

**CBP FTZ Audits & FTZ Board Compliance Spot Checks: Prepare Now**

John F. Kennedy once said, “The time to repair your roof is when the sun is shining.” While this seems like rather simple advice, it serves as a good reminder of the importance of tending to corporate compliance infrastructure before a “rainy” day.

Whether your company is new to the FTZ program or a “mature” FTZ operation, now is the time to undertake a comprehensive internal review of your FTZ and overall trade compliance in order to develop a true “audit preparedness” program and correct any identified compliance issues.

Consider the following eight recent indicators that FTZ and trade compliance are firmly on the radar of CBP, the FTZ Board and the federal government in general:

1. On April 21, 2015, CBP published an Independent Auditor’s Report from KPMG LLP (OIG-15-76) that specifically identified CBP’s weaknesses in control over the FTZ and Bonded Warehouse programs as a “significant deficiency” and recommended that CBP “implement additional training at ports and/or additional oversight controls to ensure risk assessments for BWs and FTZs are consistently performed in accordance with required guidelines”.
2. In April 2016, CBP issued “Physical Security Guidelines for CBP Bonded Facilities”. The guidelines replaced Treasury Decision 72-56 (Standards for Cargo Security), which were issued in 1972 and had not been updated in over 40 years. The new guidelines outline CBP’s expectations related to FTZ security.
3. In 2016, CBP began distributing letters to importers and other audit candidates containing CBP Informed Compliance Publications and other “informative documents” related prior disclosures, penalties and ACE data. These letters from CBP strongly encouraged recipients to monitor transactions in ACE, conduct self-reviews of compliance and correct issues including submission of duties, taxes and fees that may be due to CBP.
4. On July 23, 2016, ACE became the sole CBP EDI system for many entry types including Type 06 FTZ entries. A number of PGAs began collecting compliance data via ACE in 2016 with many more expected to require mandatory filing in ACE in 2017 or 2018. ACE functionality makes it inherently easier for CBP and PGAs to mine data, run reports and target/identify trade compliance violations.
5. In August 2016, the FTZ Board completed and submitted a “special report” to Congress containing information and survey results related to various Grantee business models and the uniform treatment regulations.
6. On September 1, 2016, the industry learned that the Government Accountability Office (GAO) initiated a congressionally-requested review of CBP oversight and revenue collection in FTZs. GAO’s research objectives seek to answer the following questions through interviews with FTZ participants including FTZ operators and users:
  - To what extent do importers use the different procedures available when utilizing an FTZ to pay user fees, such as Merchandise Processing Fees, and what is the impact on revenue collection?
  - How effective are CBP’s efforts to monitor and enforce compliance with customs laws and regulations in FTZs and deter/detect evasion of duties and fees?
  - What is known about the economic impact of FTZs on the U.S. and local economies?

7. In early 2017, the FTZ Board hired three (3) new staff examiners including an “auditor” position. The FTZ Board has stated that a portion of the auditor’s time will be dedicated to “spot checks” of FTZ production facilities to ensure compliance with “scope of authority” regulations as well as spot checks of Grantees for compliance with uniform treatment and public utility regulations.
8. On March 31, 2017, President Trump signed the “Presidential Executive Order on Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws”. In addition to enhancing enforcement of AD/CVD orders, the Executive Order requires the Secretary of Homeland Security, through the Commissioner of CBP, to “develop and implement a strategy and plan for combating violations of United States trade and customs laws for goods and for enabling interdiction and disposal, including through methods other than seizure, of inadmissible merchandise entering through any mode of transportation, to the extent authorized by law.

Given the complexities and nuances of the FTZ program, it is critically important that FTZ operators, users and grantees take a wholesale look at how they comply with the FTZ Board, CBP and PGA regulations, instructional information and technical specifications in the context of the above-referenced developments. We strongly recommend that FTZ participants turn the “business as usual” approach on its head in order to proactively shake out and correct any known and unknown compliance issues. Clearly, there is no time like the present.

The list of considerations for a CBP FTZ Audit or an FTZ Board Compliance Spot Check are too numerous to list in this article. Depending on your FTZ set up and activities, there could be over 100 discreet topics that should be reviewed, assessed an internal compliance rating, corrected if necessary, and possibly voluntarily disclosed to the government in advance of an audit or spot check and as part of your company’s “reasonable care” responsibilities as an importer. Some of these topics are traditional CBP audit considerations (value, classification, AD/CVD, FTAs, country of origin, etc.) while others are specific to the FTZ program and your company’s particular FTZ approvals.

Remember, both the CBP and FTZ Board regulations provide the ability for those agencies to fine and assess penalties or liquidated damages to FTZ operator/users and grantees for violations of the FTZ Act, the FTZ Board Regulations, the CBP FTZ Regulations and the CBP bond provisions. RGFTZS can help you assess your company’s current FTZ compliance position in the midst of many evolving changes in our industry. At the same time, we will help you prioritize and execute a compliance and operational improvement plan while identifying additional FTZ opportunities along the way. Please contact us for more information.