



# Hot Topics in the Customs Arena

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**September 17, 2010**

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# IMPORTER SECURITY FILING (ISF)

- > Graduated enforcement is underway.
  - Manifest holds, non-intrusive inspections (NII), intensive inspections/examinations, notice of non-compliance warning letters, refusal of customs release.
- > Liquidated damages to begin soon.
  - \$5,000 per violation, up to \$10,000 per shipment.
  - Also, could lose C-TPAT status.
- > Final Rule is expected out before the end of the year.
  - Future of flexible filing options unknown.
- > Still no designated “finality” on ISF for purpose of liquidated damages. Statute allows for six years.
  - COAC (Advisory Committee on Commercial Operations of Customs and Border Protection) recommendations are under review by OR&R.

# 100% Air Cargo Screening Mandate

- > Enforcement began August 1, 2010.
- > 100% of cargo moving on passenger aircraft must be screened via TSA-approved methods prior to loading (domestic, export and import).
  - Rely on airlines, use CCSP (Certified Cargo Screening Program) certified IAC/ICSF (Independent Air Carrier/Independent Cargo Screening Facility), or shippers may become CCSP certified themselves.
- > TSA has advised Congress it is not meeting deadline on imported cargo currently.
- > Additional costs will be incurred and vary depending on choice of screening method.

# Management by Account (MBA)

- > White paper proposal by COAC in May 2009.
- > Fundamental business model for all commercial, product safety and security operations.
- > Integrated account based processing concept that encompasses virtually all interactions with filers/importers designated as trade accounts with an emphasis on internal controls leading to accurate/compliant reporting for both CBP and Other Government Agencies (OGA) requirements.
- > Discussions currently underway between the COAC Trade Facilitation Subcommittee and CBP Team on various proposals under this concept.

# MBA Proposals

- > Account Executive Concept
- > Centers of Expertise
- > Risk Based Account Management (Support Trusted Partners)
- > Single Partnership Program
- > Simplified Entry Process
- > Simplified Payment Process



# Account Executives and Centers of Expertise

## > **Account Executive**

- Central point of contact for trade partners in the industry sector.
- Create engagement plan with trusted partner to gauge compliance while minimizing touch points.
- Still in very early discussion phase.

## > **Centers of Expertise**

- Industry specific.
- Functions could include facilitation, policy, oversight, targeting, enforcement, validations and customer service.
- Multiple prototypes under discussion.

# Risk Based Account Management

## > Risk Based Account Management

- Implement a finite life span for non-trusted partners and exploit a fluid pool of account candidates based on risk.
- Engage and manage entities regardless of size, value or volume.
- Collect and analyze information to identify areas of risk.
- Lead activities and develop comprehensive strategies to manage risk.
- Initiate and carry out compliance and enforcement actions.
- Track and report performance results.

## > Support Trusted Partners

- Provide a single point of contact for all CBP trade related issues.
- Coordinate, task and direct CBP activities that impact trusted partners.
- Oversee trusted partner activities to ensure continued adherence to partnership program requirements.
- Develop and implement action plans to raise and maintain compliance.
- Provide guidance on CBP programs and initiatives.
- Resolve issues of national scope.

# Single Partnership Program

- > Streamline partnership application process (ISA, C-TPAT, ISA-PS, etc).
- > Increase efficiencies through closer connectivity and communication between various CBP Partnership Programs.
- > Decrease cycle time for multiple program approval.
- > Recognize partners who demonstrate a commitment to security and compliance.
- > Extend CBP partnership efforts in size and scope through partnering with Other Government Agencies (OGAs).
- > Three models currently under consideration.
- > Single portal system – single system/single password for trade end users.



# Simplified Entry

## > Concepts Under Review

- Unified / Concurrent Importer Security Filing (ISA) and Entry Filing
  - Perform cargo selectivity sooner in the process to provide an earlier cargo examination / clearance notification.
- Periodic Entry Summary
  - Use of Import Activity Summary Statement (IASS) to allow trusted partners to file entry summary data on a periodic basis (reference 19 USC 1484).
- Pre-Filed / Forecasted Information
  - Account based releases utilizing pre-filed or “forecasted” information, with minimal data at cargo release and all remaining data at entry summary.

# Simplified Payment

## > Short Term Proposals:

- Modernize the Bill Form (CBP Form 6084)
- Stale Checks (un-cashed trade refund checks)
- Electronic ACH Application by Account

## > Long Term Proposals:

- Electronic Periodic eBilling
- Expanded Periodic Monthly Statement (PMS)

# Denial of Prior Disclosures

## > Denial of Properly Filed Prior Disclosures

- The Customs regulations require a prior disclosure to be filed “before, or without knowledge of, the commencement of a formal investigation.” (19 C.F.R 162.74(a))
- Customs has denied properly filed prior disclosures based on a new interpretation of the requirement that the importer have “knowledge of a formal Customs investigation.”

## > Routine Customs Forms

- Two routinely used Customs documents have been considered “commencement documents” that provide an Importer notice of the commencement of a formal Customs investigation.
  - Requests for Information (CF 28)
  - Notice of Action (CF 29)

# Request for Information (CF 28) Notice of Action (CF 29)

OMB No. 1651-0023  
Exp. 04-30-2008

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection <b>REQUEST FOR INFORMATION</b> 19 CFR 151.11		1. Date of Request	
		2. Date of Entry and Importation	
3. Manufacturer/Seller/Shipper	4. Carrier	5. Entry No.	
5a. Invoice Description of Merchandise		5b. Invoice No.	6. HTSUS Item No.
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.	
9. TO:		10. FROM:	
Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.		11a. Port	11b. Date Information Furnished
General Information and Instructions on Reverse			
12. Please Answer Indicated Question(s)		13. Please Furnish Indicated Item(s)	
<input type="checkbox"/> A.	Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise.	<input type="checkbox"/> A.	Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto.
<input type="checkbox"/> B.	Identify and give details of any additional costs/expenses incurred in this transaction, such as: <input type="checkbox"/> (1) packing <input type="checkbox"/> (2) commissions <input type="checkbox"/> (3) proceeds that accrue to the seller <input type="checkbox"/> (4) assists <input type="checkbox"/> (5) royalties and/or license fees	<input type="checkbox"/> B.	Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates.
		<input type="checkbox"/> C.	Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article.
		<input type="checkbox"/> D.	Submit samples: Article number and description _____ from container _____ mark(s) and number _____ Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned. See item 14 below.
		<input type="checkbox"/> E.	
14. CBP Officer Message			
15. Reply Message (Use additional sheets if more space is needed.)			
16. CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.		16a. Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official)	16b. Signature
		16c. Telephone No.	16d. Date
17. CBP Officer		18. Team Designation	19. Telephone No.

CBP Form 28 (02/02)

DEPARTMENT OF HOMELAND SECURITY CUSTOMS AND BORDER PROTECTION <b>NOTICE OF ACTION</b> <i>This is NOT a Notice of Liquidation</i>		1. DATE OF THIS NOTICE
2. ENTRY NO.	3. DATE OF REQUISITION	4. DATE OF ENTRY
5. CARRIER	6. COUNTRY	7. ENTRY NO.
8. IMPORTER/SELLER/SHIPPER	9. COUNTRY	10. CUSTOMS BROKER AND FILE NO.
11. DESCRIPTION OF MERCHANDISE		
12. TO		13. FROM
12. THE FOLLOWING ACTION, WHICH WILL RESULT IN AN INCREASE IN DUTIES, —		
<input type="checkbox"/> IS <b>PROPOSED</b> IF YOU DISAGREE WITH THIS PROPOSED ACTION, PLEASE FURNISH YOUR REASONS IN WRITING TO THIS OFFICE WITHIN 20 DAYS FROM THE DATE OF THIS NOTICE. AFTER 20 DAYS THE ENTRY WILL BE LIQUIDATED AS PROPOSED.		
<input type="checkbox"/> HAS BEEN <b>TAKEN</b> THE ENTRY IS IN THE LIQUIDATION PROCESS AND IS NOT AVAILABLE FOR REVIEW IN THIS OFFICE.		
TYPE OF ACTION		
A. <input type="checkbox"/> RATE ADVANCE		
B. <input type="checkbox"/> VALUE ADVANCE		
C. <input type="checkbox"/> EXCESS <input type="checkbox"/> WEIGHT <input type="checkbox"/> QUANTITY		
D. <input type="checkbox"/> OTHER (See below)		
13. EXPLANATION (Refer to Action letter designations above)		
14. CUSTOMS OFFICER (Name or Title)	15. TEAM DESIGNATION	16. TELEPHONE

CBP FORM 29



# Notice of a Customs Investigation

- > Request for Information (CF 28)
  - Routine Customs Inquiry
  - Must contain specific language that could be considered “notice” of a formal investigation for purposes of filing a Prior Disclosure.
- > Notice of Action (CF 29)
  - May or may not contain specific language to trigger “notice” of a formal investigation for purposes of filing a Prior Disclosure.
- > Sample language found in some CF 28s and CF 29s
  - *“...Please be advised that this constitutes official notification of the commencement of a formal inquiry regarding the xxxx of all your imported merchandise and should be construed as encompassing all previous and future entries of this merchandise when providing answers to stated questions. This **CBP Form 28** serves as notice to preclude any claim for Prior Disclosure for filing incorrect xxxx for entries made by your company.”*

# AAEI Takes Action

- > AAEI Seeks Clarification for Importers
  - The *American Association of Importers and Exporters* (AAEI) has requested clarification on behalf of the trade from Customs on the apparent shift in policy.
- > Response from Customs
  - Response from Customs states that the agency plans to clarify its policy regarding what documents/language validly give an importer notice of the commencement of a formal investigation.
  - Customs claims that they still want to encourage the filing of prior disclosures without prompting.
  - However, the response also indicates that Customs' policy is that CF 28s and CF29s may, as a matter of law, give an importer notice of the commencement of a formal investigation.

# Things To Look For and Remember

- > Look for Special Language
  - Look for special “trigger” language on any Customs Request for Information (CF 28) or Notice of Action (CF 29) that may indicate the commencement of a formal investigation.
- > Review Importing Policies
  - Use a Request for Information (CF 28) as an opportunity to review your importing practices in order to identify any weak practices or possible violations your company should disclose.
- > Expedite Filing of Prior Disclosures
  - If violations are identified, file prior disclosures as soon as possible and realize that Customs may attempt to use a Notice of Action (CF 29) to pre-empt that filing.