

The 24-Hour Rule: the early “heads up” to Customs about inbound freight and its impact

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As if international trade’s deadlines and other timing concerns weren’t challenging enough already, now America’s importers – and the transportation service providers who service them – have another concern in their scheduling equations. Effective December 2, 2002, ocean carriers and non-vessel operating common carriers (NVOCCs) must alert the Customs & Border Protection agency of the Department of Homeland Security (Customs) about specifics of all inbound cargo 24 hours before it is loaded onto a vessel. The program is entitled the “24-Hour Advance Vessel Manifest Rule,” and is dubbed the “24-Hour Rule” in waterfront parlance.

In May of 2003, Customs enacted additional regs specific to the process, including when, how hard, and by whom violators’ hands will be slapped. The agency also stepped up enforcement efforts, although only a small number of fines have been issued thus far. Program procedures are continually being revised and amended. Carriers and NVOCCs actually get in trouble with the feds, but shippers, consignees and others should darn well expect to be impacted if their bad practices cause headaches for transportation providers.

The 24-Hour Rule requires carriers and NVOCCs to transmit to Customs a cargo manifest detailing all U.S.-bound cargo (yes, that includes cargo not intended for stateside offload but which will be laden on vessels stopping here). The manifest has to be specific, which means carriers and NVOCCs must require from shippers and forwarders detail about their freight’s nature. In other words, not only will cargo descriptions like “freight all kinds” not cut it, terms such as “foodstuffs,” “apparel” or “chemicals” won’t do the trick either. Nor will Customs be happy with blank shipper descriptions, a forwarder listed as the shipper or consignee and, perhaps most problematic, the consignee being designated as “to order.”

If an “invalid” cargo description comes through, or a manifest otherwise causes concern, its U.S. port of destination will issue a “Do Not Load” message to the relevant carrier and/or NVOCC. Communication will be largely through ports’ administrative arms. Those ports approved under Customs’ Container Security Initiative (see February 2004 *Legal Lookout* article) must be able to receive and transmit data electronically; others will be allowed to work by paper. Data is accumulated, digested and assimilated at the National Trading Center, and incorporated into America’s overall security program. Fines for violations run from \$5,000 to \$10,000.

We're talking national security here. Customs is developing a systematic process to minimize terrorist threats by making it harder for bad guys to get their wares into the U.S., and easier for Uncle Sam's law enforcement authorities to take timely and effective corrective action. If data is insufficient for the purpose, the 24-Hour Rule would be meaningless. For those reasons, industry must look at manifest reporting requirements as an inconvenience justified by the purpose it serves.

But what does it mean in practice? The initial confusion and uncertainty in international trade circles haven't fully dissipated. There still are many wrinkles in the process left to iron out, but we're moving in the right direction. The most voiced issue regards confidentiality. Theoretically at least, confidentiality is protected by federal law (Customs has a program whereby shippers and importers can apply for specific confidentiality). However, many players in international trade simply aren't comfortable with the notion of their buyers, suppliers, and cargo descriptions floating around between NVOCCs, carriers, ports, and government agencies, all in newly established, international electronic communication. Customs is aware of these concerns and, as part of its program of indoctrinating its security programs, is working on ways to quell them.

Another serious issue regards mandatory advance notice of American consignees' names and addresses. Under current practice, where much inbound cargo ultimately will end up just isn't known until well after a vessel sails. Commercial issues often aren't resolved before a two-week ocean voyage commences, and many international importers have grown accustomed to having that extra time to decide where they want their freight delivered. Customs will work with the trading community on these and similar issues, but this is one that hasn't fully been resolved to everyone's satisfaction.

Also integrated into 24-Hour Rule administration is Customs-Trade Partnership against Terrorism certification (C-T PAT, see January 2004 *Legal Lookout* article). Being C-T PAT certified doesn't excuse a player from compliance with manifest reporting requirements, but it does mean your cargo is less likely to be tagged by a "Do Not Load" order, and penalties for an occasional slip up will be smaller for C-T PAT members.

Other modes of transportation are subject to similar requirements. Air carriers have four hours before arrival to report about their freight (or "wheels up" for hauls solely within North America). Rail imports must report two hours before arrival; and truckers get up to an hour before crossing the border. Exported cargo also is subject to certain reporting regs.

Inconvenient and problematic? Sure. But the 24-Hour Rule is another necessary brick in the wall America is erecting to protect herself from terrorist threats. International trade has endured many challenges for centuries. Obstacles created by this one are neither unjustified nor insurmountable.

Ref: the Customs & Border Protection agency's website at <http://www.customs.ustras.gov/>.