



customs update: safe act details

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While Republicans and Democrats made the recently passed SAFE Port Act a political plank in their election-year battle for control of Congress, it's worth taking a practical look at the legislation which will reshape the government's role in supply security.

Section 203 of the Act addresses possible changes to the Automated Targeting System. Customs Commissioner Ralph Basham previously announced a second ATS center will be opened, one to deal with passenger clearances and the other with cargo issues. The Act instructs Customs to look at the cost, benefit, and feasibility of requiring additional non-manifest documentation; reducing the time period allowed to revise a manifest and to submit entry data elements, for vessel or cargo, and other actions which would improve the ATS. Customs is also mandated by the Act to consult with its stakeholders in making decisions. Customs is also expected to seek other ways to improve the system. An independent panel will review the effectiveness and capabilities of ATS and how it should be changed or updated, including the use of so-called smart features.

Section 204 requires regulations regarding the Container Security Initiative. Rulemaking is to commence within 90 days of enactment and interim rules are to be published within 180 days. Within two years of the standards being enacted, compliance is demanded for all containers entering the U.S. Promulgation of international standards is also supported.

Subtitle B of the Act deals with the Customs-Trade Partnership Against Terrorism (C-TPAT).. It requires the formulation of the voluntary program to "strengthen and improve the overall security of the international supply chain... and to facilitate the movement of secure cargo through the international supply chain." Minimum security requirements are to be established, likely to be those currently published on the Customs Web site. Those eligible to participate are importers, customs brokers, forwarders, air, sea and land carriers, contract logistics providers, and other entities in the international supply chain and intermodal transportation system. This is expected to expand the eligible participants to include warehouses, but does not specifically require Customs to expand the pool of foreign manufacturers who may become members.

practice areas

international trade

regulatory



The Act codifies the tiered approach to benefits. Tier 1 members are certified, meaning their supply chain security profile has been submitted to Customs and accepted and, under the Act, this is to be accomplished within 90 days. They will receive a credit in ATS not to exceed 20 percent of the high risk score. Tier 2 members are those who have been validated and the Act calls for validation to be completed within one year. They are to receive the same credits in the scoring system as Tier 1 members, plus reduced exams and priority searches, presumably priority searches means they go to the head of the line when their goods are to be inspected for compliance reasons.

Then there are Tier 3 importers. These are the ones Customs has designated as relying on best practices. They are to receive expedited release, a further reduction in exams, priority for any exams ordered, further credits in the targeting system, and inclusion in any joint incident management exercises.

Section 217 requires Customs to establish procedures to revoke C-TPAT status. Suspension or expulsion from the program will now be published in the Federal Register, but at the same time, an appeals process is mandated. Section 218 requires Customs to develop a plan to institute a one-year pilot program allow third party validations which is to occur in about a year. The Act requires certification of those third party validators and does allow them to limit their liability. The Act also requires revalidation every two years for Tier 2 and Tier 3 members.

And then there is Section 220 which contains some rather odd language. Showing yet again that Congress really does not understand how cargo moves, it states, "The Secretary, acting through the Commissioner, shall consider the potential for participation in C-TPAT by importers of noncontainerized cargoes that otherwise meet the requirements under this subtitle." So, the CFS cargo of C-TPAT members now moving through the supply chain is all of a sudden chopped liver? Apparently Congress thinks bulk cargo is invisible!

There are C-TPAT program management provisions in the Act, too, but the only one of general interest is that 50 new supply chain security specialists are to be added to the staff! More newbies, ugh!

The rest of the Act is a hodgepodge of security provisions for ports and includes such things as additional radiation technology. Screening of some sort is mandated for all containers arriving in the United States and 100-percent scanning and searching of all containers identified as high-risk. There are also provisions for assistance/grants to foreign and domestic ports.

Establishment within DHS of an Office of Cargo Security Policy is also mandated by the Act. Whether this will end the turf wars between Customs and the Transportation Security Administration remains to be seen. Perhaps another sleeper provision is the requirement to appoint a Director of Trade Policy within DHS who is to

(A) advise the official [appointed to ensure that the trade and customs revenue functions within DHS are properly coordinated] regarding all aspects of [DHS'] policies relating to the trade and customs revenue functions of the Department;

(B) coordinate the development of department-wide policies regarding trade and customs revenue functions and trade facilitation; and



(C) coordinate the trade and customs revenue-related policies of the department with the policies of other Federal departments and agencies.

Apparently the concerns of the trade are being heard, as the Act also requires a study to determine:

(A) the extent to which the customs revenue functions carried out by the former U.S. Customs Service have been consolidated with other functions of the department (including the assignment of non-customs revenue functions to personnel responsible for customs revenue collection), discontinued, or diminished following the transfer of the Customs Service to the department;

(B) the extent to which staffing levels or resources attributable to customs revenue functions have decreased since the transfer, and

(C) the extent to which the management structure created by the department ensures effective trade facilitation and customs revenue collection.

Throughout the bill, DHS is mandated to consult with the business community, its stake holders and the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC). Of course, we all heard that the Act included the requirement that Customs establish an Office of International Trade. Basham established that office prior to the Act being signed into law.

Section 405 deals with the International Trade Data System, the computer system intended to allow traders to enter trade data once, and have it automatically distributed to all agencies that need it, and mandates all federal agencies that require paper for clearing or licensing imports and exports must participate in ITDS. There is also a section about in-bonds which seeks ways to enhance tracking and reconciliation between ports of arrival and ports of destination.

There is one more provision of great interest to international traders. Section 202 requires Homeland Security to develop a program for the resumption of trade in the event of another terrorist incident.

So, did either party win in enacting the legislation or did the country win as a whole?