

**Commercial Customs Operations Advisory  
Committee (COAC)  
Intelligent Enforcement Subcommittee  
Intelligent Enforcement Modernization White Paper**

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**COAC**

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COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE

# Intelligent Enforcement Modernization White Paper

## **BACKGROUND**

CBP has invited the COAC Intelligent Enforcement (IE) Subcommittee to draft an initial White Paper concerning enforcement modernization. This initiative supports CBP's development of its 21<sup>st</sup> Century Customs Framework ("CCF") designed to address and enhance aspects of CBP's trade mission to better position the agency to operate in the current trade environment. One of the 21<sup>st</sup> CCF themes is "intelligent enforcement" anchored on further improving risk management and the impact of efforts to detect high-risk activity, deter non-compliance and disrupt fraudulent behavior—all in the interest of enforcing U.S. trade laws to protect America's economic security and ensure consumer safety. CBP's intelligent enforcement efforts include how to better utilize technology, big data, and predictive analytics to drive decision-making.

## **CONSIDERATIONS**

The IE Subcommittee presents the following themes for CBP's consideration.

### **1) Fines, Penalties and Forfeitures (FPF) Partnership Branch/Special Processing for Partnership Accounts**

#### *Issue:*

The FPF decision-making and resolution process often lacks uniformity regarding time frames, rationale for decisions and consequence delivery. For trade-related cases, petitioners have indicated that often it is not evident whether their trusted trader status is considered in the adjudication of such cases.

#### *Solutions:*

CBP should consider realigning its FPF offices to create a trusted trader center, office or branch to address cases involving such partners. Perhaps the office or branch could collaborate with the Center Partnership Branches and receive input from them as appropriate, including the National Account Manager (NAM) and/or Supply Chain Security Specialist (SCSS) as appropriate.

CBP should consider enhanced mitigation guidelines written for Customs Trade Partnership Against Terrorism (CTPAT)/Trusted Trader partners or at least mention in the appropriate sections of the Mitigation Guidelines (or Seized Asset Management and Enforcement Procedures Handbook) how FPF generally should consider CTPAT/Trusted Trader status in the mitigation process like they do for Importer Security Filing (ISF) liquidated damage claims which provide a 50% reduction for CTPAT partners.

FPF should provide expedited processing for partners to improve transparency, consequence delivery and remedial action. In mitigating such claims, CBP should provide partnership accounts the ability to demonstrate a financial investment in compliance and/or infrastructure as appropriate as was the case in the Super Carrier Initiative and with other enforcement agencies such as the TSA.

CBP should consider using a template or some type of intake for all claims that designate whether an account is a partnership account so FPF officials are aware of the status in resolving such matters.

## **2) Account Based as Opposed to Transaction Based Penalty Issuance & Enforcement**

### *Issue:*

CBP should take a more holistic and national approach in addressing claims and managing the enforcement process instead of making determinations on a more myopic, episodic manner.

### *Solutions:*

CBP should consider not only the prior record or history of the petitioner's violations but also the account's commitment to partnership. CTPAT and Trusted Trader would represent an important account-based consideration.

CBP should consider issuing warning letters and informed compliance to appropriate accounts in lieu of enforcement actions by evaluating the accounts' status, volume and record with the Center Partnership Branch, including the NAM and SCSS as appropriate.

If CBP could require petitioners to file claims based on a particular template or format they should provide information concerning their account and compliance as well as enforcement history for consideration of the FPF officials.

Enforcement evaluation teams should be created at a Center or national level so that the issuance and resolution of claims would be handled nationally and uniformly instead of locally and inconsistently. This could enable CBP to avoid issuance of claims that would be cancelled or substantially mitigated months later. It also could decrease the flood of less consequential cases, improve work-load management, increase efficiencies and promote a focus on truly bad actors.

CBP should enhance FPF interaction with Centers, encouraging input from Center SMEs in enforcement matters, to evaluate the worth of trade-related cases. In this way, CBP could better contemplate the necessity of the case before submitting to FPF, from a partnership perspective, to assess whether the case should be issued to begin with.

On the other hand, the account-based approach should allow CBP to address repeat offenders displaying recidivism in a more heavy-handed, enforcement-minded manner.

### **3) Automation of CBP Notices and Decisions**

*Issue:*

CBP should continue to invest in automation to streamline and expedite the enforcement process and, in turn, consequence delivery. An automated, well-connected enforcement ecosystem will ensure cases do not languish, enhancing the impact of such decisions.

*Solutions:*

CBP should continue to support the modernization of SEACATS, the backbone of CBP's internal enforcement processing system. COAC has made several recommendations around the automation of SEACATS and the manner in which CBP generates liquidated damages notices (5955A), seizure and detention notices, 1592 violations, etc. Those recommendations should be considered as part of the Enforcement Modernization initiative because the current paper-based process does not provide enough transparency to fully implement the consequence delivery process.

CBP should align SEACATS or its appropriate internal system with ACE for trade-related cases so that there is a more seamless communication flow between the petitioner and CBP. Ideally, information and documentation should be exchanged electronically via CBP's enforcement systems with the trade as appropriate through the ACE portal.

Through an enhanced automated process, CBP should improve its liquidation, penalty and detention/seizure notices to ensure they provide all the information and detail necessary to inform the petitioner of the reasons for the claim. This is particularly critical with detention notices that often lack a detailed reason and legal/regulatory citation supporting the action.

CBP should align the automated enforcement system such that OFO, Center officials, NAMs and SCSS can evaluate and or provide input on such claims in a seamless and relevant manner, providing insights, including account information.

CBP also needs to automate the petition process to an electronic format similar to the ACE Protest Portal. In the short term, CBP should consider an email box for each FP&F office with an automated intake reply to allow petitions and supporting documentation to be emailed until a portal can be built in ACE that would integrate with SEACATS.

### **4) Enhanced Enforcement Rationale and Guidance**

*Issue:*

Enforcement decisions, particularly at the local level, are brief and often lack the meaningful detail that would enable petitioners to enhance processes to avoid future claims by adopting more compliant behaviors.

*Solutions:*

CBP should provide greater details in their detention, seizure, liquidated damages, and penalty notices as well as in their rationale when granting mitigation (or not) in their enforcement decisions.

CBP should consider requiring, or at least suggesting, a template, perhaps electronically, with certain elements for petition submissions and likewise in its mitigation decisions, designed to require background information that enables the petitioner as well as CBP to issue more meaningful decisions. CBP should do away with “free-form” non-standard submissions and decisions.

CBP’s decisions should include suggested actions and/or resources for the petitioner to consider in developing compliance programs to avoid future violations.

## **5) Informal Realignment of FPF Offices & Decision-Making on a National Level**

*Issue:*

While we acknowledge that FPF has a particular framework and career path for its officials in place that likely must remain intact, a slight realignment on a more national level could enhance the enforcement process.

*Solutions:*

CBP should consider an informal matrix-like alignment similar to, but not as structured as, the Centers to share best practices and uniform processing of certain types of trade-related claims, *e.g.*, liquidated damages, seizure, penalties, etc.

CBP should consider adjusting the settlement process on a national level as it does for certain liquidated damages claims through Indianapolis, for other claims, *e.g.*, seizures and penalties, instead of just handling differently from one jurisdiction to the next. We recognize this process would need to consider that seizures are adjudicated at local district courts.

This would promote a more uniform and transparent resolution process. Further, it could provide an opportunity to arrive at meaningful, impactful settlements that address CBP as well as violator concerns, perhaps considering infrastructure or compliance improvements as part of the settlement.

## **6) Modernized & Streamlined Petition and Appeal Process**

### *Issue:*

The enforcement process is overly cumbersome and delayed, minimizing the impact of consequence management and the opportunity for petitioners to assess and implement compliance programs and financial investments to avoid future claims.

### *Solutions:*

CBP should provide better clarification to petitioners as to the jurisdictional authority of its FPF versus Headquarters offices to adjudicate its claims. By clarifying CBP's jurisdiction and the office that will address each claim this will enable petitioners to better assess whether they wish to proceed with a claim and how to complete the Election of Proceedings Form.

CBP should consider other federal agency enforcement proceedings models. For instance, the TSA and FAA use a very streamlined and straightforward process consisting of a Letter of Investigation to which the claimant responds and then a Notice of Proposed Civil Penalty providing for payment, discussion with a TSA official (usually an attorney) or a hearing. Once that decision is rendered, claimants typically pay the claim without requesting a supplemental proceeding because much interaction has occurred on the front end.

Should CBP maintain the same process as it does now, it should consider requiring claimants who request a supplemental petition to request "further review" similar to a protest based on certain enumerated criteria. If they do not meet the criteria, further review is denied.

CBP should consider a different process for claimants found to repeatedly violate the same or similar laws perhaps involving CBP counsel and a hearing or meeting to avoid issuing the same claims and receiving the same petitions to such claims over and over again. Perhaps the Notice of Proposed Civil Penalty (or another process) could be adopted towards this purpose, where CBP would not need to provide supplemental consideration to repeat violators unless they meet "further review" criteria.

## **7) Review of Mitigation Guidelines**

### *Issue:*

We recognize that CBP has been reviewing the mitigation guidelines internally and believe a discussion with the COAC about improvements to the guidelines should also be considered.

*Solutions:*

The current mitigation guidelines are not clear in situations when other government agencies are involved, especially failure to redeliver claims that seem to conflict with the FDA's own mitigation guidelines for first time violations. These liquidated damage claims are for three times the value of the merchandise and can be punitive to small businesses because CBP rarely allows mitigation as outlined within the FDA mitigation guidelines that allows claims to be reduced to 10% of the value.

As mentioned above, the mitigation guidelines could also provide more clarity on any benefits to CTPAT and Trusted Traders as they do for ISF claims.

**CONCLUSION**

The COAC Intelligent Enforcement Subcommittee appreciates the opportunity to provide this initial White Paper concerning enforcement modernization. It is our hope that these proposals will lead to further engagement and ideally a dedicated working group to address enforcement in the context of CBP's 21<sup>st</sup> CCF. In this way, CBP will streamline and enhance the enforcement process in a way that recognizes and benefits partnership accounts, improves risk management, detects high-risk activity, deters non-compliance and disrupts fraudulent behavior in a way that minimizes repetitive violations.