



CBP Informed Compliance Letters

“Top 10 Things to Do if Your Company Receives an Informed Compliance Letter from U.S Customs & Border Protection”



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About the presenters



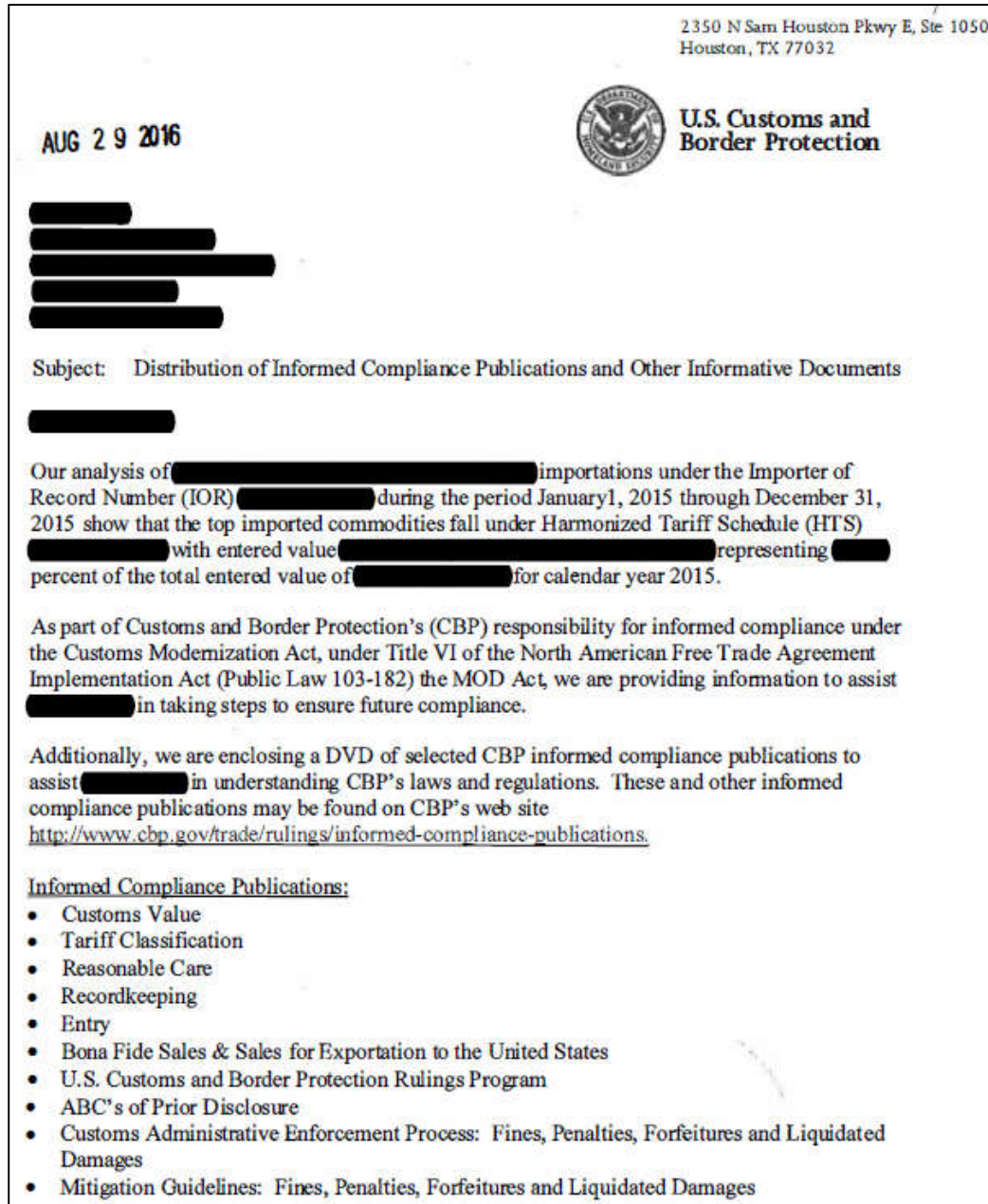
Cindy Deleon, is a former CBP Auditor & Assistant Field Director with over 21 years of trade compliance experience. She was a Senior Auditor and Assistant Field Director with CBP's, Regulatory Audit Division in Chicago for 12 years before establishing her own private audit consulting practice, **Deleon Trade LLC**. While working at CBP she conducted and supervised numerous focused assessments, quick response audits, NAFTA audits, and prior disclosure reviews. Cindy's bio: <http://www.deleon-trade.com/professionals/cindy-deleon>



George Tuttle III, Esq. is an attorney with the law firm of George R. Tuttle in San Francisco. He has been in practice for over 30 years. His practice emphasis is on Customs and international trade regulation

Mr. Tuttle assists companies determine correct customs values, product classifications; duty preference eligibility; obtain rulings, contest adverse administrative determinations by Customs; facilitate compliance audits; develop effective compliance programs; and, resolve penalty, Liquidated Damage claims, seizure, and enforcement cases. George's bio: www.tuttlelaw.com.

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CBP Informed Compliance Letters (Page 2 of 3)

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- Customs Valuation Encyclopedia (1980 – 2010)
- Proper Deductions for Freight and Other Costs
- Buying and Selling Commissions
- Rules of Origin
- Terminology and Methods for Marking of Country of Origin on U.S. Imports

United States Code and/or Code of Federal Regulations:

- Title 19 United States Code (U.S.C.) § 1592(c)(4)
- Title 19 Code of Federal Regulations (C.F.R.) § 162.74 - Prior Disclosure

Be advised that 19 U.S.C. § 1592(c)(4) does not require a party (e.g., importer) to make a prior disclosure. Rather, importers may *elect* to submit a disclosure. When a complete disclosure of a violation is presented to CBP before or without knowledge of a formal CBP investigation of the violation, there may be reduced penalties.

For instance, the penalty may be zero if the importations involve unliquidated (i.e., open) CBP entries and no fraud is involved. If the entries are liquidated (i.e., closed or finalized) and no fraud is involved, the penalty may be the interest accrued on the loss of duties. Additional information on prior disclosure is available under 19 C.F.R. § 162.74 and the ABC's of Prior Disclosure which have been provided.

We strongly encourage [REDACTED] to proactively monitor its transactional data in the ACE Secure Data Portal and evaluate whether there are any significant errors/discrepancies that should be voluntarily reported to CBP. Additionally, we encourage companies to conduct self-reviews of their systems used to make declarations to CBP, and take appropriate action to correct the issues and submit loss of revenue (duties, fees, taxes, etc.) in accordance with the appropriate laws and regulations, based on the liquidation status of the entries/transactions at issue.

ACE portal account users have access to view their account information and transactional data, which can be used to identify and evaluate compliance issues and monitor daily operations. For further information about ACE please visit CBP's website:
<http://www.cbp.gov/trade/automated>.

Because [REDACTED] has been provided this information, violations that may occur in the future could result in seizure and forfeiture of imported merchandise and/or the assessment of monetary penalties.

We request that you acknowledge receipt of the information listed above by signing in the signature block below and returning the signed letter to our office by one of these means: 1) in the form of a pdf file via email to [REDACTED] imile to (915) 534-6092; or 3) by mail to the following address:

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U.S. Customs and Border Protection
Office of Regulatory Audit
Office of Trade
1200 Golden Key Circle, Suite 461
El Paso, TX 79925

If there are any questions or [redacted] representatives would like to schedule a meeting with us, please contact [redacted]

Sincerely,
[redacted signature]

Danielle E. Hightower
Field Director-Houston
Office of Regulatory Audit
Office of Trade
Houston, TX

Enclosures:
As described above

Signature of Responsible Official Acknowledging Receipt of the Items Listed Above:

Signature	Printed Name	Title	Date
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CBP Informed Compliance Letters

- CBP has been issuing informed compliance notification letters to importers for the past year.
- This process is old with a new twist.
- Receiving a letter mean that CBP Regulatory Audit has identified specific high risks with the company's import transactions and is "strongly considering" the company for a comprehensive audit.
- Audits may include both substantive transaction testing and internal control testing.
- These letters advise importers that they should consider a prior disclosure.
- Companies are generated based on CBP QRAM database and ACE data.
- The letters go on to state that, because the company has been provided information relating to specific risks with their import transactions, "violations that may occur in the future could result in seizures and forfeitures of imported merchandise and/or the assessment of monetary penalties."

CBP Informed Compliance Letters

- Letters are currently being sent out by the CBP Regulatory Houston Field Director for the entire country.
- Focus is being placed on the Top 1000 Importers and letters will be sent out annually.
- Customs does not publish the Top 1000 list but does publish the Top 5000 Importers alphabetically (<https://www.cbp.gov/document/top-5000>).
- ISA Members could also receive IC letters and are not exempt from Quick Response Audits.
- These letters are generating numerous Prior Disclosures to CBP.
 - ✓ So what should the Importer do?
 - ✓ What actions should the Importer take?
 - ✓ Next, are the Top 10 actions to consider once receiving an informed compliance letter.

1.) Consider the meaning of the letter

- CBP has explained that these letters are a courtesy notification that an audit and/or investigation may be forthcoming. These letters are not random.
- Why did they send you the letter? Don't blind side your management, tell them about the letter and what it might mean for the company.
- Should your company sign and return the letter?
- What does it mean if you do? Greater culpability and corresponding penalties?
- Who should sign?
- Is there another way?
- Would a well drafted response reduce the risk that CBP would audit?

1.) Consider the meaning of the letter (con't)

- What if you are an ISA member?
- Is silence golden?
- Is an email in lieu of signing prudent?
- When was the last time the Company filed a prior disclosure or conducted an internal review?
- Does the Company have robust compliance program where monitoring and post-entry reviews are key components?

2. Get Educated!

Have you read the CBP Informed Compliance Publications provided to you via the letter and other sources available on CBP's website to understand your legal requirements?

Attend training sessions and webinars to increase your knowledge and understanding of CBP requirements.

- ❖ NCBFAA – NEI Program for Importers
- ❖ Trade Associations such as AAEL, CompTIA, American Apparel & Footwear Association, ICPA, etc.
- ❖ Local Broker & Forwarder Associations
- ❖ CBP Centers of Excellence Webinars/ seminars and outreach events

2. Get Educated!

The screenshot shows the NCBFAA Educational Institute website. At the top, there is a navigation bar with links for HOME, JOIN NCBFAA, MEMBERSHIP DIRECTORY, ONLINE PAYMENT, CONTACT US, and social media icons for LinkedIn and Twitter. The NCBFAA logo is prominently displayed, along with the text "NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC." and "VOICE OF THE INDUSTRY SINCE 1897". A search bar is located on the right side of the header.

The main navigation menu includes: ABOUT NCBFAA, MEMBERSHIP, EDUCATIONAL INSTITUTE (highlighted), PUBLICATIONS & RESOURCES, EVENTS, MARKET PLACE, and LOGIN.

The main banner features the NEI logo and the text "NCBFAA EDUCATIONAL INSTITUTE" over a background image of an airport tarmac with a yellow ground support vehicle and an airplane.

On the left side, there is a sidebar menu under the heading "Educational Institute" with the following items: Logistics Educational Interface, G-TEC, Educational Calendar, Quarterly Program, Bookstore, Webinars, Continuing Education, Certified Customs Specialist (CCS), Certified Export Specialist (CES), and Professional Membership.

The main content area is titled "CERTIFIED CUSTOMS SPECIALIST (CCS) PROGRAM" and includes a "Printer Friendly" link. The "About the Program" section states that the program is designed to assist trade professionals in becoming experts in current import regulations. The "CCS Course" section describes it as a self-paced online offering with a proctored final exam. The "Who Should Attend" section lists individuals in the import industry. The "Benefits of Attending" section lists expanding knowledge and national professional recognition.

2. Get Educated!

- CBP Website

- <https://www.cbp.gov/trade/programs-administration/audits/focused-assessment>
- <https://www.cbp.gov/trade/programs-administration/importer-self-assessment>

Focused Assessment Program (FA)

Focused Assessment Program Overview:

- [FA to ISA Transition Program Presentation \(October 2014\)](#)

Focused Assessment Documents:






















The following documents are the portions of the FA Kit that have been updated to date and are effective for new PAS assignments started on or after October 1, 2014:

- [Exhibit 2A – Pre-Assessment Survey Questionnaire \(October 2014\)](#)
- [Exhibit 2C – FA PAS Audit Program \(October 2014\)](#)

The following document contains all the exhibits of the original FA Kit:

[FA Kit \(October 2003\)](#)

ICPA Miami 2017

-  [Exh 2A FA General Questionnaire.pdf](#)
-  [Exh 2C Pre-Assessment Survey Audit Program.pdf](#)
-  [Exh 3A Determining Review Areas based on Risk.pdf](#)
-  [Exh 3B Consideration of Internal Controls in a Customs Audit.pdf](#)
-  [Exh 3C Internal Control Summary by Component.pdf](#)
-  [Exh 3D Internal Control Management & Evaluation Tool.pdf](#)
-  [Exh 3I Errors Disclosed to Customs.pdf](#)
-  [Exh 4A Example of Internal Control Manual.pdf](#)
-  [Exh 4B Common Errors by Importers.pdf](#)
-  [Exh 4C Prior Disclosure During a FA.pdf](#)
-  [Exh 4E Compliance Improvement Plan Framework.pdf](#)
-  [Exh 4F Guidelines for supporting GSP Claims.pdf](#)
-  [Exh 5A PAS Internal Control Overview.pdf](#)
-  [Exh 5B Transaction Value PAS Technical Guide.pdf](#)
-  [Exh 5D Classification PAS Technical Guide.pdf](#)
-  [Exh 5E HTS 9801 Technical Guide.pdf](#)
-  [Exh 5H 9802.00.80 Technical Guide.pdf](#)
-  [Exh 5I HTS 9802.00.90 Technical Guide.pdf](#)
-  [Exh 5J Antidumping & CVD Technical Guide.pdf](#)
-  [Exh 5M GSP PAS Technical Guide.pdf](#)
-  [Exh 6A Audit Sampling Policy.pdf](#)

Importer Self-Assessment

Importer Self Assessment is a voluntary approach to trade program provides the opportunity for importers who have the resources to assume responsibility for monitoring their exchange for benefits

[Importer Self-Assessment Program: General Notice](#)

[Federal Register Notice](#)

[Importer Self-Assessment Handbook](#)

[ISA Questionnaire](#)

[Memorandum of Understanding - ISA](#)

[Importer Self-Assessment Program Presentation](#)

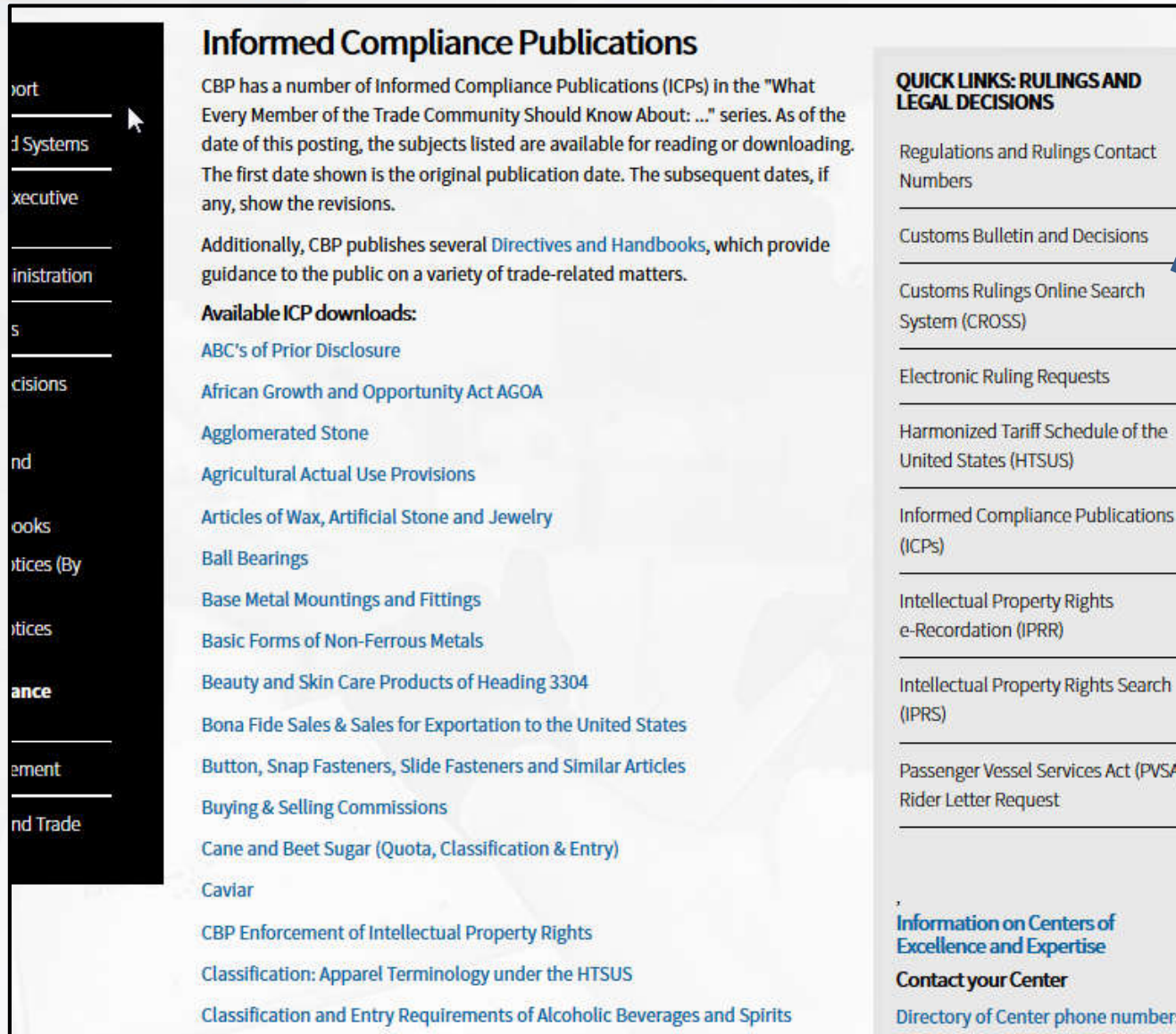
[Entry Summary Trade Data Request](#)

[Annual Notification Requirements](#)

[Guidance on Internal Controls for ISA](#)

[Best Practices of Compliant Companies](#)

[ISA Program Fact Sheet](#)



Informed Compliance Publications

CBP has a number of Informed Compliance Publications (ICPs) in the "What Every Member of the Trade Community Should Know About: ..." series. As of the date of this posting, the subjects listed are available for reading or downloading. The first date shown is the original publication date. The subsequent dates, if any, show the revisions.

Additionally, CBP publishes several [Directives and Handbooks](#), which provide guidance to the public on a variety of trade-related matters.

Available ICP downloads:

- [ABC's of Prior Disclosure](#)
- [African Growth and Opportunity Act AGOA](#)
- [Agglomerated Stone](#)
- [Agricultural Actual Use Provisions](#)
- [Articles of Wax, Artificial Stone and Jewelry](#)
- [Ball Bearings](#)
- [Base Metal Mountings and Fittings](#)
- [Basic Forms of Non-Ferrous Metals](#)
- [Beauty and Skin Care Products of Heading 3304](#)
- [Bona Fide Sales & Sales for Exportation to the United States](#)
- [Button, Snap Fasteners, Slide Fasteners and Similar Articles](#)
- [Buying & Selling Commissions](#)
- [Cane and Beet Sugar \(Quota, Classification & Entry\)](#)
- [Caviar](#)
- [CBP Enforcement of Intellectual Property Rights](#)
- [Classification: Apparel Terminology under the HTSUS](#)
- [Classification and Entry Requirements of Alcoholic Beverages and Spirits](#)

QUICK LINKS: RULINGS AND LEGAL DECISIONS

- [Regulations and Rulings Contact Numbers](#)
- [Customs Bulletin and Decisions](#)
- [Customs Rulings Online Search System \(CROSS\)](#)
- [Electronic Ruling Requests](#)
- [Harmonized Tariff Schedule of the United States \(HTSUS\)](#)
- [Informed Compliance Publications \(ICPs\)](#)
- [Intellectual Property Rights e-Recordation \(IPRR\)](#)
- [Intellectual Property Rights Search \(IPRS\)](#)
- [Passenger Vessel Services Act \(PVSA\) Rider Letter Request](#)

Information on Centers of Excellence and Expertise

Contact your Center

[Directory of Center phone numbers](#)

*What Every Member of the
Trade Community Should Know About:*
Reasonable Care
(A Checklist for Compliance)



**U.S. Customs and
Border Protection
Valuation Encyclopedia
(1980 – 2015)**



U.S. CUSTOMS and BORDER PROTECTION

*What Every Member of the
Trade Community Should Know About:*
**DETERMINING THE
ACCEPTABILITY OF
TRANSACTION
VALUE FOR
RELATED PARTY
TRANSACTIONS**




AN INFORMED COMPLIANCE PUBLICATION

APRIL 2007

U.S. CUSTOMS and BORDER PROTECTION

3.) Conduct a risk assessment

- Analyze ACE Data and Other Information
<http://www.cbp.gov/trade/automated/getting-started/using-ace-secure-data-portal>
 **ace secure data portal** U.S. Customs and Border Protection
- Focus on the risks identified in the IC letter as well as CBP Priority Trade Issues (e.g. Antidumping Duty and Countervailing Duty risk).
- Ensure corrective actions in prior disclosures are working as intended.
- Review the results of CBP Form 28s, CBP Form 29s, post summary corrections submitted to CBP, as well as any internal post entry audits.
- Consider whether you are a Top 1000 importer.
- **Risk Assessment Example:** Identify potential ADD/CVD risks with regards to HTS-Country of Origin combinations in the company's import data matching active ADD/CVD cases. ACE ES-105 Report!

3.) Conduct a risk assessment

Focus on Customs Priority Trade Issues – CBP's goals are to:

- **Free Trade Agreements** – prevent non-compliance.
- **Anti Dumping Duties** - detect and deter circumvention.
- **Textiles / Wearing Apparel** - ensure compliance with laws, regulations, quotas, Free Trade Agreement requirements, and Intellectual Property provisions.
- **Intellectual Property Rights** - target and seize imports of counterfeit and pirated goods, and enforce exclusion orders on patent-infringing and other IPR violative goods.
- **Import Safety** - ensure that unsafe products do not enter the US.

4.) Test and measure your compliance level

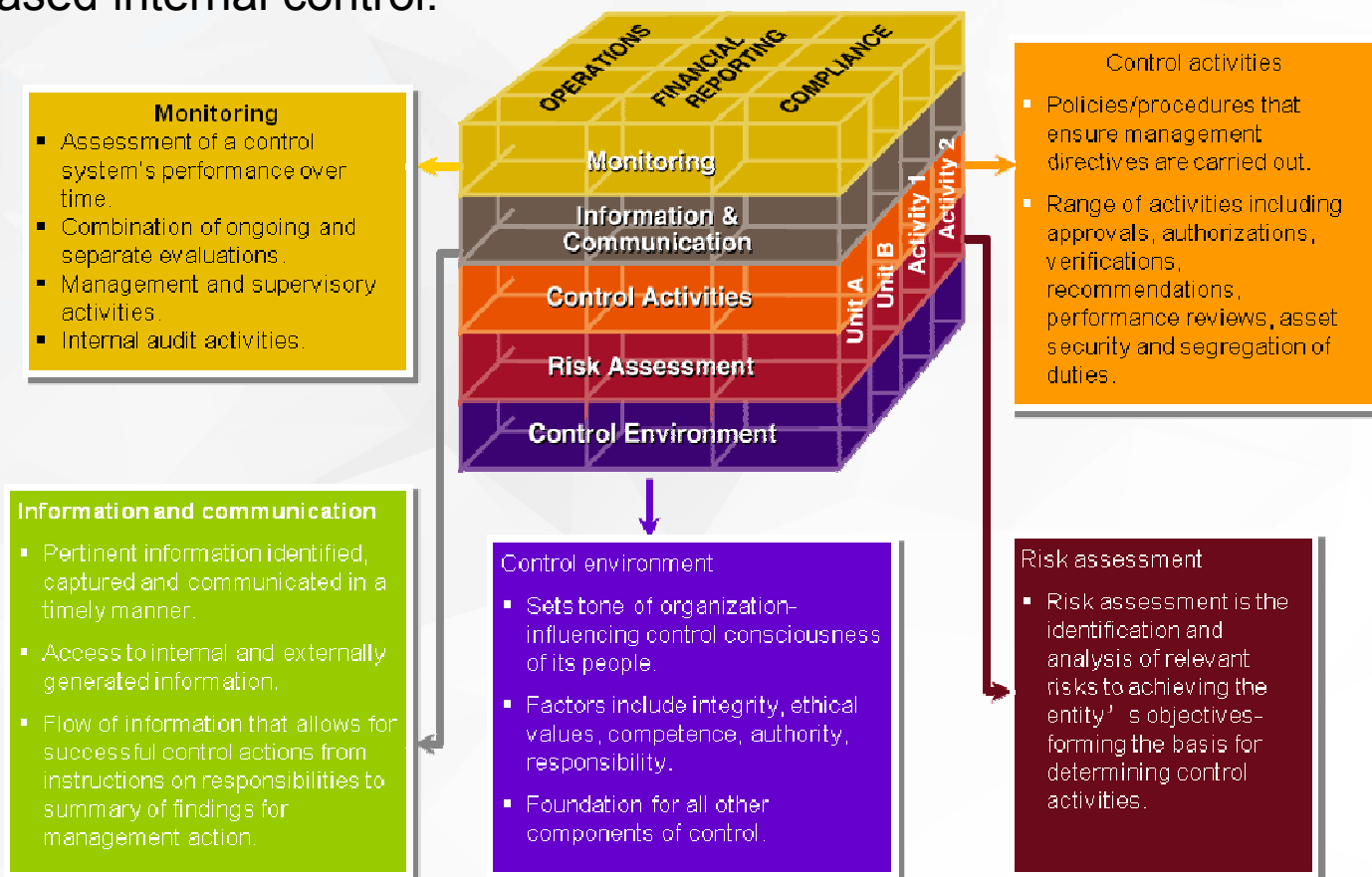
- Are you audit ready in all risk areas?
- CBP may start with the risk area(s) identified in the IC letter but, if audited, CBP may expand and review all risk areas.
- Conduct targeted sampling based on risk assessment results.
- See the Focused Assessment kit for a list of risk areas - see exhibits 5a-5v (<https://www.cbp.gov/sites/default/files/documents/FA%20Document.pdf>)
- Compute compliance rates (using Microsoft Excel or Access) with a 95% compliance level target in mind.

5.) Get management buy-in

- How is this best accomplished?
 - Stress the effectiveness of COSO based controls
- Use data metrics
 - Highlight possible opportunities and ROI
 - Identify possible loss of revenue and corresponding penalties for your management team
- Evaluate Record-keeping procedures and availability
 - Clarify the impact if deficient
- Compare and contrast compliance organizations and program structure of competitors or using industry standards
 - Share war stories or what if scenarios
 - Negative press and stock-holder concerns

6.) Evaluate your internal control program

- Compliance programs should include all 5 components of COSO-based internal control.



6.) Evaluate your internal control program

- Importers should implement effective Customs Compliance internal controls (demonstrate reasonable care), consisting of:
 - include all 5 components of internal control
 - include company-wide policies, procedures and mandate (not only trade comp)
 - ensure you have strong broker management procedures
 - ensure you have a dedicated, well-educated compliance team.
 - include risk assessment and management procedures
 - prepare specific internal controls procedures (SOP's)
 - develop detailed monitoring procedures (post-entry audit)
 - include reference materials or references
 - ensure periodic updates for new risk area, program changes, corrective action

6.) Evaluate your internal control program

Elements of a Good Customs Compliance Manual

- Good customs compliance controls are:
 - Not a regurgitation of laws and regulations!
 - Not an education manual for employees!
 - Not created to collect dust on a shelf!
- Internal controls should:
 - address all areas of risk
 - identify responsible parties
 - describe how to perform the task
 - explain the process for independent verification of tasks
 - include a process for reporting & correcting errors
 - Include a process to update and strengthen internal controls (when errors are found think of the past and future)



7. Consider a Prior Disclosure (“PD”)

- Mistakes Happen – Expect them and deal with them appropriately
- If you find non-compliance consider the pros and cons of filing a Prior Disclosure
- Prior Disclosure limits monetary penalties under 19 USC 1592
- Prior Disclosure are **voluntary** – Not obligated to make them
- **Elements** of a PD –
 - Identifies the class or kind of merchandise involved in the violation.
 - Identifies the importation . . . included in the disclosure by entry number . . . or by indicating each concerned Customs port of entry and the approximate dates of entry . . .
 - Specifies the material false statements, omissions or acts including an explanation as to how and when they occurred; and
 - Sets forth, to the best of the disclosing party's knowledge, the true and accurate information or data that should have been provided in the entry.
 - Tenders any duties or fees owing, or agrees to tender any duties and fees owing within 30 days of written notification.
 - Must be made without knowledge of an investigation by CBP violations – Letter does not constitute “notification of an investigation”.



7. Consider a Prior Disclosure (“PD”)

- PD’s are viewed as an “[admission of a violation](#)” (i.e., making a false statement or material omission)
- [Reasonable care](#) is a complete defense to an allegation of “negligence”
- Can request CBP HQ to consider the question of:
 - Is there a violation? I.e., is there a “mistake” in classification or value, etc. . . . ?
 - If there is a mistake, was it negligent? (No negligence means no violation – no violation means no duty owed for liquidated entries and no penalty)
- CBP may require [deposit of duties](#) before consideration of any issues
- Can not [protest](#) CBP decisions related to PD issues and no Judicial review of decisions
- To ensure prior disclosure rights are not cut off, can file an [initial notice](#), which can then be [perfected](#) (completed) 30, 60 or 90 (+) days later.
- [Time period for PD](#). Generally five years from date of Disclosure
- CBP will request a waiver of [Statute of Limitations](#) if PD covers 3 or more years

7. Consider a Prior Disclosure (“PD”) & Statistical Sampling

- **Statistical sampling** is a valuable tool to use to limit scope work
- Use of statistical sampling is authorized by CBP in Prior Disclosure
- 19 CFR § 162.74(j) Prior disclosure
 - Importer may use statistical sampling to “disclose the circumstances of a violation” and for calculation of lost duties, taxes, and fees or lost revenue for purposes of prior disclosure, provided that the **statistical sampling** satisfies the criteria in **19 CFR 163.11(c)(3)**.
 - The disclosure must include an explanation of your sampling plan and methodology that meets with CBP's approval.
 - The time period, scope, and any sampling plan employed, as well as the execution and results of the self-review, are subject to CBP review and approval.
 - CBP may review other transactions from the same time period and scope that are the subject of the prior disclosure.
 - Can **offset** overpayments and over-declarations. See 19 CFR 163.11(d).
- Exhibit 6A Audit Sampling Policy from CBP FA Kit.

8.) Develop a corrective action plan

- Develop a plan that will strengthen internal controls to ensure errors do not reoccur.
- Conduct a root cause analysis before developing an action plan.

CIP Contents

The CIP should identify the company point of contact, describe the noncompliant area, illustrate the corrective action, and project the completion, implementation, and validation target dates. A suggested format (template) is provided for preparing a CIP.

Responsible Official
The CIP should identify by name and title the person assigned to coordinate the CIP process. That person should be the company's primary point of contact regarding the CIP.

Deficiency Disclosed on the Result Sheet
The CIP should clearly state the deficiencies found during the FA for each noncompliant area and should refer to the result sheet(s) describing the noncompliant condition.

Action Steps
The company should include a full explanation of any corrective action steps taken and/or planned to correct the noncompliant areas. A step-by-step outline is necessary for the integration of each affected department involved with the company's Customs transactions.

Supporting Documentation
Copies of supporting documentation (department operating manuals illustrating the change, policy statements, or other evidence documenting the corrective action for action steps already completed) should be attached to the CIP. The nature of the required action steps should determine the kind of supporting documentation provided.

Target Dates
A target date should be established for each action step required to correct a deficiency. The company should inform Customs when it expects to complete the action steps.

Responsible Department
In some cases, more than one department may be responsible for addressing an action step. The action plan should reference all departments assigned to address each action step.

8.) Develop a corrective action plan (con't)

Focused Assessment Program		Exhibit 4E	
COMPLIANCE IMPROVEMENT PLAN (Suggested format)			
Company Name			
Date Compliance Improvement Plan Prepared			
CIP CONTENTS			
Name/Title of Responsible Official			
Deficiency Disclosed on the Audit Results Sheet <i>(should be taken from the "Condition" section of the Results Sheet)</i>			
Corrective Action		Target Date	Responsible Department
<i>(Specific action steps to be taken to correct the deficiency)</i>	<i>(Supporting documentation to be submitted)</i>	<i>(Expected completion date for each action step)</i>	<i>(Title of department assigned to address each action step)</i>
Validation Action <i>(Description of testing methodology to be used)</i>			
Approving Official/Title			Date

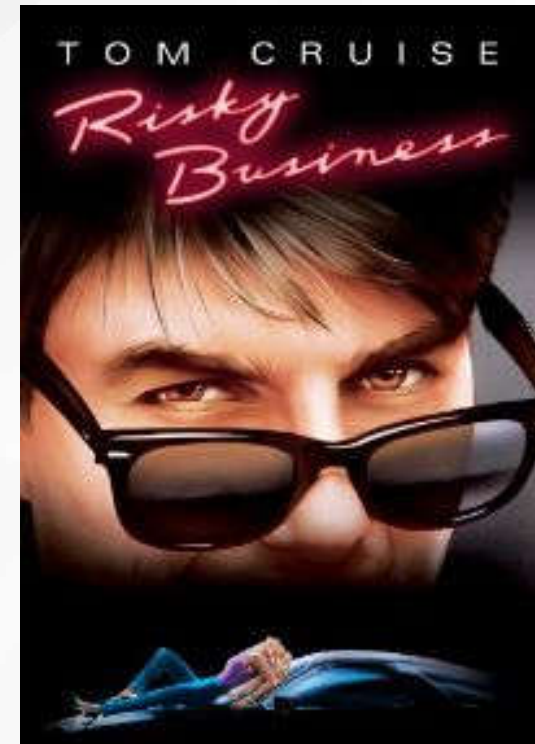


9.) Implement corrective action

- Once the action plan has been designed disseminate it to all the proper parties for review and discussion.
- Let parties know that adherence is mandatory.
 - Reward or punish adherence.
- Roll-out the action plan via a group meeting to ensure everyone is on board and understands what's required.
- Test the plan once implemented.
 - Make sure that your corrective action plan is working.
- If errors continue to occur, conduct a root cause analysis.
- Re-test compliance levels to validate new controls are working and are effective.

10. Act Now!

- Do not wait until CBP is at your door!
- Failing to respond appropriately can have adverse consequences
 - Increase likelihood for CBP follow-up or Audit
 - Possibility that CBP could notify you of an “investigation” and preclude Prior Disclosure
 - Increases likelihood that if a CBP Audit discovers a violation, 1592 penalties may be assessed.
 - CBP less likely to grant extensions or delay start of audit
- Key steps
 - Review data in letter
 - Respond to letter
 - Development and implement Risk Review Team and Process



10. Act Now!

- Conduct a **targeted** risk review
- Analyze **root cause** of errors
- Develop and implement **corrective action** procedures and retest
- Consider benefits of Prior Disclosure for **material** errors
 - Differences in risk review vs. use of Statistical Sampling in the context of Prior Disclosure.
 - Sampling methodologies
 - Judgmental sample
 - Stat sample
 - Stop and go method

