



COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE

## **15<sup>th</sup> Term Commercial Customs Operations Advisory Committee**

### **Term to Date Recommendations**

**October 03, 2018**

#### **TRADE MODERNIZATION SUBCOMMITTEE**

#### **FOREIGN TRADE ZONE REGULATORY REFORM WORKING GROUP**

##### **Introduction**

Foreign-Trade Zones (FTZ) are secure areas under U.S. Customs and Border Protection (CBP) supervision that are generally considered outside CBP territory upon activation. Located in or near CBP ports of entry, they are the United States' version of what are known internationally as free-trade zones.

Authority for establishing these facilities is granted by the Foreign-Trade Zones Board under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u). The Foreign-Trade Zones Act is administered through two sets of regulations, the FTZ Regulations (15 CFR Part 400) and CBP Regulations (19 CFR Part 146).

Foreign and domestic merchandise may be moved into zones for operations, not otherwise prohibited by law, including storage, exhibition, assembly, manufacturing, and processing. Foreign-trade zone sites are subject to the laws and regulations of the United States as well as those of the states and communities in which they are located.

Under zone procedures, the usual formal CBP entry procedures and payments of duties are not required on the foreign merchandise unless and until it enters CBP territory for domestic consumption, at which point the importer generally has the choice of paying duties at the rate of either the original foreign materials or the finished product. Domestic goods moved into the zone for export may be considered exported upon admission to the zone for purposes of excise tax rebates and drawback.

##### **Role of CBP**

CBP is responsible for the transfer of merchandise into and out of the FTZ and for matters involving the collection of revenue. The Office of Regulations and Rulings at CBP Headquarters provides legal interpretations of the applicable statute, CBP Regulations and procedures.

The Port Director of CBP, in whose port a zone is located, is charged with overseeing zone activity as the local representative of the Foreign-Trade Zones Board. He or she controls the admission of merchandise into the zone, the handling and disposition of merchandise in the zone, and the removal of merchandise from the zone. In addition to the Foreign-Trade Zones Act, he or she enforces all laws normally enforced by CBP that are relevant to foreign-trade zones.

Zones are supervised by FTZ Coordinators (i.e., CBP Officers, Import Specialists, Entry Specialists or Agricultural Specialists, etc.) through compliance reviews and visits; the security of the zone must meet certain requirements.

### **COAC FTZ Working Group**

With over 230 general purpose zones and nearly 400 subzones in the United States, the FTZ industry is vital to the U.S. economy and provides many benefits to U.S. companies in order to help maintain and grow American jobs and associated U.S. investment through Customs duty mitigation strategies. With the modernization of the Automated Commercial Environment (ACE), CBP recognized the need to establish a COAC FTZ Working Group (WG) under the Trade Modernization Subcommittee. The goal of the FTZ WG is to collaborate on a regulatory rewrite of 19 CFR 146, modernize policies, and consider technology solutions in ACE to create a paperless and auditable environment for FTZ operations.

In accordance with the COAC charter, the FTZ WG was established on March 14, 2018, and has over 40 members representing all trade sectors including U.S. manufacturers, general purpose zones, subzones, importers, exporters, customs brokers, attorneys, FTZ consultants, sureties, and various trade associations including the National Association of Foreign Trade Zones (NAFTZ) and the National Customs Brokers and Forwarders of America (NCBFAA). The FTZ WG also includes representation from the FTZ Board on behalf of the Department of Commerce (DOC) and CBP's Office of Trade Relations (OTR), Office of Trade (OT), Regulations and Rulings Directorate, and Office of Field Operations (OFO).

To tackle the monumental task of a regulatory rewrite for 19 CFR 146, the FTZ WG established three (3) teams each participating in weekly conference calls from March through July. Team 1 reviewed Subpart A-B, Team 2 Subparts C-E, and Team 3 Subparts F-G. The entire FTZ WG also had monthly calls and in-person meetings on July 18-19. During this meeting, the FTZ WG developed the below recommendations as well as a red-lined version of 19 CFR 146 that began in 2015 and culminated in a regulatory draft package that shall become a formal part of these COAC recommendations.

### **Modernization of Language**

#### **010300**

- 1) **Regulatory Reform:** As outlined in the red-lined version of 19 CFR 146 to support these recommendations, COAC recommends that CBP modernize and streamline FTZ Regulations to:
  - conform with the FTZ Board regulations modified in 2012 and reference FTZ board production authority scope of approval and restrictions;
  - reflect a paperless environment in ACE;
  - eliminate and/or automate certain forms, seals, and processes that are antiquated;

- distinguish authority of CBP Centers of Excellence and Expertise for post entry work;
- revise to meet the new in-bond regulations implemented in 2018;
- update and move all definitions to Subpart A to provide a central location for clarity;
- reorder regulatory sections to provide clarity and logical order of content;
- clarify language concerning valuation and quantity reporting;
- modify the five (5) day removal rule

### **010301**

**2) Update Regulations:** As outlined in the red-lined version of 19 CFR 146 in support of these recommendations, COAC recommends that CBP draft language for:

- “Zone Status Changes” in 19 CFR 146.12(e).
- “Voluntary Cessation of Zone Activities” in Subpart C
- Free Trade Agreements with Duty Deferral restrictions (create 19 CFR 145.64 for NAFTA and 19 CFR 145.65 for U.S. Chile).
- Expanded language for 19 CFR 146.15 to distinguish dutiable status of the goods or consider consolidating with Subpart E.
- Title transfer in an FTZ.
- Temporary removal provisions.

### **010302**

**3) Trade Remedies:** COAC recommends that CBP adopt changes to 19 CFR 146.13 and throughout 19 CFR 146 as applicable to include regulatory language that merchandise subject to Anti-Dumping/Countervailing Duties (AD/CVD) and trade remedies such as Section 201, 232, and 301 must be as admitted in Privileged Foreign Status. The regulatory changes should clarify that any applicable AD/CVD duties would apply regardless of the processing conducted in the FTZ, but as applicable trade remedy duties may not apply based on the FTZ processing. However, in all cases the rate of duty in force on the date of removal from the FTZ would apply. Further, CBP should provide clarification regarding the appropriate country of origin for duty purposes due to Census’ requirement, inconsistent with CBP origin determinations, to report the country of origin based on the foreign status merchandise and in cases of components from more than one country, the country with the greatest aggregate value.

### **010303**

**4) Zone Activation Process:** COAC recommends that CBP revise 19CFR146.6 to provide a more formal and streamlined process for the zone application, denial and appeal process so activations are handled in a timely and uniform manner.

### **010304**

**5) ACE Policy:** As FTZ admissions fully migrate to ACE, the regulations should be updated to clarify the different admission types, the timing associated with each, and the specific data elements required in ACE, including the same for regular and weekly entries.

## Policy Changes

### 010305

- 6) **Direct Delivery:** COAC recommends that CBP develop and publicly disseminate a risk assessment methodology that is both company-based and product-based to allow CBP to establish known parameters for approvals and also allow related parties to FTZ Operator firms to qualify for direct delivery. COAC also recommends that 19 CFR 146.39 be updated to require the ACE data elements for CBP Form 214 as outlined in the ACE CATAIR.

### 010306

- 7) **Production Equipment:** COAC recommends that CBP create a new admission type or flag in ACE for Production Equipment and modify the regulations at 19 CFR 146.16 to accommodate this revised process and any applicable requirements within the FTZ Manual.

### 010307

- 8) **FTZ Bonding:** COAC recommends that CBP review how the FTZ bond amount (Activity Code 4) is determined with the COAC Bond Working Group to ensure it contemplates the custodial obligation of an FTZ based on duty of average inventory rather than value within the FTZ. This review should ensure the FTZ bond amounts are sufficient to protect the revenue of the U.S. and calculated in a uniform manner to avoid unnecessary hardship on the trade. COAC further recommends that CBP modernize the FTZ regulations to align with the eBond environment implemented in January 2015.

### 010308

- 9) **FTZ Manual:** In support of the final regulatory and policy changes made to 19 CFR 146, COAC recommends that CBP modernize and streamline the FTZ Manual to ensure it aligns with all regulatory reform, policy changes, and automation capabilities.

### 010309

- 10) **Section 321 De Minimis:** In light of recent CBP rulings restricting section 321 de minimis shipments through FTZs and the increasing flow of such shipments from warehouses abroad located in Mexico and Canada, COAC recommends that CBP consult with COAC to examine the economic impact such restrictions are having on the domestic FTZ industry and the efficacy of a regulatory or statutory change to enable such operations to occur in the U.S.

## **PGA Capabilities and Collaboration**

### **010310**

**11) Partner Government Agencies (PGA):** COAC recommends that CBP incorporate into the regulatory rewrite of 19 CFR 146 any reference to PGA jurisdiction where CBP has enforcement authority to hold or detain merchandise. COAC also recommends that CBP engage with the Border Interagency Executive Council (BIEC) to solidify PGA Policy to incorporate into the regulatory rewrite for admissions.

## **Technology and Automation Solutions**

### **010311**

**12) CBP Form 216 and Exceptions:** COAC recommends that CBP create functionality in ACE that provides a mechanism to electronically report CBF Form 216 and all exceptions for overages, shortages, destructions, etc.

## **FTZ Enforcement**

### **010312**

**13) Penalties and Liquidated Damages:** COAC recommends that CBP modify 19 CFR 146.81 to clarify and reference potential for liquidated damages under 19 CFR 113.73 and penalties under 19 USC 1592 for clearer transparency to the trade.

### **010313**

**14) Suspension:** COAC recommends that CBP modify 19 CFR 146.82 to provide an opportunity to appeal to the Office of Field Operations (OFO) at CBP Headquarters to be consistent with OFO's review of any cause for suspension.

---

**February 27, 2019**

**SECURE TRADE LANES SUBCOMMITTEE  
IN-BOND RECOMMENDATIONS**

**The following recommendations were unanimously adopted by the COAC members present at the meeting.**

**010314**

1. COAC recommends that CBP enhance ACE Reports to allow bond owners to access as much data as legally allowed, for every bonded movement of cargo that has obligated their bond. This will enable bond owners to effectively manage legal obligations that are created by the use of their carrier or custodial bonds, based on below requirements:
  - Regardless of the mode of transportation in which a bond was initiated
  - At a minimum the report should display information that will identify the physical shipment i.e. arriving carrier, bill of lading, pieces and weight as well as the party that has obligated their bond.

**010315**

2. COAC recommends that ACE functionality be developed to send push notifications to the party whose bond has been obligated when a shipment is nearing the 30 day maximum time, similar to the ACE General Order clock functionality that generates 1R/1S-type notifications, in anticipation of the enforcement of a strict maximum 30-day In-Bond total transit time.

**010316**

3. COAC recommends that visibility to CBP cargo status be given to both the carrier and broker as soon as possible and earlier than is currently done. Today, visibility to the CBP status of cargo moving under bond is not provided to the carrier until messages are received by CBP that report the arrival of the cargo at the In-Bond destination port, precluding the ability to effectively manage delivery within the In-Bond facility free time

**010317**

4. COAC recommends that CBP clarify and standardize what constitutes the legal boundaries that are allowed for the purpose of verifying content and piece count of In-Bond merchandise. In-Bond merchandise is frequently opened in order to verify the piece count and detailed specifications (make, model, serial number, etc.) of the goods prior to being exported. CBP periodically issues liquidated damage claims alleging unauthorized manipulation of the In-Bond merchandise. Since there is no definition of manipulation in the regulations, trade stakeholders lack the opportunity to know with certainty what actions are prohibited when verifying In-Bond merchandise.

### **010318**

5. COAC recommends that holds placed by CBP or a Participating Government Agency (PGA) on all cargo, including cargo moving In-Bond, should include disposition codes that identify the hold status of cargo by communicating what PGA has held the cargo, the reason the cargo has been held, the location the cargo must be moved to for inspection, and/or if the cargo is required to be exported or destroyed.

### **010319**

6. COAC recommends that CBP develop a capability, through the ACE portal or other electronic means, to provide real-time notice to the trade when a FIRMS code is activated or deactivated. This will ensure visibility to trade in the correct assignment of the required FIRMS codes for arrivals.

### **010320**

7. COAC also recommends that the requirement for inclusion of a FIRMS code for all In-Bond cargo movements be deferred until there is mutual agreement to the capability and requirement for FIRMS application on all In Bond movements, including a suitable transition period to allow Trade to implement this new requirement.

### **010321**

8. COAC recommends that CBP provide the ability to amend In-Bond transactions rather than the current process of having to delete and re-add full details of an In-Bond record. Efficiencies would be gained by both the trade and CBP with this additional functionality.

### **010322**

9. COAC recommends that CBP publish clear and specific guidelines that explain what acceptable and adequate documents and/or procedures will satisfy CBP's Proof of Export requirements. Until an automated solution is available, suggested processes are to continue to allow CBP, upon request, to stamp CBPF-7512 or similar document containing the In-Bond number, outbound bill of lading, an official foreign government entry document or its electronic equivalent.

### **010323**

10. COAC recommends that CBP work closely with industry stakeholders to develop a comprehensive Information Technology (IT) plan across ACE modules to facilitate In-Bond automation. The principles informing the development of this plan should include the following:
    - i. Carriers in all modes should be provided with the necessary functionality to accomplish all carrier related In-Bond automation requirements in the Automated Manifest System (AMS) and not be required to access the Automated Broker Interface (ABI) for such functions.
    - ii. The timing to develop/implement new ACE functionality to allow efficient implementation of the final rule automation requirements should determine the effective date of a given automation requirement.
    - iii. Automated solutions should be developed on a systemic basis to ensure stakeholders do not have to engage in manual workarounds to implement partial functionality.
    - iv. CBP should leverage existing ACE automation projects, such as truck refactoring and automated export manifest, to the maximum extent to develop full In-Bond automation capabilities for both import and export across all modes.
    - v. A timeline of no later than December 31, 2019 should be established by CBP to require all facilities that handle In-Bond freight to automate their In-Bond processes.
- 

## **SECURE TRADE LANES SUBCOMMITTEE**

### **TRUSTED TRADER**

**The following recommendations were unanimously adopted by the COAC members present at the meeting.**

### **010324**

1. COAC recommends that CBP adopt a Forced Labor strategy and continue to develop a Forced Labor component of the future CTPAT Trade Compliance program that allows companies who have a Corporate Social Responsibility or Compliance program to demonstrate compliance and self-identify as low risk in the area of forced labor, expanding their trusted trader scope.

### **010325**

2. COAC recommends that CBP include a definition of the term Forced Labor in the strategy document.

### **010326**

3. COAC recommends CBP allow companies that have forced labor programs the option of opting in or opting out of the Forced Labor component of the future CTPAT Trade Compliance program to be in line with the voluntary nature of CTPAT for security and Importer Self-Assessment (ISA) for trade compliance, and similar to existing ISA programs for Product Safety and Drawback.

### **010327**

4. COAC recommends CBP clearly identify the program requirements, participant qualifications, and detail documents required as “evidence of implementation” by stage of participation such as the initial application and review, an annual notification and a periodic validation, as appropriate. Existing standards, such as the California Supply Chain Transparency & Disclosure Act, should be reviewed for sufficient evidence of implementation to leverage efforts and programs companies already have in place.

### **010328**

5. COAC recommends wherever possible, a standard of sharing account information such as a company’s internal controls to minimize forced labor risk and remediation procedures is preferred over requiring prescriptive documents such as audit reports, corrective action plans, etc.

### **010329**

6. COAC recommends that when documents such as audit reports or corrective action plans are provided, the information should only be related to forced labor and importers should be allowed to redact or omit sections related to other corporate social responsibility areas.

### **010330**

7. Regarding the proposed strategy criteria on “Remediate Violations”, COAC recommends that, as is the case with other product admissibility or compliance components e.g., intellectual property or commercial negligence, CBP provide guidance regarding the potential enforcement actions such as issuing a detention, redelivery or seizure notice or a monetary penalty when CBP suspects or a program participant discloses a violation.

### **010331**

8. Regarding the proposed strategy criteria on “Remediate Violations”, COAC recommends that, as is the case with other product admissibility or compliance components e.g., intellectual property or commercial negligence, CBP provide guidance regarding the potential enforcement actions such as issuing a detention, redelivery or seizure notice or a monetary penalty when CBP suspects or a program participant discloses a violation.

### **010332**

9. COAC recommends CBP continue to work with the Trusted Trader Working Group (TTWG) on the requirements, development, and implementation of the specific criteria and benefits of the strategy to achieve the objectives of the overall Trusted Trader Strategy Framework to include alignment with current Trusted Trader programs as well as achieving a balance of requirements, investment, and benefits for participants.

---

## **SECURE TRADE LANES SUBCOMMITTEE**

### **PIPELINE**

**The following recommendations were unanimously adopted by the COAC members present at the meeting.**

### **010333**

1. COAC recommends that CBP develop a Standard Operating Procedure (SOP) for Pipeline movements that will standardize entry filing procedures and provide uniformity at all ports of entry. To help collaborate on this effort, the Pipeline Working Group has created an SOP Appendix to these recommendations to capture key points and issues that should be included in this SOP.

### **010334**

2. COAC recommends that CBP standardize data reporting requirements that allows for monthly reporting of Pipeline movements as outlined in the SOP Appendix.

### **010335**

3. COAC recommends that CBP develop standard reporting requirements for Pipeline Operators, which will resolve variability among port practices as outlined in the SOP Appendix.

### **010336**

4. COAC recommends that CBP automate the filing of the 7512 for in-bond pipeline movements across land borders to meet Census and data collection requirements as outlined in the SOP Appendix.

**010337**

5. COAC recommends that CBP confirm the appropriate Merchandise Processing Fee (MPF) procedures for natural gas and other products moved in continuous pipeline stream.

**010338**

6. COAC recommends that CBP review the bond requirements for Pipeline Operators with the Bond Working Group to provide uniformity in the Customs Bonds required and liability created for Pipeline Operators.

**010339**

7. COAC recommends that CBP place the Pipeline Working Group on hiatus to allow CBP to develop the SOP to respond to these recommendations and continue ongoing dialogue with the Petroleum Center of Excellence and Expertise. If there are technology and/or regulatory issues to be addressed, COAC recommends these be addressed with the Trade Support Network or COAC Regulatory Reform Working Group as necessary.

**See supporting documentation to these recommendations (Appendix A)**

---

**NEXT GENERATION FACILITATION SUBCOMMITTEE**

**REGULATORY REFORM**

**The following recommendations were unanimously adopted by the COAC members present at the meeting.**

**Communication:**

**010340**

1. COAC recommends that CBP provide for the use of automated and electronic forms of notification whenever possible.

**Clarity:**

**010341**

2. COAC recommends that CBP should simplify filings, promoting the use of automated and electronic submissions as practical to eliminate the need for paper forms and multiple copies.

### **010342**

3. COAC recommends that CBP eliminate irrelevant or obsolete documents and data wherever applicable and practicable.

#### **Consistency:**

### **010343**

4. COAC recommends that CBP remove lists embedded within the text of the regulations whenever possible to prevent reliance on potentially incorrect/outdated information. Instead, CBP should consider placing these lists on CBP.gov as a reference page or document.

### **010344**

5. COAC recommends that whenever amending Sections or Parts of the regulations that CBP also take the opportunity to eliminate in those regulations, language and references for antiquated communication methods and obsolete programs or agreements that are no longer active.

#### **Consolidation:**

### **010345**

6. COAC recommends that CBP consolidate references and information related to a topic to the greatest extent possible.

#### **Compatibility:**

### **010346**

7. COAC recommends that CBP identify mandatory certificates, certifications, or additional product information and allow, to the extent provided by law, filers to supply them electronically, as well as to supply them upon request using an account-based approach, rather than having to automatically submit them with each transaction.

### **010347**

8. COAC recommends that where practicable, CBP should implicitly grant permission for certain routine activities unless CBP expressly states otherwise.

### **010348**

9. COAC recommends that CBP should grant full extension periods instead of requiring multiple extension requests, particularly where CBP routinely grants them anyway.

### **010349**

10. COAC recommends that CBP reduce regulation and control regulatory costs by eliminating the approximately 170 sections in Section 19, Code of Federal Regulations, that the Regulatory Reform Working Group identified as appropriate for repeal.

**See supporting documentation to these recommendations (Appendix B)**

---

## **E-COMMERCE**

**The following recommendation was unanimously adopted by the COAC members present at the meeting.**

### **010350**

1. COAC recommends that CBP review and adopt the multi-modal supply chain mapping that it developed with the trade when considering future e-commerce policy, automation development, enforcement postures, facilitation programs and education efforts.

**See supporting documentation to this recommendation (Appendix C)**

---

## **INTELLIGENT ENFORCEMENT SUBCOMMITTEE**

### **INTELLECTUAL PROPERTY RIGHTS**

**The following recommendations were unanimously adopted by the COAC members present at the meeting.**

### **010351**

1. Additional Data Elements and Metrics: Building on the information already provided in CBP's annual IPR Enforcement Statistics, COAC recommends that CBP collect the following statistical data by mode and provide metrics regarding (1) seizures and (2) detentions which do not result in seizures:
  - a) types of IPR violations by mode
  - b) number of shipments by mode
  - c) country of origin for such shipments,
  - d) port of export for such shipments, and
  - e) type of commodity for such shipments.

## **010352**

2. Small Package: Whereas the small package arena has been noted by CBP publicly to be a concern for potentially containing illicit shipments of IPR infringing products, and whereas the express industry and rights holders have an interest in participating with CBP to explore avenues for better detection, interception, and prevention of each illicit shipment, COAC recommends:
  - a. CBP develop, with the partnership of rights holders, importers and/or consignees, the postal service, and the express industry, a mapping exercise that depicts the specific risks or concerns within the small package industry for IPR violations, which are different from traditional trade, so that those specific concerns can be prioritized and addressed.
  - b. Based on the mapping exercise, COAC recommends that CBP develop a specialized, efficient process for targeting, detaining, inspecting, seizing, destroying, and/or releasing small parcels, specifically related to the shipment's value and overall risk. The process should be specific to counterfeit goods and take into account the resources available to CBP, importers and/or consignees, and rights holders.
  - c. As rights holders have noted a deficiency in the type and amount of information available to them related specifically to the small package arena, COAC recommends that CBP, in partnership with relevant stakeholders, examine avenues for information exchange between rights holders, law enforcement, and CBP to facilitate dissemination of intelligence related to supply chains and trends in IPR infringing materials in the small package arena. CBP should consider establishing a separate channel, such as a public communication and quarterly meetings with the stakeholders to facilitate reporting and information exchange on a consistent basis concerning small packages containing IPR infringing products. This will ensure that the proper stakeholders are engaged and aware of such trends and data, as rights holders can use this information to focus their resources depending on the trends shown.

## **010353**

3. Automation: As the current process for notification and information exchange is a paper/manual process, COAC recommends that CBP explore the establishment of an electronic means to notify and share as many data points as possible along with relevant documents at the time of shipment seizure or detention.

#### **010354**

4. Regulatory: COAC recommends that CBP evaluate existing regulations related to counterfeits and suggest modifications that would streamline the process of seizure, forfeiture, detention, and abandonment for IPR enforcement.

#### **010355**

5. Donation Program: COAC encourages collaboration between CBP and the private sector to enable the detection of counterfeit products and enforce IPR by allowing donations of hardware, software, equipment and similar technologies as well as accept training and other support services from the private sector for the purpose of enforcing IPR.

#### **010356**

6. eRecordation: COAC recommends that CBP improve communication with the ports of entry through the designated CBP Centers when onboarding new rights holders who register their brand through the eRecordation process. This should encourage participation in the eRecordation program by avoiding unnecessary delays, detentions or seizures.
-