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Ready or not, '10+2' is here

O.K., we all have to admit how much we really didn't want to see a final rule on "10+2." Even an interim final rule sends chills up and down the spine of any trade professional who is alive and breathing.

The sheer task at hand of complying with "10+2" is something that none of us could have conceived of undertaking five years ago. "10+2" is shorthand for the advance data elements that U.S. Customs and Border Protection is proposing to collect:

- Importers are required to submit 10 data elements no later than 24 hours before cargo is laden aboard a U.S.-bound vessel.
- Carriers generally are required to submit two additional reports — a vessel stow plan and container status messages.

All freight imported into the United States via ocean container including breakbulk cargo, Foreign Cargo Remaining on Board (FROB) and goods transported under Immediate Exportation (IE) or Transportation and Exportation (T&E) requires an Importer Security Filing (ISF).

All 10 data elements are required for cargo imported for consumption or entered into a foreign trade zone. There's a list of the 10 data elements in the interim final rule at edocket.access.gpo.gov/2008/pdf/E8-27048.pdf.

We also have to admit that not having a final rule was equally scary. We've spent countless hours communicating within our companies about the urgency of 10+2 and the need for corporate awareness, focus and planning that would be required to implement 10+2 in just 60 days following publication of the interim final rule. If a final rule wasn't published, we risked our credibility across our companies — we may have been considered the boy who cried wolf.

But enough imagining how hard it would have been to restore our credibility and let's focus on how we're going to get 10+2 implemented.

Don't boil the ocean. CBP will be phasing in enforcement. What this means is that if you make reasonable efforts to implement 10+2 given your current level of ability, you will not be penalized. CBP will show restraint in enforcing the rule, taking into account difficulties that importers may face in complying with the rule. CBP has stated it would "consider an entity's progress in the implementation of the rule during the delayed enforcement period as a mitigating factor in any enforcement action following the delayed enforcement period."

So, from an importer's perspective, let's approach this in a very methodic way:

1) Identify all of the ocean imports that you bring into the United States. As a CBP Automated Commercial

Environment (ACE) Trade Ambassador I highly recommend that you get an ACE account and run the Entry Summary Lines by Manufacturer Code Report.

2) Break it down into distinct supply chains — different suppliers, different handling processes, different service providers, etc. Don't forget about DDP (Delivery Duty Paid) and DDU (Delivery Duty Unpaid) shipments; prototypes and R&D materials; returned materials; U.S. goods returned; manifest discrepancies (incorrect goods); trade shows; and vendor managed inventory shipments.

3) Select the supply chain that will allow you to file the highest number of ISF transactions for your shipments and start tackling that supply chain. Apply the 80/20 rule and that will help you to show that you are making "a good faith effort to comply with the rule to the extent of their current ability."

Since 60 days is an awfully short time to contact every manufacturer (supplier) and get its commitment to provide you with advance data for every shipment, start with your highest volume manufacturers (suppliers) and gain their agreement immediately. Then work on the smaller manufacturers (suppliers) as soon as you can.

CBP will be producing ISF Report Cards so they will know which importers aren't filing ISFs at all. They'll also be able to see the importers which are making satisfactory progress toward compliance. You don't want to be getting calls from CBP with offers that they will work with you (a non-complying ISF filer) in order to help you adhere to the new requirements — do you? I honestly believe its best to begin filing immediately and file amendments as changes to the information filed or more accurate information becomes available.

Almost more importantly, by filing ISFs starting on Jan. 26 you'll be able to provide CBP with lots of data in your comments to the ISF filing on June 1:

- Make sure you tell them the compliance costs you are incurring, including the cost of data collection, service provider fees, shipment delays, inventory carrying costs, lost sales, etc.

- You'll also have a chance to tell them about the impact of the flexibilities provided in the interim rule. I think having to amend an ISF is a very costly approach.

- Tell them loudly and clearly about any barriers you have to submitting ISF 24 hours prior to lading.

- Make sure to calculate how many dollars in liquidated damages (at \$5,000 per shipment) you would have paid if CBP were not taking a flexible approach to enforcement.

The most important thing is to take action — 10+2 is here.

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