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TO MEMBERS OF THE ASSOCIATION

Dear Member:

NEW INFORMATION REQUIREMENTS FOR MARITIME CARGOES DESTINED FOR THE UNITED STATES: THE “10+2” SECURITY RULE

On November 24, 2008, the U.S. Customs and Border Protection (CBP) announced new information requirements on maritime cargoes destined for the United States. The Importer Security Filing and Additional Carrier Requirements Interim Final Rule, also known as the “10 + 2 Rule”, will require maritime cargo carriers and importers to provide additional data to the CBP before vessels are permitted entry into the US.

The submission of information required under this new rule must be delivered to the CBP by way of a CBP-approved electronic interchange system. The CBP expects that the provision of this additional data will improve its ability to identify high-risk shipments – and particularly containerized cargoes so as to prevent smuggling and to ensure cargo safety and security.

This interim final rule will take effect on January 26, 2009.

Existing requirements

Under existing CBP requirements, a carrier must submit vessel cargo information no later than 24 hours before the cargo is loaded onto a vessel at a foreign port. This rule is commonly known as the “24-Hour Rule” and was the subject of Circular No. 07/06 of February 17, 2006. However, carriers are not presently required to submit vessel stow plans or (in the context of container vessels) to transmit container status messages to the CBP.

Under existing arrangements, importers must file entry information with the CBP within 15 days of the date of arrival of the shipment in question at a U.S. port, but an importer is not currently required to submit advance cargo information to the CBP.

New requirements for importers: the “10” of the “10 + 2” Rule

The new reporting requirements mandate that importers (which include owners, purchasers, consignees or agents, such as licensed customs brokers) must submit an Importer Security Filing (ISF) to the CBP no later than 24 hours before the cargo is loaded on board a vessel destined for the US for shipments consisting of goods intended for entry into the United States and goods intended to be delivered to a foreign trade zone (FTZ). The ISF must contain the following eight data elements:

- Seller;
- Buyer;

- Importer of record number / FTZ applicant identification number;
- Consignee number(s);
- Manufacturer (or supplier);
- Ship to party;
- Country of origin; and
- Commodity Harmonized Tariff Schedule of the United States (HTSUS) number.

The rule provides flexibility for importers with respect to the submission of four of these data elements. In lieu of a single specific response, importers may submit a range of responses for each of the following data elements: manufacturer (or supplier), ship-to party, country of origin, and commodity HTSUS number. The ISF must be updated as soon as more accurate or precise data becomes available and no later than 24 hours prior to the vessel's arrival at a US port.

The ISF will also need to include two data elements that must be submitted as early as possible, but no later than 24 hours prior to the vessel's arrival at a U.S. port. These data elements are:

- Container stuffing location; and
- Consolidator.

In addition, the rule requires that the Importer Security Filing for shipments consisting entirely of foreign cargo remaining on board (FROB) and shipments consisting entirely of goods intended to be transported in-bond as an immediate exportation (IE), or transportation and exportation (T&E), must provide five elements. Importer Security Filings for IE and T&E shipments must be submitted no later than twenty-four hours before the cargo is laden aboard a vessel destined to the United States and Importer Security Filings for FROB must be submitted any time prior to loading. The following five data elements must be submitted for FROB, IE and T&E shipments:

- Booking party;
- Foreign port of unloading;
- Place of delivery;
- Ship to party; and
- Commodity HTSUS number.

All IFRs transmitted to the CBP must be submitted by way of an current approved electronic data interchange system, which are the Automated Manifest System (AMS) or the Automated Broker Interface (ABI).

Importers who fail to comply with or violate the ISF requirements will be subject to a liquidated damages amount of \$5,000 per violation.

New requirements for carriers: the “2” of the “10 + 2” Rule

In addition to the existing carrier requirements pursuant to the 24-Hour Rule, the interim final rule also requires carriers to submit (1) a vessel stow plan for cargoes destined to the US and (2) container status messages (CSMs) in the context of containerized cargoes destined to the US.

Vessel Stow Plan:

Carriers must transmit the stow plan to the CBP, via the Automated Manifest system (AMS), secure file transfer protocol, or e-mail, so that it is received by the CBP no later than 48 hours after the carrier's departure from the last foreign port. For voyages of less than 48 hours, the CBP must receive the information prior to the vessel's arrival at the first port in the US. The stow plan must include the vessel name, vessel operator and voyage number. With regard to each container, the vessel stow plan must also include the container operator and the equipment number, equipment size and type, stow position, hazmat code, port of lading and port of discharge.

Container Status Messages (CSM):

CSMs must be submitted to the CBP daily for certain events relating to all containers laden with cargo destined for the US by vessel. Carriers must submit a CSM when any of the required events occurs if the carrier creates or collects a CSM in its tracking system reporting that event. For each CSM submitted, the following information must be included: event code being reported, container number, date and time of event being reported, status of the container (empty or full), location where the event took place, and vessel identification associated with the message if the container is associated with a specific vessel. This must be done no later than 24 hours after the message is entered into the carrier's equipment tracking system.

It should be noted that carriers are exempt from the vessel stow plan and CSM requirements if the vessel is exclusively carrying bulk cargo (liquid or dry) and/or break-bulk cargo.

Violations by carriers of this new regime will result in a penalty of \$5,000 per violation subject to a total cap of \$100,000. Additionally, a carrier's failure to provide the newly required information under this rule may also prompt the CBP to commence procedures to deny a permit to unload containers upon arrival in the United States.

Ongoing review and flexible enforcement period

Because the CBP has made several significant amendments to the initial proposed rule (due largely to feedback from the public and commercial sector), the interim final rule includes a specific 12-month delayed compliance period to allow some flexibility to carriers and importers alike. This 12-month period also allows the CBP to take into account any difficulties that importers may face in complying with the rule. Members should, however, be aware that this flexibility period does not mean that the rule will not be enforced. The CBP will only be flexible so long as carriers and importers are making a good faith effort and satisfactory progress toward compliance with the "10 + 2" security requirements.

Recommendations

Importers, which expression also includes owners, should become familiar with these new information requirements in order to avoid potential penalties and unnecessary delays at discharge ports in the US. Members should also endeavor to exercise their best efforts to comply with these regulations to minimize the prospect of any fines from the CBP. Members should also advise the CBP of any difficulties regarding compliance so that such comments



can be taken into consideration by the CBP as part of its continuing review of these new rules.

As an additional guide to compliance with this new regime, Members should also refer to the Frequently Asked Questions (FAQs), which can be found on the CBP website at www.cbp.gov. Other questions and any comments to the CBP can also be sent to the following CBP e-mail address: Security_Filing_General@cbp.dhs.gov

As always, if any Member has specific inquiries in regard to the above, the Managers stand ready to assist and advise.

Yours faithfully,


Joseph E. M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB