

SPC&B Update

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CBP's Regulatory Audit (RA) division has made changes to its Focused Assessment (FA) program, which will go into effect for all audits commenced on and after October 1, 2014. One of the significant changes is an expansion of the Pre-Assessment Survey Questionnaire (PASQ) (formerly known as the Internal Control Questionnaire) to include an examination of the company's mission statement, code of ethics/conduct, and objectives, and more detailed questions designed to help the auditors to better understand the company's operations. In addition, there will no longer be a formal Advance Conference prior to the actual commencement of the audit. Rather, the Entrance Conference will be the immediate start of the audit and the auditors will expect all requested documentation and all personnel to be available at that time.

Changes that should prove beneficial to importers include an emphasis on tailoring the preliminary assessment of risk and questionnaire to the individual circumstances of the company being audited and the ability of auditors to exclude areas from the scope of the audit if determined to be insignificant or immaterial. This includes the ability to eliminate classification and value from the audit areas, if appropriate, and focusing on other areas such as Free Trade Agreement claims. RA also is emphasizing the need to consider the size and complexity of the importer and an understanding that the lack of formal documented internal controls, policies and procedures does not automatically indicate an unacceptable risk.

At the same time, RA has made the audit process more burdensome to importers. In this regard, auditors will be selecting more entry line items for walkthroughs, "to understand variations in procedures used." In recent years, auditors have selected only one or two walkthrough line items for the initial phase of the audit. This number will increase. In addition, the audit sample size, which used to be 1 to 20 entry lines, will, potentially for each audit area, be 25 to 40 entry lines if the population size is greater than 250, or 10% of the population if it is less than 250. RA's justification for this significant increase in transaction testing was asserted to be in order to have an increased level of assurance that the company is in compliance. According to Customs, an error found in a small sample looms larger than an error found in a greater sample, thus potentially calling for an unacceptable risk decision that is not really necessary.

Regardless of the reasoning the tremendous increase in transaction testing potentially can cause significant more disruption of ordinary business operations when a company is undergoing an audit. As a result, more importers may want to consider signing up for the Importer Self Assessment (ISA) program, as ISA members are removed from the general Focused Assessment pool.

For further information on CBP audits or on how to apply to be an ISA member, please contact Gail Cumins at gcumins@spcblaw.com, Alli Baron at abaron@spcblaw.com, or Donna Shira at dshira@spcblaw.com, or call us at 212-425-0055.

Sharretts, Paley, Carter & Blauvelt, P.C.
75 Broad Street, 5th Floor
New York, NY 10004
212-425-0055
customs@sharretts-paley.com

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