexibility usage can be primarily attributed to the trade industry's determination that flexibility use is unnecessary due to the existence of CBP's standard amendment process, which allows filers to update the information in their ISF regardless of whether or not they claim flexibility use. Additionally, importers we interviewed cited a variety of reasons for the nonuse and use of flexibilities.

Importers' Use of Flexibilities Has Declined over Time

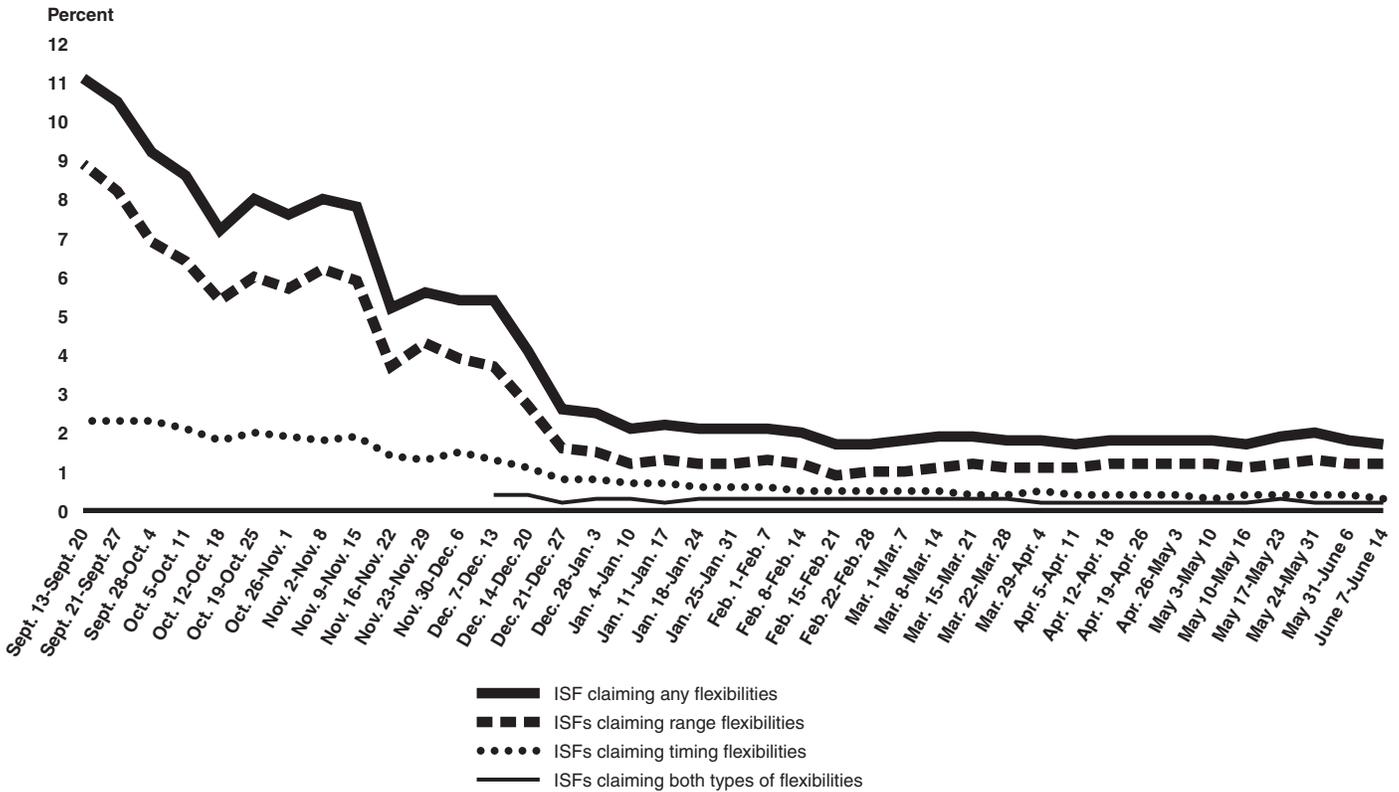
Prior to September 13, 2009, CBP did not have a mechanism to track importers' intended use of flexibilities and it relied instead on analyses of filed submissions to approximate the use of flexibilities. For example, CBP conducted analyses of filed submissions and concluded that relatively few importers were using the flexibility of not providing either the consolidator element (entity who loads the container) or the container stuffing (packing) location element at the time of initially filing their ISFs. Among initial ISF submissions, 99 percent provided the consolidator element and 99 percent provided the stuffing (packing) location element. To gauge importers' understanding of the flexibilities, CBP implemented a function in its electronic filing submission system in September 2009 to allow importers to identify their intent to use flexibilities at the time they submit filings.³⁶ However, this function did not allow CBP to monitor whether an importer was using both flexibilities for a single ISF. Further, beginning in November 2009, CBP adjusted its system for receiving ISFs to allow importers to indicate their intent to use both range and timing flexibilities—the data element submission options provided to importers that allow the submission of a range of acceptable responses and the initial omission of certain data elements, respectively. Prior to this change, importers could only indicate their intent to use one flexibility type, although CBP's system allowed the data to be entered in a way that utilized both types of flexibilities.

According to data obtained through CBP, ISFs indicating an intent to use range flexibilities or timing flexibilities declined from 11 percent of filings

³⁶Importers indicate their intent to use the flexibilities by checking a box on the form for the type of flexibilities to be used. If an importer checks a box for use of the flexibilities, the importer must later update the ISF to check a box indicating that the information is complete.

each week in September 2009 to 2 percent each week in January 2010. Further, following the start of the enforcement period on January 26, 2010, overall use of the flexibilities has remained low, with importers indicating use of the flexibilities in about 2 percent of ISFs submitted each week from January 26, 2010, through June 14, 2010 (see fig. 3). From September 13, 2009, through June 14, 2010, the percentage of importers that indicated use of the flexibilities on their ISFs declined from more than 13 percent to less than 4 percent. Over the portion of the flexible enforcement period for which CBP has data on importers' indication of flexibilities use (September 13, 2009, through January 25, 2010), 100,252 of the 1,909,523 submitted ISFs (or 5 percent) indicated flexibilities use. Since the start of the enforcement period on January 26, 2010, through June 14, 2010, the percentage of ISFs for which importers claimed flexibility use remained relatively consistent at about 2 percent of ISF submissions (67,429 of the 3,647,476 filed). Additionally, from December 7, 2009, through June 14, 2010, ISFs that indicated use of both types of flexibilities remained below 0.5 percent of all ISFs each week, which corresponds to about 1 percent or less of importers claiming both types of flexibilities on their ISFs each week.

Figure 3: Percentage of ISF Submissions Indicating Use of Flexibilities, by Week, for the Flexible Enforcement Period (September 13, 2009, through June 14, 2010)



Source: GAO analysis of CBP data.

While importers' use of flexibilities has remained at about 2 percent since January 2010, the percentage of ISFs indicating use of flexibilities that constitute incorrect or unnecessary use of flexibilities has remained consistently high. The system changes CBP implemented to allow importers to indicate their intent to use the flexibilities has enabled CBP to gauge importers' understanding of the flexibilities by analyzing whether the data provided in ISFs indicating use of the flexibilities are consistent with the flexibilities provisions in the interim final rule. For timing flexibilities, correct use of the flexibilities is indicated by an ISF missing either the consolidator element or the stuffing (packing) location element,

or both.³⁷ For range flexibilities, correct use of the flexibilities is indicated by multiple entries for one or more of the flexible range data elements: manufacturer, ship to party, country of origin, or commodity Harmonized Tariff Schedule number.³⁸ During the period September 13, 2009, through June 14, 2010, the rate of incorrect or unnecessary use of range flexibilities has remained consistent, at around 70 percent or more of the ISFs that indicated use of the flexibilities. The rate of incorrect or unnecessary use of timing flexibilities declined from 85 percent to 63 percent during the time period September 13, 2009, through January 26, 2010, but has generally remained at around 60 percent or greater since the start of the enforcement period. Thus, while the overall use of flexibilities remains relatively low, the rate of incorrect or unnecessary use of flexibilities has remained consistently high. CBP officials stated that the overall use of flexibilities, as well as the high rates of incorrect use, will inform their consideration of whether to eliminate, modify, or maintain the existing flexibilities associated with the 10+2 rule. Due to the limited use of the flexibilities, CBP officials currently question their utility.

CBP and Importers Cited Various Motivations for Deciding Whether or Not to Use Flexibilities

CBP officials and trade industry representatives we spoke with stated that CBP's standard ISF amendment process provides greater flexibility than the timing and range flexibilities provided for in the 10+2 rule. When an importer indicates use of the flexibilities on an ISF, it must submit an updated ISF to indicate that the information is final, regardless of whether the information on the ISF has changed. CBP's standard amendment process, however, provides more latitude in that it allows the importer to initially submit information on the basis of what it reasonably believes to be true and then requires the importer to update the filing only if any of the information changes or more accurate information becomes available. These updates may be filed any time before goods enter a U.S. port, in contrast to the flexibilities, which require updates no later than 24 hours prior to goods' arrival at a U.S. port.

CBP officials also explained that using the flexibilities could subject importers to additional fees if they are using a third-party filer that charges

³⁷Use of timing flexibilities is considered incorrect if an ISF submission includes entries for both the consolidator element and stuffing location element.

³⁸Use of range flexibilities is considered incorrect if an ISF submission includes only a single entry for each manufacturer, ship to party, country of origin, and commodity Harmonized Tariff Schedule element.

for each filing because the importers would have to pay for the initial filing in addition to any updated filings. However, if the importer does not use flexibilities, the importer would only be subject to additional filing fees if shipment information changes and use of the standard amendment process is required. Some of the importers we spoke with concurred with the benefits offered by the standard amendment process as compared to use of the flexibilities.

Importers we spoke with cited a variety of reasons for not using flexibilities, and one importer cited benefits for using them. Some importers echoed CBP officials' explanation that the standard amendment process provides more flexibility and can be less costly than using the flexibilities provided for in the interim final rule. Additionally, some importers who are C-TPAT members said they are reluctant to use flexibilities because it could convey to CBP that they do not have complete awareness of their supply chains. Further, some importers cited no need for the flexibilities because they collect all of the required 10+2 data elements prior to the ISF submission deadline. One importer, however, stated that use of the range flexibilities has allowed it to develop a template through which it can submit multiple entries per flexible range element, which in turn improves the efficiency of its submission process. This importer stated it is not concerned about the expense of filing flexibility updates because that cost is expected to be offset by savings associated with automation of its filing process.

CBP Has Not Yet Finalized Its Targeting Criteria to Identify Risk Factors in 10+2 Data, and CBP's Use of the Data Has Not Impacted Trade Flow

Data generated by the 10+2 rule are available for use in targeting efforts, such as identification of unmanifested containers, but CBP has not yet finalized the ATS national security weighted rule set—CBP's primary targeting criteria within ATS for identifying high-risk cargo containers—to identify risk factors present in the ISF data set. Additionally, CBP officials and trade industry representatives report that CBP's use of the data to enforce rule compliance has not impacted trade flow.

CBP Is Using 10+2 Data to Target High-Risk Shipments, but Has Not Finalized the ATS National Security Weighted Rule Set to Identify Risk Factors in 10+2 Data

CBP targeters have access to data generated by the 10+2 rule, and tactical rules can identify risk factors based on any of the 10+2 data elements. In particular, CBP has updated the TECS rules in ATS to incorporate the additional 10+2 data elements to identify shipments that could pose a threat to national security. ATS uses the updated TECS rules to compare 10+2 data—such as the identities of the buyer, seller, or manufacturer—to certain high-risk TECS national security threats. These rules use the data to affect containers' risk scores, which can affect whether a shipment is inspected for dangerous cargo. If ATS determines that any of the data elements are connected to high-risk TECS national security threats, it then increases the overall national security weighted rule set risk score for that shipment. For example, CBP officials said that the TECS tactical rules have identified potential risk factors for hundreds of thousands of shipments based on information from the additional 10+2 data elements.

Additionally, CBP officials stated that access to vessel stow plans—one of the two data elements provided by carriers—has enhanced CBP's ability to identify potentially dangerous unmanifested containers—containers and their associated contents not listed on a ship's manifest that pose a security risk in that no information is known about their origin or contents.³⁹ CBP officials explained that they are able to use vessel stow plans to mitigate the risk posed by unmanifested containers by taking investigative actions, such as contacting carriers and trade associations to collect missing shipment data or assigning the containers for additional inspection upon reaching a U.S. port. For example, CBP officials stated that from April 22, 2010, through July 14, 2010, targeters used vessel stow plans to identify 1,050 cargo-laden unmanifested containers bound for U.S. ports.⁴⁰ Without access to the carriers' vessel stow plans, CBP officials said that they would not have been able to identify, investigate, and mitigate the risks posed by these potentially dangerous containers. See figure 4 for an example of a cargo-laden container vessel in transit.

³⁹CBP officials stated that access to vessel stow plans provides additional security and safety benefits by allowing CBP to identify the stow positions of containers at risk of being used for smuggling, as well as those carrying hazardous materials.

⁴⁰According to CBP officials, the United States was the final destination of 213 of these unmanifested containers, while the remaining 837 were destined for foreign nations and were to remain on board the carrier vessels while in U.S. ports (i.e., FROB).

Figure 4: The Vessel Stow Plan Allows CBP to Identify the Location of Unmanifested Containers on a Vessel While in Transit, Prior to It Reaching a U.S. Port



Source: GAO.

CBP officials said that they are in the process of updating the ATS national security weighted rule set to identify risk factors in the 10+2 data elements and intend to test them thoroughly prior to implementation, but CBP has not established time frames or milestones for when integration of a finalized weighted rule set will be completed. The finalized national security weighted rule set is intended to analyze relationships between the 10+2 data elements to identify risks in these relationships beyond those that are analyzed by TECS. According to best practices in project management, the establishment of project milestones and time frames can help ensure timely project completion.⁴¹ According to CBP officials, the updated weighted rule set will be tested prior to deployment by executing it in tandem with the existing weighted rule set. This test is intended to

⁴¹Project Management Institute, *A Guide to the Project Management Body Of Knowledge*.

determine the ability of the updated weighted rule set to identify all potential risk factors and assign scores based on all available shipment data, including the 10+2 data elements. The test will also determine the number of shipments that would face mandatory examination because of their high risk scores. If the updated weighted rule set does not perform according to specification, or if there is an unexpected change in the number of shipments facing mandatory examination because of their risk scores, CBP plans to review and possibly amend the weighted rule set. CBP plans to continue to retest the amended weighted rule set to ensure that the system is performing according to design and that the flow of trade is not unduly impacted. Thus, until this testing is complete, CBP officials said that they will not be able to determine a date when the finalized weighted rule set will be in place. We recognize that the results of such testing could require adjustments to tasks that make it difficult to adhere exactly to established dates for completing a project. However, establishing milestones and time frames for having the finalized weighted rule set in place could help guide CBP in such testing and provide CBP with goals for completing interim steps and finishing this project, thus better positioning it for targeting high-risk cargo, thereby fulfilling the statutory purpose of the requirement to collect the additional data elements.

According to CBP, the potential effectiveness of the additional 10+2 data in enhancing cargo security has been demonstrated in analyses it conducted on cargo containers arriving at the ports of Los Angeles, Long Beach, New York, and Newark in February 2006. The analyses indicated that risk scores assigned while a shipment is in transit, which are based on manifest data, may differ from the final assigned risk scores, which are based on customs entry data. For certain shipments, the difference in the risk scores assigned at these two times, in transit and at arrival, is significant enough to affect CBP's response to these shipments. For example, twice as many containers were targeted as high risk based on entry data compared to manifest data. Therefore, earlier access to information that approximates entry data could allow CBP to (1) address risk factors before cargo is loaded on U.S.-bound ships at foreign ports, or (2) obtain more information that indicates the cargo is not high risk before the cargo arrives in the United States. The goal of the 10+2 rule is to prevent dangerous shipments from being loaded onto U.S.-bound vessels and CBP may issue "Do Not Load" orders for shipments identified as high risk based on analyses of shipment data. CBP has yet to issue any "Do Not Load" orders as a result of the 10+2 rule and does not plan to begin issuing such orders for ISF noncompliance any earlier than January 2011.

CBP Officials and Trade Industry Representatives Report That Enforcement of the 10+2 Rule Compliance Has Not Measurably Impacted Trade Flow

According to trade industry representatives, to date, CBP's use of the additional 10+2 data elements to target noncompliant shipments for inspection has not impacted trade flow. In particular, none of the 30 importers we interviewed stated that their trade flow has been impacted by 10+2 rule enforcement efforts such as shipment inspections or holds. According to CBP officials, individual ports have begun to use the additional 10+2 data elements to target noncompliant shipments for inspection, but CBP cannot identify the number of shipments held specifically due to 10+2 noncompliance because the data it collects do not discern between different types of holds. CBP officials added, though, that they have not received any complaints from the trade industry regarding inspections of noncompliant shipments impacting the flow of trade. According to CBP officials, individual ports make compliance enforcement decisions based on their own discretion. CBP believes that the potential impacts of noncompliance, which can include cargo inspection fees of \$100 to \$150 and a delay in cargo release of 1 to 3 days, are sufficient incentives for the trade industry to comply with the ISF requirements. As a result, CBP's current enforcement strategy is to exercise the least punitive measures necessary to obtain full ISF compliance. CBP does not have any plans for initiating mandatory holds on noncompliant shipments and will continue to monitor compliance rates and its application of a measured enforcement approach for the immediate future. CBP officials stated, though, that if CBP determines that additional enforcement actions are necessary, it may consider measures, such as mandatory inspections for all noncompliant shipments. CBP officials added that they do not believe that they would take such actions before November 2010.

Conclusions

The stated purpose of the SAFE Port Act requirement for CBP to collect additional data on U.S.-bound cargo is to enhance CBP's ability to target high-risk cargo containers at an earlier point in the shipping process than can currently be done. To determine the benefits and costs of requiring such additional data, applying best practices, such as those in OMB guidance, to the development of regulatory assessments could help to determine the likelihood that the benefits of a regulation justify the costs and also identify which possible actions would be most cost-effective. To this end, transparency in the assessment regarding why certain alternatives were selected for analysis and how estimates were derived is important to ensure that stakeholders can clearly see how the information in the regulatory assessment informs the regulatory action an agency takes. Furthermore, to achieve the proposed benefits of collecting

additional data, CBP would need to incorporate the additional data into its targeting practices.

CBP's regulatory analysis is not transparent regarding how the alternatives were selected for analysis or why the selected alternative is preferable over the others. If CBP publishes an update to its regulatory assessment, as CBP officials said that CBP may do, further transparency could help clarify CBP's decision making in formulating the 10+2 rule. In addition, a more complete analysis—with further analysis of uncertainty for both costs and benefits, as well as certain costs to foreign entities—could help to provide better information about the circumstances under which benefits justify costs. An update to the regulatory assessment with this additional information could make the assessment more transparent to the trade industry and other stakeholders who are affected by the rule.

To accomplish the statutory purpose of collecting the 10+2 data, which is to enhance CBP's ability to target high-risk cargo containers, CBP plans to update the ATS national security weighted rule set to identify risk factors in 10+2 data. CBP is in the process of updating the ATS national security weighted rule set to identify risk factors in submitted 10+2 data elements, but it has not determined when updates to the ATS national security weighted rule set will be finalized. Establishing milestones and time frames for updating the ATS national security weighted rule set could help guide CBP staff in its efforts and provide CBP with goals for completing interim steps and finishing the project, thereby better positioning it to fulfill the purpose of the SAFE Port Act requirement and enhance its capability to identify high-risk shipments.

Recommendations for Executive Action

We recommend that the Commissioner of CBP take the following two actions:

- If CBP updates its *Regulatory Assessment and Final Regulatory Flexibility Analysis*, provide greater transparency in the updated assessment regarding the information which contributed to decisions made in developing the 10+2 rule by including information, such as:
 1. a discussion of how the alternatives were selected for analysis, including alternatives that were considered but not included in the analysis, and what information CBP considered in addition to the regulatory assessment to conclude that the alternative requiring the Importer Security Filing, with an exemption for bulk cargo, and the Additional Carrier Requirements was preferable over the other alternatives analyzed;

-
2. an uncertainty analysis for the costs to importers for a day of delay and for the value of statistical life; and
 3. to the extent data are available, estimates for lost profits borne by foreign entities.
- To help guide CBP in updating the ATS national security weighted rule set, establish milestones and time frames for updating the ATS national security weighted rule set to use 10+2 data in its identification of shipments that could pose a threat to national security.

Agency Comments

DHS provided written comments on a draft of this report, which are reprinted in appendix I. DHS concurred with our two recommendations. Regarding our recommendation to provide greater transparency in an updated regulatory assessment, if CBP publishes such an assessment, DHS concurred. Specifically, it stated that the potential elements we cited for improving transparency will accompany the publication of a final rule for the ISF and Additional Carrier Requirements. Such actions should address the intent of our recommendation, provide greater transparency to the trade industry and other stakeholders, help clarify CBP's decision-making process, and provide better information about the circumstances under which benefits justify costs. Regarding our recommendation to establish milestones and time frames for updating the ATS national security weighted rule set to use 10+2 data in its identification of shipments that could pose a threat to national security, DHS commented that it had already updated the weighted rule set for certain risk factors, some of which are discussed in this report, and identified requirements for modifying the weighted rule set for other risk factors, many of which it stated have been incorporated into ATS and are available for preliminary evaluation and analysis. Moreover, DHS stated that it has plans to fully integrate these updates by November 2010. Establishing a time frame for fully integrating these updates into ATS provides DHS with a goal for completing the project to fulfill the purpose of the SAFE Port Act requirement to collect additional data and can better position it to effectively target high-risk container shipments. Therefore, although DHS did not specifically discuss actions being taken to establish interim milestones for integrating these requirements, effectively integrating the updates into ATS by November 2010 would address the intent of our recommendation. CBP also provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the

report date. At that time, we will send copies of this report to interested congressional committees, the Secretary of Homeland Security, and other interested parties. The report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

Should you or your staff have questions concerning this report, please contact me at (202) 512-8777, or caldwells@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix II.

A handwritten signature in black ink, appearing to read "Stephen L. Caldwell". The signature is fluid and cursive, with a large initial "S" and a checkmark-like flourish at the end.

Stephen L. Caldwell
Director, Homeland Security and Justice Issues

Appendix I: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

September 7, 2010

Stephen L. Caldwell
Director, Homeland Security and Justice
441 G Street, NW
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Caldwell:

RE: U.S. Customs and Border Protection's Comments on Government Accountability Office's Draft Report Entitled "SUPPLY CHAIN SECURITY: *CBP Has Made Progress in Assisting the Trade Industry in Implementing the New Importer Security Filing Requirement, but Challenges Remain.*" (GAO-10-841).

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report. DHS concurs with the recommendations in the draft report and offers the following response.

Recommendation 1: If CBP updates its *Regulatory Assessment and Final Regulatory Flexibility Analysis*, provide greater transparency in the updated assessment regarding the information which contributed to decisions made in developing the 10+2 rule by including information, such as:

- 1) a discussion of how the alternatives were selected for analysis, including alternatives that were considered but not included in the analysis, and what information CBP considered in addition to the regulatory assessment to conclude that the alternative requiring the Importer Security Filing, with an exemption for bulk cargo, and the Additional Carrier Requirements was preferable over the other alternatives analyzed;
- 2) an uncertainty analysis for the cost to importers for a day of delay and for the value of statistical life; and
- 3) to the extent data are available, estimates for lost profits borne by foreign entities.

Response: Concur. These potential additions to the Regulatory Assessment and Final Regulatory Flexibility Analysis will accompany a Final Rule for Importer Security Filing and Additional Carrier Requirements.

Completion Date: Dependent upon issuance of a final rule.

Recommendation 2: To help guide CBP in updating the ATS national security targeting criteria, establish milestones and timeframes for updating the ATS national security weighted

**Appendix I: Comments from the Department
of Homeland Security**

rule set to use 10+2 data in its identification of shipments that could pose a threat to national security.

Response: Concur. CBP has already updated its national security weight set to identify certain risk factors present in the 10+2 data. Specifically, the national security weight set currently identifies subjects of terrorist-related TECS records and importers that are participants in the Customs-Trade Partnership Against Terrorism (C-TPAT) program.

CBP officials have gathered a significant number of programming requirements to identify risk factors present in the 10+2 data set. Many of these criteria have been programmed in ATS and are available for the purpose of preliminary evaluation and analysis. Full integration of these updates is scheduled to be completed in November 2010.

Completion Date: November 30, 2010

Thank you for the opportunity to comment on this Draft Report and we look forward to working with you on future homeland security issues.

Sincerely,



Jerald E. Levine

Director

Departmental GAO/OIG Liaison Office

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Stephen L. Caldwell, (202) 512-8777 or caldwells@gao.gov

Acknowledgments

Key contributors to this report were Christopher Conrad, Assistant Director; Alana Finley, Analyst-in-Charge; Lisa Canini; and Matthew Tabbert. Charles Bausell contributed economics expertise, Stanley Kostyla assisted with design and methodology, Frances Cook provided legal support, and Katherine Davis and Lara Miklozek provided assistance in report preparation.

Related GAO Products

Supply Chain Security: Feasibility and Cost-Benefit Analysis Would Assist DHS and Congress in Assessing and Implementing the Requirement to Scan 100 Percent of U.S.-Bound Containers. [GAO-10-12](#). Washington, D.C.: October 30, 2009.

Combating Nuclear Smuggling: DHS's Program to Procure and Deploy Advanced Radiation Detection Portal Monitors is Likely to Exceed the Department's Previous Cost Estimates. [GAO-08-1108R](#). Washington, D.C.: September 22, 2008.

Supply Chain Security: CBP Works with International Entities to Promote Global Customs Security Standards and Initiatives, but Challenges Remain. [GAO-08-538](#). Washington, D.C.: August 15, 2008

Supply Chain Security: Challenges to Scanning 100 Percent of U.S.-Bound Cargo Containers. [GAO-08-533T](#). Washington, D.C.: June 12, 2008.

Supply Chain Security: U.S. Customs and Border Protection Has Enhanced Its Partnership with Import Trade Sectors, but Challenges Remain in Verifying Security Practices. [GAO-08-240](#). Washington, D.C.: April 25, 2008.

Supply Chain Security: Examination of High-Risk Cargo at Foreign Seaports Have Increased, but Improved Data Collection and Performance Measures Are Needed. [GAO-08-187](#). Washington, D.C.: January 25, 2008.

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