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DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION

Test to Allow Customs Brokers to Pre-Certify Importers for Participation in the Importer Self-Assessment Program

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to test allowing customs brokers to pre-certify importers for participation in the Importer Self-Assessment (ISA) program. The test will be known as the Customs Broker Importer Self-Assessment Pre-Certification (Broker ISA PC) test. The primary goal of the Broker ISA PC test is to leverage customs broker relationships to facilitate and promote importer participation in the ISA program, especially for small and medium enterprises. This notice provides the eligibility criteria for voluntary participation in the test, explains the test program application process, describes the broker participant responsibilities, provides information for importer ISA applicants, and discusses the repercussions for misconduct under the test. This notice also invites public comment concerning the test program.

DATES: Communication to CBP indicating interest in participation in this planned test is requested within ten (10) business days from [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Comments may be submitted to the email address indicated in the "Addresses" section below at any time throughout the test.

ADDRESSES: Comments concerning this notice and indication of interest in participation in the Broker ISA PC test program should be submitted via email to tppb-isa@dhs.gov. For a

comment, please indicate “Broker ISA PC Federal Register Notice” in the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Florence Constant, Chief, Partnership Programs, Office of International Trade, U.S. Customs and Border Protection, (202) 863-6537.

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection (CBP) recognizes the importance of licensed customs brokers who serve as intermediaries between CBP and the trading community. Licensed customs brokers have played a significant role in the success of various CBP commercial initiatives, automation efforts, and security programs. Because of customs brokers’ vital role, CBP, in partnership with the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA), worked in January 2011, to develop a program that could benefit both CBP and brokers while addressing the challenges of 21st Century commerce. An outcome of this joint collaborative trade modernization effort is the creation of a role for the broker in CBP’s Importer Self-Assessment (ISA) program.

The Broker Importer Self-Assessment Pre-Certification (ISA PC) test will leverage broker relationships to promote participation in the ISA program by allowing selected brokers, referred to as ISA pre-certifiers, to pre-certify importers for the ISA program. Through their communication with importers, the ISA pre-certifiers will provide information on the ISA program and work to expedite the ISA application process for importers who choose to use their services. The aim is that by serving as liaisons between CBP and the trade community, the ISA pre-certifiers will act as a “force multiplier” for CBP in facilitating and expediting legitimate trade, increasing the pool of trusted traders with minimal allocation of CBP resources.

The ISA program was established in 2002 to enable interested importers to participate in a program that allows them to self-assess their own compliance with customs laws and regulations on a continuing basis. See 67 FR 41298 (June 17, 2002). The ISA program is a trade facilitation partnership program that recruits trade compliant companies with the goals of reducing both CBP and company resources required during entry and post-entry processes, and of building cooperative relationships that strengthen compliance with trade laws. The ISA program is based on the premise that importers with strong internal controls are more likely to achieve a high level of compliance with customs laws and regulations and the program provides a means for CBP to recognize and support importers who have implemented such systems. Importers who wish to participate in the ISA program may apply directly to CBP and this will not change under this Broker ISA PC test. For more information on the ISA program, please see the Importer Self-Assessment Handbook available online at www.cbp.gov.

Broker Importer Self-Assessment Pre-Certification Test Program

Participation in the Broker ISA PC test program is voluntary for customs brokers. Under this test, CBP will select no more than nine (9) licensed customs broker sole proprietorships and/or licensed customs brokerages who apply for this test. After completing the required orientation, ISA pre-certifiers may provide Broker ISA PC services to importers who apply for participation in the ISA program. Interested importers who wish to use the services of a pre-certifier must submit a complete ISA application package to both CBP and the ISA pre-certifier whom they select (once approved, a list of ISA pre-certifiers will be available online at www.cbp.gov). More information on the ISA PC Evaluation Process is provided later in this notice. Broker ISA PC services include the evaluation of the importers' customs policies, procedures, and readiness to participate in the ISA program, the submission of evaluation results

to CBP, and a “pre-certification” that the importer has demonstrated that they are ready to assume the responsibilities of the ISA program.

Eligibility Requirements

Licensed customs brokerages and licensed customs broker sole proprietorships seeking to participate as ISA pre-certifiers in the Broker ISA PC test program must:

1. Have operated as a licensed customs broker representing importers as a filer (under the licensed broker’s filer code) for at least five (5) consecutive years immediately prior to the date of application;
2. Have been C-TPAT certified as a broker for at least three (3) consecutive years immediately prior to the date of application;
3. Have maintained written internal control procedures designed to ensure compliance with CBP related activities;
4. Have been trained in internal control concepts based on the Committee of Sponsoring Organization (COSO) Internal Control – Integrated Framework course; and
5. Have a history of compliance with customs laws and regulations.

Customs brokers who participate in the Broker ISA PC test must remain in compliance with all statutory and regulatory requirements, including 19 U.S.C. § 1641 and 19 CFR Part 111, when conducting customs business.

Application Process

CBP will limit the initial test phase to no more than nine (9) participants. Any party seeking to participate must submit an email to tppb-isa@dhs.gov with the subject heading “Broker ISA PC Participant Request.” All emails must be received within ten (10) business days of the date of publication of this notice. Only parties meeting all of the eligibility

requirements set forth above should submit a participant request email. CBP will assign a number to each e-mail in the order in which they are received beginning with the number 1 and ending with the total number of e-mails received. CBP will then use random number generating software to generate nine (9) numbers from the pool of interested brokers. Once the nine (9) candidates are selected at random, CBP will provide each of these candidates with an ISA pre-certifier questionnaire that must be completed and reviewed by CBP. Qualified candidates will be invited to attend the ISA Pre-Certifier Orientation and begin offering Broker ISA PC services.

Procedure to Contest Non-Selection

If, after reviewing the ISA pre-certifier questionnaire, CBP finds any candidate to be unqualified for participation in the Broker ISA PC program, the Executive Director of Trade Policy and Programs will provide that candidate with a written explanation of its determination. The non-selected candidate will be offered the opportunity to appeal the Executive Director's decision within 30 calendar days of receipt of the written decision. Appeals should be forwarded to U.S. Customs and Border Protection, Assistant Commissioner, Office of International Trade, 1400 L Street, NW, Washington, D.C. 20229-1155. The Assistant Commissioner will issue a final written decision on the candidate's appeal within fifteen (15) working days after receiving a timely filed appeal from the candidate. If no timely appeal is received, the written explanation becomes the final decision of the Agency as of the date that the appeal period expires.

ISA Pre-Certifier Orientation

After determining which candidates are qualified to participate, CBP will invite the selected candidates to attend CBP's ISA Pre-Certifier Orientation. The goal of this orientation is to provide the brokers with training, guidance, and requirements pertaining to the Broker ISA PC

participant responsibilities. After successful completion of the orientation, the licensed customs brokers will become ISA pre-certifiers who can conduct ISA PC evaluations.

ISA Pre-Certifier Status

ISA pre-certifier status is non-transferrable. An ISA pre-certifier may not subcontract with third parties to conduct ISA PC evaluations.

Further Expansion of the Test

Any further expansion of the Broker ISA PC test, including but not limited to the number of participants, will be announced via a separate **Federal Register** notice.

Broker ISA PC Participant Responsibilities

ISA PC Evaluation Process

Interested importers who wish to use the services of a pre-certifier must submit a complete ISA application package (see ISA **Federal Register** notice at 67 FR 41298_(June 17, 2002)) to both CBP and the ISA pre-certifier whom they select (once approved, the list of ISA pre-certifiers will be available online at www.cbp.gov). If an importer uses the services of an ISA pre-certifier, they must note this at the time they submit their ISA application. An importer cannot apply solely to CBP and later decide to use the services of an ISA pre-certifier. CBP will begin the review and vetting process, which will include an initial risk assessment, for the application and assign a National Account Manager (NAM) if one has not already been assigned to the importer. The NAM will then provide the importer with its import data that CBP possesses, as well as help to focus the ISA pre-certifier's efforts on the areas for the review.

Once the initial review and vetting is complete, CBP will notify the ISA pre-certifier's primary contact via email. Once an ISA pre-certifier is notified to proceed with the evaluation of the ISA application package, the ISA pre-certifier will:

1. Review the ISA application package to ensure that all required elements are present and complete;
2. Evaluate the importer's written customs-related policies and procedures and identify areas of risk;
3. Assess the design of the importer's internal control for achieving compliance with customs laws and regulations, and develop an expectation about the operating effectiveness of its internal control;
4. Consult with the importer, if necessary, on best practices and improvement considerations;
5. Assess the adequacy of the importer's risk-based self-testing plan; and
6. Conclude the ISA PC evaluation and determine the importer's ISA readiness.

Once the ISA pre-certifier completes its evaluation, it is required to prepare and submit to CBP an ISA Evaluation Report based on CBP guidelines, with the following supporting documentation:

- Written risk assessment;
- Summary of the walk-through conducted of the entry process; and
- Synopsis of the importer's risk-based self-testing plan.

If required, the ISA pre-certifier will provide additional information or clarification concerning the evaluation to CBP. The ISA Evaluation Report will be processed for certification and approval in accordance with established ISA program procedures. CBP maintains and reserves the right to approve or disapprove any ISA application.

Annual Reporting Requirements

On an annual basis, the ISA pre-certifier will be required to submit a report to CBP attesting to its continued commitment to adhere to the requirements of the Broker ISA PC test program. The annual submission will, at a minimum, include the following information:

1. Personnel changes that impact the Broker ISA PC test program;
2. Organizational and procedural changes;
3. Continued proficiency training, seminars, etc., taken by the ISA pre-certifier;
4. ISA applicant name(s) and importer of record number(s) for completed and pending ISA PC evaluations conducted during the last year and of any ISA PCs in progress; and
5. Any broker penalties incurred during the last 12-month period.

Confidentiality Requirements

All records pertaining to the business of ISA applicants serviced by an ISA pre-certifier are to be considered confidential business records of the ISA applicant. The ISA pre-certifier must not disclose the contents of, or any information connected with, the records to any third parties other than personnel involved with the ISA program from CBP's Offices of International Trade and Field Operations and from U.S. Immigration and Customs Enforcement - Homeland Security Investigations, as necessary.

Recordkeeping Requirements

All records made or acquired by ISA pre-certifiers pertaining to the Broker ISA PC test program must be stored and maintained separately from records subject to recordkeeping requirements under 19 CFR Part 111 and 19 CFR Part 163. CBP reserves the right to request all ISA PC evaluation supporting documentation. Records shall be retained for at least five (5) years after the final date of approval or rejection of the ISA application.

Information for Importer ISA Applicants

Importers interested in applying to participate in the ISA program have the option of using the Broker ISA PC services (most likely for a fee) of any ISA pre-certifier to facilitate participation in the ISA program. Alternatively, importers may continue to apply for participation in the ISA program without using the services of an ISA pre-certifier. CBP will compile a list of ISA pre-certifiers that are available to the public and will post this list on CBP's website, www.cbp.gov. CBP will continue to conduct ISA evaluations for importers that apply for ISA participation and do not choose to use the services of an ISA pre-certifier.

A key benefit of using the services of an ISA pre-certifier is the facilitation of the ISA application process. It is expected that use of an ISA pre-certifier's ISA PC services will reduce the time period from application to presentation to the ISA Review Board from the average processing time for CBP which is between nine (9) and 12 months to between 90 and 120 days. The importer will initiate the CBP process by submitting its ISA application to CBP and also sending a copy to its chosen ISA pre-certifier. The importer must indicate on the cover letter the name of the ISA pre-certifier it selected for the evaluation; otherwise the ISA application will be evaluated by CBP.

ISA Application Review

Upon receipt of the ISA application, CBP will review it for completeness and accuracy. CBP will verify that the importer meets threshold eligibility criteria and notify the ISA pre-certifier whether or not to proceed with Broker ISA PC services. The ISA pre-certifier will conduct evaluations of the importer's written procedures, self-testing plan, and overall system of internal control in accordance with CBP's ISA evaluation guidelines. Please refer to the "ISA PC Evaluation Process" section above for a more detailed description of the process. The role of

the ISA pre-certifier will be to evaluate the design of the importer's internal control, which involves determining if internal control is documented, logical, reasonably complete, and is likely to prevent or detect non-compliance in identified risk areas. At the conclusion of its evaluation, the ISA pre-certifier will draft an ISA Evaluation Report on the importer's readiness to participate in the ISA program and submit it to CBP. If the ISA pre-certifier finds that the importer is ready to assume the responsibilities of the ISA program, the ISA pre-certifier will pre-certify the importer. CBP will review the ISA pre-certifier's evaluation report and applicable supporting documentation and then make a final determination on whether the importer is approved and certified to participate in the ISA program. CBP will notify the ISA pre-certifier and the importer of its final determination.

Final ISA Approval Process

Once the ISA pre-certifier submits the ISA Evaluation Report, CBP will review and verify the soundness of the report and the supporting documentation provided. CBP will provide the ISA pre-certifier with feedback on the ISA Evaluation Report and allow time to resolve any issues or questions. The ISA Evaluation Report will be submitted to the ISA Review Board, an independent body consisting of representatives from U.S. Immigration and Customs Enforcement, as well as the CBP Offices of Field Operations and International Trade, for final approval during periodic meetings. The ISA pre-certifier will provide the ISA Review Board with a summary of the ISA Evaluation Report results and support the conclusion as to the importer's readiness to assume the responsibilities of the ISA program and answer any related questions that the Board may have.

Request for Reconsideration for Rejected ISA Applications

If during the final ISA approval process, the ISA Review Board determines that an ISA application should not be approved, it will inform the Partnership Programs Branch, which will issue a written notice to the ISA pre-certifier and ISA applicant indicating the reason(s) for the rejection. The ISA pre-certifier and/or ISA applicant may submit a written request for reconsideration if the reason(s) for the rejected ISA application has been corrected within 90 days of receipt of the notice. The request for reconsideration should be forwarded to U.S. Customs and Border Protection, Executive Director, Trade Policy & Programs, Office of International Trade, 1400 L Street, NW, Washington, DC 20229-1155.

A final written decision on the request for reconsideration will be issued within 45 days of receipt of the request. The ISA pre-certifier and/or applicant may respond to denials, in writing, to the Assistant Commissioner, Office of International Trade, at the following address: U.S. Customs and Border Protection, Assistant Commissioner, Office of International Trade, 1400 L Street, NW, Washington, D.C. 20229-1155.

Misconduct Under the Test

The Executive Director of Trade Policy and Programs may revoke a broker's participation privileges under the Broker ISA PC test program if the licensed broker serving as an ISA pre-certifier:

1. Obtains participation in the program through false statement, act, or omission;
2. Commits an act that would constitute a misdemeanor or felony;
3. Refuses to cooperate with CBP in response to any inquiry, audit, or investigation;
4. Fails to meet the program eligibility requirements outlined in this **Federal Register** notice or fails to abide by the terms, conditions and obligations of this test ;

5. Submits an ISA Evaluation Report that contains misstatements of fact;
6. Evaluates the importer's ISA application package contrary to Broker ISA PC evaluation procedures and agreed upon processes;
7. Submits ISA Evaluation Reports that are consistently inadequate and require additional evaluation or documentation to support the conclusion of the importer's readiness to participate in the ISA program;
8. Has their entry filer code revoked;
9. Incurs excessive broker penalties; or
10. Fails to comply with applicable laws and regulations.

If the Executive Director of Trade Policy and Programs believes that there is a basis for revocation of an ISA pre-certifier's participation privileges, a written notice of removal with a description of the facts warranting removal will be provided to the ISA pre-certifier. The ISA pre-certifier will be offered the opportunity to appeal the Executive Director's decision within 30 calendar days of receipt of the written notice providing for proposed revocation. Appeals should be forwarded to U.S. Customs and Border Protection, Assistant Commissioner, Office of International Trade, 1400 L Street, NW, Washington, D.C. 20229-1155. The Assistant Commissioner will issue a final written decision on the discontinuance within fifteen (15) working days after receiving a timely filed appeal from the ISA pre-certifier. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

In the case where CBP proposes to suspend or revoke a broker's license or a criminal charge is filed against the broker, CBP may immediately discontinue the ISA pre-certifier's participation privileges upon written notice to the ISA pre-certifier. The notice will contain a

description of the facts or conduct warranting the immediate action. The ISA pre-certifier will be offered the opportunity to appeal CBP's decision within ten (10) calendar days of receipt of the written notice providing for immediate discontinuance. The immediate discontinuance will remain in effect during the appeal period. CBP will issue a final written decision on the discontinuance within fifteen (15) working days after receiving a timely filed appeal from the ISA pre-certifier. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

Evaluation of Test

CBP will review the effectiveness and feasibility of the Broker ISA PC test program one (1) year after the date of the ISA Pre-Certifiers Orientation. Based on the results and lessons learned from the test, CBP will determine if the Broker ISA PC will be fully implemented as a permanent program.

Dated: April 11, 2013

Allen Gina

Assistant Commissioner,

Office of International Trade

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