

"10+2" rule faces obstacles, call for interim prototype

The likelihood is increasing that the government's "10+2" proposal requiring advance ocean shipment data for security screening will not see the light of day until 2009.

U.S. Customs and Border Protection officials have hinted all year that a final rulemaking would be published by late summer or fall, but has not cleared the Office of Management and Budget in several weeks. The White House is taking a much closer look at the rule's economic impact to make sure it doesn't pose an undue burden on industry in light of the U.S. financial crisis and global economic slowdown, Deputy Commissioner Jayson Ahern told hundreds of importers at the agency's annual Trade Symposium in Washington on Wednesday.

Earlier this year, the Bush administration imposed a Nov. 1 deadline on agencies to issue final regulations in what legal experts contend is an effort to ensure that new rules are less subject to being overturned by the next president. Many regulations do not take effect until 60 days after they have been issued, and a new president can try to postpone or revise them as President Bush did in hundreds of cases after taking over from President Bill Clinton in 2001. White House Chief of Staff Joshua Bolton told agencies it would make exceptions for rules that missed the deadline in extraordinary circumstances, according to the *New York Times*.

Meanwhile, Rep. Charles Rangel, the powerful head of the House Ways and Means Committee, sent a letter Tuesday to CBP Commissioner Ralph Basham urging the agency to issue an interim rule instead of a final rule and conduct a limited prototype to test in a controlled fashion how importers can collect and electronically transmit the new data elements. The new approach was characterized as a way to minimize unintended burdens for international traders.

The letter was also signed by Rep. Sander Levin, chairman of the trade subcommittee, and ranking Republicans Jim McCrery on the full committee and Wally Herger on the subcommittee.

The controversial rule will require importers or their agents to electronically submit 10 categories of data about who made, packed and received their shipment -- manufacturers, logistics providers and customers -- and liner carriers to subsequently submit stow plans and status messages for containers in their custody. The Importer Security Filing must be transmitted 24 hours prior to loading on a vessel at the foreign port of origin.

Many shippers and their freight management providers are worried about programming costs, third-party filing fees, and cargo delays while importers track down origin and destination information that may not be readily available through normal business channels.

The [letter, obtained by *American Shipper*](#), supports demands by the trade community for a go-slow approach because "10+2" requires substantial changes to normal business processes and new information technology systems to transmit the data. Several business groups have claimed the Department of Homeland Security has underestimated the rule's full impact on industry. Trade experts have also expressed concern about whether CBP's computers will be able to

handle the crush of new data by implementing the system all at once. CBP has said it plans a one-year phased enforcement period to give companies time to adjust to the rule before penalties are issued, but the informed compliance period doesn't lessen the agency's IT challenge. Some experts have recommended that CBP phase in the program by taking a volunteer cross-section of companies and begin real data exchanges with them to perfect the system before universal implementation begins.

The Rangel letter said CBP should use its proposed delayed enforcement period to test the rule with a limited set of importers and get more public comment before issuing a final rule. Other importers who have established systems to comply with the rule could do so on a voluntary basis. The lawmakers asked CBP to establish a formal process with the import community to correct operational and technical issues related to the rule's implementation.

Rangel and his colleagues also called for CBP to develop more tangible benefits for companies participating in the Customs-Trade Partnership Against Terrorism. The letter appeared to suggest that C-TPAT members could be excused from some of the stricter requirements of the Importer Security Filing, but only referred in general to enhanced trade facilitation benefits.

The letter follows a similar one in August from 20 House lawmakers that asked DHS and CBP to develop a 10+2 pilot program before the rule's full-scale implementation. The congressmen also asked CBP to give "some consideration to those companies that have validated supply chains" through C-TPAT.

"I commend Congress for calling out CBP's stated commitment that members of the trade who are certified by CBP as committed to enhancing the global trade security of their shipments into the United States should receive benefits for their efforts," said Beth Peterson, president of trade consultancy BPE Inc.

Peterson

CBP's original economic analysis said the rule will cost industry from \$390 million to \$630 million per year for security filing transaction costs or transmission fees charged to importers by cargo agents, the potential for supply chain delays and the estimated transmission cost to carriers. But import professionals say the analysis failed to account for indirect costs such as delays to consolidated shipments, new information technology systems and extra inventory holding.

Daniel Baldwin, assistant commissioner for international trade, told attendees at the Trade Symposium that the White House and DHS have since reached consensus on a common economic model that better accounts for the various estimated costs that could be incurred as a result of the 10+2 rule.

The trade community should not be alarmed about potential cargo delays because CBP has a demonstrated track record of working with industry to make sure security rules do not unduly affect cargo flows, insisted Thomas Winkowski, assistant commissioner for field operations. He pointed to the 24-hour advance manifest rule in 2004 as an example of how the agency made adjustments to ensure a smooth implementation.

"If after this 14-month period of time, we still see that there's issues out there, we're not going to start penalizing," he said. "I really have a hard time buying into the trade (notion) that CBP would tolerate a program that created delays.

"To really think we'd let something happen where we'd just stymie trade, I think that's scaremongering," he said of ongoing criticism from some industry quarters.

CBP officials reiterated that the data elements are crucial to their strategy of targeting the highest risk shipments for high-tech and physical inspections because the manifest data currently received is not accurate or reliable enough and focuses only on who transported the shipment.

"I know with certainty that this is what we need for targeting. These are the elements without question that our professionals looked at and determined are necessary for targeting," Deputy Commissioner Ahern said.

The manifest data, for example, will not alert CBP officers to the fact that a shipment from a country of concern, such as Iran, has been transshipped via the Port of Rotterdam, he pointed out. The security filing will identify the origin of the shipment.

Agency officials said they used a very disciplined approach to select only those data elements essential for automated risk analysis.

"I'm not saying 10+2 is perfect, but I can tell you it wasn't done in a vacuum. We didn't sit in the Ronald Reagan Building and say '10+2.' Probably if we'd done that it would be '30+100,'" Winkowski said.

He said the trade should support the security filing because it is preferable to other security approaches being debated in Washington.

"You've got 100 percent scanning lurking out there and July 2012 is not all that far away," he said about the congressional mandate to scan all inbound containers overseas by that date. "We've got to demonstrate to Congress and to others that a 10+2 type of solution really negates the need to have scanning." — [Eric Kulisch](#)