

SUBJECT: GUIDANCE ON CBP 10+2 RULE

1. Summary: U.S. Customs and Border Protection (CBP) has published an interim final rule requiring importers and carriers to electronically submit additional information on cargo before it is brought into the United States by vessel.

The rule, also known as "10 2," fulfills the advance data requirements of the Security and Accountability for Every (SAFE) Port Act of 2006 and is a step in the Department of Homeland Security's (DHS) strategy to assess and identify high-risk shipments to prevent terrorist weapons and materials from entering the United States. As many trading partners and industry representatives have raised concerns regarding the impact of these requirements on trade, below is background information and points on the current status of the rule.

BACKGROUND

2. On January 2, 2008, CBP published a notice of proposed rulemaking in the Federal Register for public comment.

3. Following the publication of the proposed rule, CBP extended the public comment period to March 18, 2008. CBP has received comments from importers, members of Congress, and foreign governments citing concerns with the implementation of the rule and potential negative impacts on trade. Some industry representatives have estimated that the costs of the rule could reach up to \$20 billion annually and result in a 2 to 5 day delay in the supply chain. CBP's latest estimates demonstrate potential annualized costs of up to \$7 billion. State has received comments from Japan, the EU and Brazil echoing the concerns of industry and calling for a pilot program. Also, several trading partners and the World Customs Organization have raised concerns with the rule's compatibility with the WCO SAFE Framework.

4. CBP has engaged with the trade community and other executive branch agencies to address these concerns and has

prepared an interim final rule, which was published on November 25, 2008. The interim final rule will take effect 60 days after publication. Pursuant to the interim final rule, importers are required to file an Importer Security Filing, generally consisting of the following 10 data elements 24 hours prior to vessel lading at the foreign port:

- Manufacturer (or supplier)
- Seller
- Buyer
- Ship to party
- Container stuffing location
- Consolidator (stuffer)
- Importer of record number / FTZ applicant identification number
- Consignee number(s)
- Country of origin
- Commodity Harmonized Tariff Schedule of the United States (HTSUS) number

In addition, carriers are required to submit a vessel stow plan and container status messages regarding certain events relating to containers loaded on vessels destined to the United States. The new requirements apply to the maritime cargo environment only.

5. CBP has made several significant changes from the proposed rule. The interim final rule provides for a structured review and flexible enforcement period, during which CBP will show restraint in enforcing the rule, taking into account difficulties that importers may face in complying with the rule, so long as importers are making satisfactory progress toward compliance and are making a good faith effort to comply with the rule to the extent of their current ability. In addition, the rule provides flexibility with respect to the required timing of submission of certain Importer Security Filing data elements and how traders interpret these elements. The six data elements with flexibility are: manufacturer (or supplier), ship to party, country of origin, commodity HTS number, container stuffing location, and consolidator. These flexibilities will allow CBP to conduct a structured review of the data elements, including an

evaluation of any specific compliance difficulties the industry may encounter. CBP will gather information through June 1, 2009, by conducting reviews of particular importers to determine whether submission of all 10 data elements 24 hours before lading is feasible. If it is not, CBP will analyze what barriers the importers encountered. The structured review will cover a range of enterprises, from small to large, and will include both integrated and nonintegrated supply chains.

6. CBP has invited written comment on the six data elements

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for which some type of flexibility has been provided and on the revised Regulatory Assessment and Final Regulatory Flexibility Analysis. Comments must be received on or before June 1, 2009.

7. CBP and other agencies, including State, have been heavily involved in this process. CBP will issue specific guidance on the details of the data element requirements. CBP has also committed to conduct an extended round of structured outreach activities to engage with the trade on all aspects of the rule with a series of regional seminars and trade round table discussions at all of CBP's major seaports of entry and other ports as needed or requested by the trade. CBP will also identify trade community operators who have established processes (or who have successfully re-engineered processes) to deliver the data timely to CBP to provide their colleagues in the community with business advice on how to comply with the regulatory requirements. CBP's seminars will focus on all topics related to this rule, technical, operational, and process components, such as documentation adjustments and developing automated solutions to track supply chain partners and commodity orders. All material discussed and presented at the seminars will be published on

the CBP website along with Frequently Asked Questions (FAQs) and a general "How to Guide." As this rule has garnered much attention among trading partners, below are background points for use in response to inquiries. Additional information on the program as well as the published Federal Register notice with detailed information on how to submit comments are available on EEB's intranet website at <http://eb.state.gov/> under Maritime Security Community and at www.cbp.gov.

BACKGROUND POINTS

- The SAFE Port Act of 2006 mandates the development of a regulation to require additional data elements for improved high-risk targeting, including appropriate security elements of entry data to be provided as advanced information prior to vessel lading.
- U.S. Customs and Border Protection (CBP) issued a notice of proposed rulemaking on January 2, 2008, known as the Importer Security Filing and Additional Carrier Requirements or "10 2."
- CBP issued an interim final rule on November 25, 2008. The interim final rule will take effect 60 days after publication.
- This rule will increase the scope and accuracy of information gathered on shipments of cargo arriving by vessel into the United States.
- Under this rule, importers and carriers will be required to submit additional pieces of information in order to enhance the security of the maritime environment.

- CBP will continue to consult with the trade community and our international trading partners on developments involving maritime security and trade facilitation.