

US Customs regulations – Importer Security Filings and Additional Carrier Requirements (10+2 Rule)

The United States Bureau of Customs and Border Protection (CBP) has recently begun enforcement of regulations that require the electronic transmission of *additional data elements* to be provided as advance information with respect to cargo destined for importation into the United States. This information must be provided prior to loading of such cargo on vessels at foreign seaports. These regulations were promulgated under The United States Security and Accountability for Every (SAFE) Port Act of 2006¹ and the Maritime Transportation Security Act 2002,² by publication of a final rule on 25 November 2008, Importer Security Filing and Additional Carrier Requirements, commonly known as the “10+2 Rule” in the Federal Register (73 FR 71730). The final rule came into force on 26 January 2009 and included a delayed compliance date of 12 months. As of 26 January 2010, CBP is enforcing the 10 +2 Rule.



Importer Requirements (The “10” of the 10 + 2 Rule)

The 10+2 Rule requires importers, including owners, purchasers, consignees, or agents such as licensed customs brokers, to submit full Importer Security Filings (ISF) to the CBP for cargo, other than foreign cargo remaining onboard a vessel and certain goods transported in bond, no later than 24 hours before the cargo is loaded onboard a vessel destined for the United States. ISFs must be made electronically via the Automated Broker Interface or the Automated Manifest System (AMS). Importers need only submit five elements for foreign cargo that remains onboard and goods intended to be transported in bond as an immediate exportation or transportation and exportation shipment.³

The Carrier requirements⁴

In addition to submitting the cargo manifest information electronically to the CBP by way of its AMSs⁵, the carrier is now required to also electronically submit two additional data elements; a *Vessel Stow Plan* and *Container Status Messages* to the CBP for all containerised ocean vessel shipments inbound to the United States.

A *Vessel Stow Plan* must include information on the physical location of the cargo, in particular, dangerous goods and other high-risk containerised cargo, loaded onboard the vessel destined for

¹ Security and Accountability for Every (SAFE) Port Act of 2006 (sec 203).

² Trade Act of 2002 as amended by the Maritime Transportation Security Act 2002 (section 343a).

³ See also Federal Register, Vol. 73, No. 228. 25 November 2008. pg 71731-71733. For certain limited purposes, the ocean carrier may be deemed an importer, for example, with respect to foreign cargo remaining on board (FROB), and is responsible for submitting the five data elements to CBP before the cargo is loaded on the vessel, although it is not a requirement that such notice is submitted 24 hours before loading.

⁴ Exempt from the carrier's additional “2” reporting requirements are: (1) Bulk and break bulk carriers that are exclusively carrying bulk and break-bulk cargo and (2) carriers of goods (including containerised cargo) arriving via vessel into Canada or Mexico and afterwards trucked or railed into the U.S.

⁵ See Federal Register 19CFR Parts 4, 103 and Gard Member Circular No 07/2003.

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the United States. The CBP must receive the stow plan no later than 48 hours after the carrier departs from its last foreign port. If the voyage is less than 48 hours, the CBP must receive the stow plan prior to the vessel's arrival at its first U.S. port. The vessel stow plan must include standard information regarding the vessel and each container onboard the vessel. According to the CBP, the vessel operating carrier, not the NVOCC, is responsible for filing the vessel stow plan. For bulk and break-bulk carriers shipping part container cargo, the CBP requires the carrier to submit a vessel stow plan for all containerised cargo aboard the vessel.

Container Status Messages (CSM) report container movements and changes in status, e.g. whether full or empty. If a carrier currently creates or collects CSMs in an equipment tracking system, that carrier must submit CSMs to the CBP regarding certain events relating to all containers destined to arrive in a U.S. port by vessel. Carriers must submit CSMs electronically via the secure file transfer protocol no later than 24 hours after the message is entered into the carrier's equipment tracking system. As with the Vessel Stow Plan, the CBP requires the vessel carrier, not the NVOCC, to submit CSMs.

Enforcement

According to the CBP, enforcement in 2010 will be gradual and progressive depending on the circumstances.⁶ In the first quarter, CBP intends to concentrate its enforcement measures on importers who have not made an ISF despite having imported products, or who have made inaccurate or untimely ISFs. Although the CBP does not intend to assess liquidated damages or issue "Do Not Load" orders (DNLs) during the first quarter, instances of non-compliance will be reviewed on a case-by-case basis potentially subjecting non-compliant operators to penalties.⁷

In the second quarter, the CBP intends to use holds on cargo and other security approaches as a means to compel compliance. However, the CBP has advised that it does not plan to assess liquidated damages or issue DNLs during this period. In the third and fourth quarters, the CBP intends to begin assessing liquidated damages on ISF with data or filing problems, including timeliness. By the fourth quarter, CBP will be in full enforcement mode.

Recommendations

Even though enforcement will reportedly be gradual, carriers and importers should ensure that they are complying with 10+2 requirements. Importers and carriers should take this opportunity to review their procedures for compliance to avoid delays at the border or the imposition of fines.

⁶ See American Association of Exporters and Importers, "ISF Enforcement Strategy" (Jan. 20, 2010), available at <http://www.aaei.org/LinkClick.aspx?fileticket=UICAz3wrz5A%3d&tabid=36>. Further information concerning the requirements can be obtained at http://www.cbp.gov/xp/cgov/trade/cargo_security/carriers/security_filing/.

⁷ The CBP will impose fines of at least USD 5,000 for each violation with a maximum fine of USD 100,000. The fine level will depend on whether violations are international consignments with a final destination in the U.S., whether the goods are in transit through the U.S., or whether the advance information has not been submitted on time, is insufficient or incorrectly reported on the vessel stow plan or container status message.

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