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COAC SUBCOMMITTEE: AIR CARGO ADVANCE SCREENING PILOT

Overall CBP Message:

- The ACAS pilot was a response to the October 2010 Yemen cargo incident, which highlighted threats to aviation security and gaps in the global supply chain.
- The principle of co-creation was a cornerstone of the pilot, which ensured that CBP would receive sufficient input from Industry about their business practices, perspectives, and technical capabilities.
- CBP also reached out to the Transportation Security Administration (TSA), streamlining the Department's efforts in the air mode by leveraging TSA's screening requirements and resources to mitigate risk identified by CBP. They have also been a force multiplier at the National Targeting Center.
- In December 2010, the pilot was launched with the express couriers, and CBP began testing the collection of pre-loading data by leveraging existing regulatory requirements and technical infrastructure. We started with participation from the express companies, and now there is representation from all air cargo stakeholders.
- Over the past two and a half years, some of the main lessons that CBP has learned are the following: (1) data is available very early in the supply chain, sometimes twenty hours before the last foreign port of departure; and (2) there are many stakeholders that play a critical role in advance data and have varying responsibility and accountability in aviation security.
- Based on these lessons, CBP is ready to initiate the rulemaking process for ACAS with the Notice of Proposed Rulemaking (NPRM) by the end of the year, but will continue to engage Industry as much as possible.
- However, to establish ACAS as a regulatory requirement, there are a number of government-specific factors that need to be considered. These factors consist of ensuring ACAS brings added value to aviation security, considering the impact to small and medium-sized enterprises, safeguarding data security, and minimizing costs associated with human resources and programming. These factors may inevitably require changes to some business practices.

COAC Recommendations and CBP Positions¹

Filing Regimes

- **Recommendation 1:** Establish a self-filer regime that represents the Integrated Carrier – Conventional Carrier business model.
 - **CBP Position:**
 - The details of the recommendation to establish this self-filing regime remove too much responsibility away from the carrier that is transporting the cargo into the United States.
 - Passenger carriers, or carriers that are transporting cargo into the United States, are responsible for the security and safety of their aircraft and passengers. As such, they are responsible for verifying with CBP that all ACAS holds are resolved before departing to the United States.

¹The COAC recommendations were paraphrased and combined for simplicity and brevity.

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- Passenger carriers also have physical control of the cargo before departing to the United States. Therefore, it would be difficult for CBP to hold an express company accountable for violations related to loading and unloading cargo from a passenger carrier.
- CBP has agreed to Industry requests about programming additional messages and technical functions that enable carriers to obtain information from CBP about shipments that have or do not have ACAS holds.
- We will continue to work with the air cargo industry on this matter.
- **Recommendation 2:** Establish a self-filer regime that represents the Freight Forwarder – Conventional Carrier business model, establishing less stringent responsibilities and conditions for participation.
 - **CBP Position:**
 - All of CBP’s advance information programs have self-filing regimes, allowing entities to transmit data directly to CBP and take responsibility of the timeliness and accuracy of their data. This will apply to ACAS as well.
 - It will be extremely challenging for CBP to allow less stringent requirements for ACAS-only self-filers. CBP relies on the submission of accurate and timely data from Industry to target high-risk cargo and implement its mission. Therefore, regulations need to be applied evenly to all participants.
 - It is important to remember that CBP can exercise discretion on a case-by-case basis by policy.
 - We will continue to work with the Freight Forwarding industry to address their concerns.
- **Recommendation 3:** Treat ACAS and Air AMS as programs with distinct requirements with different self-filing regimes.
 - **CBP Position:**
 - CBP plans to make distinctions between Air AMS and ACAS, and there will be more entities that will be eligible to file ACAS than Air AMS.
 - All existing Air AMS participants will be eligible to file ACAS.
 - CBP will work to ensure that ACAS and Air AMS requirements are as complementary as possible.

ACAS Compliance/Enforcement

- **Recommendation 4:** Employ an “account-based” approach that evaluates an entities’ overall compliance before liquidated damages are assessed, instead of today’s approach that is based on violations per shipment.
 - **CBP Position:**
 - This recommendation will be considered when CBP develops ACAS specific guidelines on the assessment of liquidated damages and its mitigation once rulemaking has been finalized.
 - While CBP understands the value of this recommendation, CBP has identified a few potential challenges.
 - ACAS is about assessing the risk of individual shipments, not the carrier or filer. It is the responsibility of the carrier/filer to comply

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with ACAS requirements to ensure CBP can assess the risk of each shipment as early as possible. A carrier/filer's compliance rate and performance has always been appreciated and considered when evaluating the mitigation of liquidated damages.

- CBP's existing enforcement model provides significant opportunity for highly compliant parties to petition and mitigate any assessments of liquidated damages.
- If the enforcement structure is changed, ACAS filers may not be able to enjoy the mitigation procedures that they do today. An "account-based" approach may require CBP to develop mitigation guidelines that are much more stringent than they are today in order to ensure those that continually commit violations are held accountable.
- Another concern is that an "account-based" approach may pose an undue disadvantage to small and medium sized enterprises. A one-time violation may drop a small company's compliance rate down by 10 percent, whereas a one-time violation for a large company may not drop its compliance rate down at all. It will be difficult to establish a standardized performance threshold that is fair and equitable to all trade stakeholders.
- **Recommendation 5:** Provide a long implementation period of informed compliance similar to the Importer Security Filing (ISF).
 - **CBP Position:**
 - CBP will adopt a reasonable implementation period of informed compliance.
- **Recommendation 6:** Establish an "account-based" approach to the Air AMS and outbound program.
 - **CBP Position:**
 - Since CBP is undergoing significant modernization work this recommendation may be best addressed through a different COAC work group at a later time.

ACAS Data Elements

- **Recommendation 7:** The definitions of the ACAS data elements should match as closely as possible to the definitions that have been used and thoroughly tested during the pilot period. Therefore, the definitions of the data elements should be broader than those of Air AMS.
 - **CBP Position:**
 - CBP does not feel it is necessary to change the definition of data elements, but will instead continue to focus on the quality of the data. CBP appreciates that "raw" data is submitted for the sake of early submission.
 - CBP will consider that the quality of data will be less precise for ACAS and plans to draft regulatory language accordingly. However, ACAS filers will be expected to update ACAS data when more accurate information is made available.

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- It is important to note that since the beginning of the pilot, CBP has consistently stated that ACAS was about collecting a subset of currently required data elements earlier in the supply chain.