

Customs Seeks Comments on Proposed Rule Regarding Additional Importer and Carrier Filing Requirements (10+2 Security Filing Notice)

On January 2, 2008, U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking (NPRM) regarding Importer Security Filing and Additional Carrier Requirements (known as the “10+2 Security Filing Notice”). Currently, under the 24-hour rule, a manifest must be submitted electronically through the vessel automated manifest system (AMS) 24 hours prior to lading of cargo at a foreign port. Additionally, the SAFE Port Act requires the electronic submission of additional data elements to enhance security analysis. The proposed rule builds on these enhancements and would require both importers and carriers to electronically submit additional information pertaining to cargo before it is brought into the United States (U.S.) by vessel.

Specifically, carriers would be required to submit (1) a vessel stow plan and (2) container status messages (CSM) (the “2” of the “10+2”). The vessel stow plan (which breaks down the physical location of cargo loaded aboard a vessel), must be submitted no later than 48 hours after departure from the last foreign port. For voyages less than 48 hours, the stow plan would have to be received by CBP before the vessel’s arrival in the United States. The proposed rule contains an exemption for vessels containing exclusively bulk cargo. CBP also proposes requiring carriers to submit container status messages (CSM) daily for all containers laden with cargo destined to arrive in the U.S. each time a container is involved in any of the following

events: confirmed booking; gate inspection; arrival or departure from a facility; loading or unloading from a conveyance; arrival or departure from a port; intra-terminal movement; ordered stuffing or stripping; confirmed stuffing or stripping; or shopping for heavy repair. CBP emphasizes that the proposed regulations would not require a carrier to create or collect any CSM data beyond what carriers already create and collect in the ordinary course of business. CBP would also like to provide carriers the option of transmitting all of their CSM data rather than filtering out CSM data related to containers destined for the United States. However, by transmitting that additional information, carriers would be authorizing CBP to access and use all of that data.

Regarding importers and their agents, CBP proposes requiring an Importer Security Filing containing ten elements for cargo other than foreign cargo remaining on board (FROB), goods intended to be transported as immediate exports (IE) or transportation and exportation in-bond shipments (T&E) (the “10” in the “10+2”). The required elements are: (1) Manufacturer (or supplier) name and address; (2) Seller name and address; (3) Buyer name and address; (4) Ship to name and address; (5) Container stuffing location; (6) Consolidator (stuffer) name and address; (7) Importer of record number; (8) Consignee number(s); (9) Country of origin of the goods; and (10) Commodity HTSUS number to the 6th digit level. In the case of shipments

consisting entirely of FROB, IE, or T&E, only the following five elements are required: (1) Booking party name and address; (2) Foreign port of unloading; (3) Place of delivery; (4) Ship to name and address; and (5) Commodity HTSUS number to the 6th digit level. Importers would be required to submit security filings no later than 24 hours before cargo is laden aboard a vessel destined to the U.S. for all cargo other than FROB. Importer Security Filings for FROB would be required any time prior to lading, since FROB is frequently laden based on a last-minute decision by the carrier.

Written comments must be submitted to CBP on or before **March 3, 2008**.

The NPRM only addresses sea shipments, and other modes of transportation will be added later. The implementation of the new rules will mirror CBP past efforts in implementing advanced manifest data rules. After the final rules are issued there will be a voluntary test period, but then the rules will be mandatory. The final rules will likely be implemented later this summer or fall, with mandatory participation likely in 2009.

To view the CBP publication in the Federal Register, visit <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=38917426165+0+0+0&WAISaction=retrieve>. CBP would require all information to be received by way of a CBP-approved electronic data interchange system.

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FOR MORE INFORMATION

If you have comments on the proposed rule, please do not hesitate to contact us. Please email any of the following members of Kelley Drye Collier Shannon's International Trade and Customs Group for further assistance:

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