

**Commercial Customs Operations
Advisory Committee (COAC)
Intelligent Enforcement Subcommittee
IPR Working Group
Draft Recommendations**

July 15, 2020



COAC IPR Working Group is pleased to present the following recommendations:

- 1) **IPR Restricted and Prohibited Parties List:** COAC recommends that CBP should seek and obtain the legal authority to create and enforce a comprehensive “IPR Restricted and Prohibited Parties List” (hereinafter called the **IPR RPP List**) consisting of foreign and domestic parties (i.e., individuals, companies or organizations) who are known offenders due to repeat violations. There are troves of information about counterfeiters by the trade, CBP, ICE and other agencies that can be put to more effective use through a consolidated approach and system. Known counterfeiters like terrorists, proliferators, and other bad actors, present a threat to U.S. health, safety, security, and the economy. The **IPR RPP List** would serve to deter and reduce the numbers of de minimis (Section 321) as well as other informal and formal entries of counterfeit shipments flooding the country.
- 2) **Public Lists:** COAC recommends that CBP create and enforce the **IPR RPP List** based on the successful use of other lists created for “denied parties” from entities such as Bureau of Industry and Security (BIS), Directorate of Defense Trade Controls (DDTC), Office of Foreign Assets Control (OFAC) and CBP’s own Debarred or Suspended Importers list.
- 3) **CBP IPR Database Portal:** COAC recommends the **IPR RPP List** be developed with information that contains data from numerous sources including the IPR rights holder’s own internal investigations. This list would be housed in a new CBP IPR Database Portal, and would complement CBP’s IPR eRecordation Application, which serves as CBP’s system of record for IPR administration and enforcement.
- 4) **IPR RPP List Criteria:** COAC recommends CBP develop a process and criteria to place parties on the **IPR RPP List** based on information gleaned from the CBP IPR Database Portal as well as CBP’s own internal resources from [IPR Seizure Statistics](#) and targeting intel. Such criteria should be made public and consider violations, such as:
 - a. Shipments without valid licensing agreements (if required)
 - b. Repeat offenders with more than three (3) seizures and/or uncontested detention notices.
 - c. Foreign shippers or consolidators of violative goods even if consolidated and commingled with legitimate merchandise due to repeat violations.
 - d. Any seizures reported on CBP’s annual IPR Seizure Statistics report, which currently only provides commodity, country of origin, and value details, not any list of the violators.
- 5) **Trusted IPR Vendor List:** In support of prior recommendation 10437, COAC recommends that CBP should complement the **IPR RPP List** with a Trusted IPR Vendor list. In addition to the criteria from our prior recommendation, CBP could also consider the receipt of ruling requests from the trade community concerning prospective transactions. Under 19 CFR Part 177, the Office of Regulations & Rulings may issue binding rulings in respect to a specifically described transaction, that constitute a definitive interpretation of applicable law.
- 6) **Appeal Process:** COAC recommends that CBP develop an appeals process to allow for parties to be removed from the **IPR RPP List** and ensure due process. The appeal process should be made public and consider the criteria to be removed from the **IPR RPP**

List and timeframe for doing so to avoid unnecessary hardship on the trade. Such criteria should include:

- a. Party provides receipt of proper IPR licensing
 - b. Party changes sourcing to an approved or licensed supplier or distributor
 - c. Party can remove violative goods from co-mingled shipments and correct problems with co-mingled and/or consolidated shipments.
- 7) **Publicly Available:** COAC recommends that CBP make the **IPR RPP List** publicly available, like the BIS, OFAC, and other lists. **The IPR RPP List** should include the entity names and addresses and be downloadable so these lists can be managed in proprietary software for vetting purposes.
- 8) **ACE Integration:** Similar to recommendation 10446, COAC recommends that CBP program ACE to reject any entries for any parties on the **IPR RPP List** and have an automated process to remove them from the list through the appeals process.
- 9) **STOP Act:** COAC recommends that CBP promulgate regulations to implement the requirements set forth in the Synthetic Trafficking and Overdose Protection (STOP) Act. Such regulations should ensure that USPS provides advance electronic data for risk assessment for 100% of mail parcels that enter the United States, with the level of information provided comparable to that already required of inbound air cargo. Additionally, as CBP further develops its e-commerce strategy and contemplates the potential adoption of new data requirements for e-commerce shipments, it should ensure that such requirements are applied simultaneously in the cargo and mail environments. In particular, COAC recommends that additional requirements not be placed on air cargo until the technical, legal and practical barriers for mail data requirements have been resolved satisfactorily, such that advance data requirements—both current and new—can be mandatorily applied to 100% of mail shipments arriving in the U.S. Finally, as part of its ongoing COAC e-commerce and IPR work, CBP should collaborate with COAC and/or Working Groups dedicated to the topic of advance data for mail in order to consult and issue recommendations in this regard.