

## **COAC MEMBER FEEDBACK ON ACE PGA PILOTS**

**October 22, 2015**

### **PGA PILOT COMMUNICATION AND OUTREACH**

There is very little communication targeted at importers. All of the communications and CSMS messages are targeted at filers. CBP and the PGAs are assuming that filers are acting as a conduit and funneling information to importers, but that isn't happening. Importers are very unclear on the steps it takes to join a pilot. Filers cannot join pilots without consenting importers, nor can they force all of their clients in just because a few of them are interested. Recruitment and targeting efforts need to include importers and not just filers. And if an importer DOES want to join via their filer, do 100% of their entries automatically get included? Or can they opt to include only certain IORs at certain ports of entry? There is no information out there anywhere and the agencies aren't responsive to these questions.

How are lessons learned from the pilots being communicated? There is concern that the learnings will not be communicated until the pilots are concluded, which gives the trade no time to react and adapt internal processes accordingly.

CSMS messages are not being issued on a timely basis to advise filers of real-time issues that are occurring in ACE. The CSMS gets issued only after many hours have already been spent trying to fix the problem internally or with the ABI Vendor and/or ABI Client Representative. (For example, ACE was not able to process releases from Aug 21-25, but the related CSMS didn't get issued until 8/26.) The CSMS messages that do get issued are often too technical to understand and require in-depth review of implementation guides, some of which are over 200 pages.

CBP and the PGAs have not yet provided a contact list of ACE experts by port and defined escalation points when assistance with cargo release is required. A list of national ACE ambassadors has been published, but they do not have the technical expertise to deal with cargo release. The trade is also confused about which PGAs will send automatic May Proceed vs. Hold Intact vs. Docs Review to understand who will send what and who should be contacted to troubleshoot these issues. CBP needs to provide a cheat sheet to help explain the process and PGA contacts who can help resolve issues as necessary.

### **PGA PILOT ROLLOUT SCHEDULE**

What's the current PGA pilot rollout plan? CBP.gov hasn't been updated since August. Did the pilot schedule stay the same after the mandatory filing date got pushed back 4 months?

## **PGA BUSINESS RULES AND IMPLEMENTATION GUIDES**

From the software side, things are progressing very slowly. The requirements from the agencies are not complete and accurate. The implementation guides are changing frequently. Once the software providers get changes made to one, there is another revision they have to work on.

For test filings in the CERT environment, the error messages received from CBP are not specific and clear, requiring follow up calls to the agencies. The usual response is to try changing the field and resending. We can't program successfully when we don't have clear and concise rules.

Filers are struggling to get correct information from their importers because they haven't provided the information in the past and don't have it readily available. There is a large learning curve for the importers.

## **PGA PILOT FEEDBACK**

### **General**

CBP is stressing the need for more pilot participants, yet is not processing the requests. One filer has a client who wanted to join the EPA pilot and sent the requested information to CBP within 24 hours of the pilot announcement. It has now been two months without any follow up from CBP to get them into the pilot. It seems CBP can't keep up with the requests.

Some data elements need to be keyed as part of the customs entry and then again as part of the PGA message set.

### **FSIS Pilot (meat products)**

Previously, the broker just handed a meat certificate to the USDA meat inspector. Now they need to transcribe the data from the form into their system. The form breaks down products by lot, not by HTS (as required in ACE), so prior to entering the information, the filer needs to parse out the lots by HTS. This is very time consuming, especially when a shipment includes multiple lots. Entry writers are spending an additional 5-20 minutes per file. This is a strain on the filer's resources, resulting in additional cost, which in turn results in higher broker fees for the importers.

Most importers are not able to submit this data in EDI format, so the process is very manual for the filer. The filers are also unclear on how some of the PGA data is going to be populated into their systems, so cannot provide their clients with an EDI map. Even for those clients who do have EDI capabilities, there will be a good deal of work remapping the feeds and adding additional data fields.

The addition of new data fields also increases the post-filing audit requirements for both filers and importers. With every new field, additional auditing is required to ensure quality output. This results in additional cost for filers and importers.

The PGAs all need to rethink *exactly what data they really need to determine admissibility*, and exactly *when* in the process they need this data. Sending data prior to release is much more difficult, as is any

time-sensitive process. We all know that if you want something tomorrow it costs more than if you are willing to wait until next week.

We question what this increased data is really getting anyone. With all the additional data, work, and time being spent, are the PGAs expecting to see any increased efficiencies, such as expedited release or processing?

### **EPA Pilot**

Prior to ACE, the broker would send three data elements to EPA. With ACE, the number of data elements has increased to 11 or more. Importers haven't yet programmed their systems to send the additional information electronically, so broker processing time has increased by 20 minutes per entry.

We commend EPA on their efforts in cargo release for ag chem/ pesticides. Importers are very happy with the paperless aspect.

In the pilot, there is a concern about shortened lead times for EPA review and release. In the past, importers could submit the notice of arrival weeks in advance. With the new data requirements, there is only a 5-7 day window to transmit, and a 5-7 day window for EPA to review. We have discussed with EPA and they are very open and cooperative in the discussion.

Another concern is the carrier contact information required in the data set. Each filing requires this information. It would be more efficient for CBP and EPA to maintain a master list of contacts rather than requiring it on a per-entry basis.

If the solution to data mismatches is to refile (e.g., to replace an ocean B/L with a rail B/L), will that impact the filer/importer compliance rating?

### **NHTSA Pilot**

They have been very good to pilot with and extremely collaborative. However, much more data is required than before. NHTSA claims the data was always required in paper form, they just never looked at it or enforced it. The broker would keep certain data on file and submit it to NHTSA upon request, which they rarely (if ever) did. So if the agency never looked at the data before, why is it suddenly so important to have *at the time of entry*? The data was NOT used for admissibility purposes in the past.

The biggest issue we have is identifying what data is needed and when, in order to send it to the broker. Until importers complete their programming, the broker will continue to spend an outrageous amount of time processing the information manually, and subsequently increasing their fees.

At an industry level, importers are very concerned about meeting the February deadline.

The NHTSA implementation guides and CATAIR are very confusing to filers. Currently, there is a separate DOT Bond that did not get converted to an eBond process because OA did not have ownership of it. Per the updated CATAIR and implementation guidelines, CBP is now requiring each bond to be scanned and uploaded to DIS at the time of ACE Cargo Release. In many cases, the ABI Vendors do not have DIS capabilities ready and this requires a document to be scanned and emailed per the DIS Implementation Guide, which can add over 4 hours more per day of processing time.

### **APHIS (Lacey) Pilot**

Most of the data required in ACE is the same as what was previously provided, but APHIS made changes to their record layout just before the pilot started, this this frankly did not help in piloting their functionality.

### **FDA Pilot**

We have grave concerns regarding FDA. Under the pilot, in addition to the entry filing, FDA is requiring importers to provide a spreadsheet of data elements for each and every shipment. Once the importer completes the spreadsheet, they send it to FDA and the agency validates the information against their internal databases. If there are any discrepancies, they request the importer to re-validate the information on the spreadsheet. Once validated by the importer, it is sent back to FDA and again validated. If everything looks OK, then the file can be transmitted via ABI through CERT. If everything looks OK in CERT, the file can then be transmitted through production. Obviously this takes a lot of time for all parties involved. We understand the need for FDA to validate the information, but we are supposed to go live in just a couple of months. That is not a lot of time. In addition we believe that once their system goes live, there will continue to be mismatches between the entry submission and the FDA databases. We are worried that these continued mismatches will throw everything to human review and bring FDA-regulated imports to a crawl.

Filers are worried that they may not be able to adequately test all FDA commodities by the end of February. If we had a year or more, we could certainly follow this process, but if we are to go live in a few months, the process is not sustainable.

Importers are concerned that FDA is not piloting reality. They are piloting an artificial process, whereby the importer's data is pre-validated ahead of time to ensure it's always perfect when the entry is eventually filed. Furthermore, it is our understanding (we could be wrong on this) that for the purposes of the pilot, FDA is treating the optional and conditional data elements as mandatory, again creating an artificial pilot environment. In reality, importer data isn't perfect and the optional/conditional elements won't always be provided. FDA needs to pilot real data in order to adequately identify issues and test the success of their ACE deployment.

In addition, any metrics FDA is keeping with regards to improved release times in the pilot environment are going to be misleading, because the entries aren't being filed until the data is perfected, and that process of pre-validating shipment-specific data is not sustainable. Unless FDA plans to continue to pre-validating data for all importers after the conclusion of the pilot, their metrics won't reflect reality. Metrics should be measured from the time the first data is submitted to FDA until the time the cargo is released.

### **PGA HOLDS**

#### **General**

We do not yet know how the agencies will handle cases where a MAY PROCEED is received but corrections need to be made and re-transmitted. How do the PGAs/CBP want to handle this? This question has been asked with no response.

When a commodity is subject to multiple PGAs, the trade is seeing multiple holds at multiple ports for a single shipment. Individual agencies are making separate review and document requests. For example, a particular shipment may be subject to one agency's review at the port of arrival and another's at the port of destination/entry, and both agencies are requesting documents. CBP has advised that all PGA holds should be coordinated through a single 1USG message, but this functionality is not yet ready in ACE. How will the multiple agency situation be coordinated, especially if there is a need to examine the cargo? If not properly coordinated, there could be inspections at both ports, which is very costly for the importer.

### **FDA Holds**

We are unclear how ACE is programmed with regards to FDA holds. In a recent outreach and discussion with FDA, they insist that if they put a commodity on hold, the goods will not be held at the terminal but will be allowed to be taken to another facility awaiting release. I've also heard that ACE is programmed so that there will NOT be a 1C in ACE which basically means that if there is an FDA hold, cargo will be held at the terminal. For pharma companies with temp-controlled pharmaceuticals, this will be devastating. We need to do further testing to see how this will actually work.

### **RECOMMENDATIONS:**

**Communication and Outreach Related to the ACE PGA Pilots:** The COAC recommends that CBP do the following, leveraging the BIEC as appropriate when PGA matters are involved:

- As recommended previously (see recommendation #14017), CBP should deliver an actionable and measurable communication plan to COAC before the next public meeting.
- CBP's communication and outreach efforts should include more importer-focused messaging.
- CBP and the PGAs should publish Importer FAQs for how to join a pilot.
- CBP should publish updated information re: the PGA pilot rollout schedule on CBP.gov and keep it current.
- Pilot applicants should receive more timely responses from CBP and an acknowledgement that their request to join has been received and is under review.
- CSMS messages regarding ACE deployment should be more timely and specific, and better categorized for easier reference (e.g., software issues, policy issues, etc.).
- Key issues and learnings from the pilots should be published on CBP.gov and broadly communicated to the trade as soon as they are identified, to give as much lead time as possible in the development of contingency plans by importers and filers.

- CBP and the PGAs should publish a list of ACE contacts and escalation points by port and/or district/region.

**PGA Message Sets and Related ACE Functionality:** The COAC recommends that CBP do the following, leveraging the BIEC as appropriate when PGA matters are involved:

- The business rules, implementation guides, and record layouts for all PGAs should be locked down now, with no additional changes allowed prior to the February 2016 mandatory filing deadline. The agencies have had enough time to finalize their layouts. Importers and filers need to be afforded the same courtesy, in terms of having adequate time to complete and test their own programming.
- As recommended previously (see recommendations #14008 and 14018), CBP should work with the PGAs to minimize data creep. Data not used for admissibility decisions before, including forms that were kept in broker files but rarely requested by the PGA, should not be used for that purpose now. The agencies should collect this data post-entry, if necessary, but it should not impede the entry process when no real risk is present.
- All data elements that are included in the customs entry and are also required by the PGAs should be fed automatically without having to re-key the data.
- CBP should incorporate automated house bill release in ACE Cargo Release and companion manifest capabilities where it does not exist to facilitate effective visibility in managing cargo release at non-automated facilities.
- CBP should implement an eBond process for DOT bonds.

**PGA Pilot Processes:** The COAC recommends that CBP do the following, leveraging the BIEC as appropriate when PGA matters are involved:

- The PGAs should evaluate staffing levels to ensure they are able to turn around releases in the new shorter timelines. The timing of certain automated PGA data may shorten the time the PGA has to review data for cargo release.
- CBP and the PGAs should establish a true 1USG process, whereby requests for documents and/or exams are made once on a multi-agency basis, and the same information or exam results are used by all agencies.
- Unless FDA intends to continue pre-validating data after the conclusion of their pilot, FDA should test real/un-validated data during the pilot to ensure all potential issues are identified and addressed. If FDA intends to continue pre-validating data, it should be done one time at a master data level, not at a shipment level. Pre-validating data on a shipment level is not sustainable by the trade or the agency.
- CBP, via the BIEC, should encourage FDA to relax all non-critical data requirements (i.e., those that are important to the agency but do NOT impact admissibility and weren't previously provided at the time of entry) so that release is not held up due to the addition of new data elements. Additional information or validation, if deemed necessary, can be provided post-

entry. If FDA is not willing to relax and/or eliminate some of its new requirements, we recommend that the mandatory filing date for FDA is pushed to later in 2016 to allow time for further testing of real data.

**PGA Holds:**

- The COAC recommends that CBP, the BIEC, and the ITDS Board of Directors provide guidance to the trade community so they may properly understand the hold authority of CBP as well as those PGAs whose regulations permit pre-emptive authority at the border. The trade community needs clear guidance on who has the authority to issue a hold, how the hold will be managed (particularly under any relevant PGA pilots), and what actions may be taken to resolve a hold or detention. We believe the PGAs who have the ability to detain or hold cargo at the border, may also have authority over imported goods after they have cleared the border and been released from CBP custody. For this reason, the trade community needs to understand its obligations both at the border and after importation. We highly recommend the issued guidance include a list of current laws and regulations enforced by each PGA, the process to be followed to satisfy each agency's import requirements, and additional information requirements for the other PGAs who rely on CBP's 30 day detention period in 19 U.S.C. 1499, to ensure that imported goods can be made available to them after release.