



CCSContact

Keep Score with Your NEI Transcript

The end of the year is coming up. Are you current with your CCS Certification?

The handy NEI Transcript can answer this question quickly and easily, easing all of your concerns. Here are a few tips on how to maximize your Transcript experience

Log onto www.NCBFAA.org and log in with your username and password. Click on the Educational Institute tab and follow the link to the Education Director site. From here, click on Current User and, once your Home Page pops up, the Transcript tab on the top right of the screen.

Please review your transcript to see if there are any problems with it, like missing events or improperly assigned credits, before contacting NEI. If you find a problem, please feel free to contact the NEI by filling out an Appeal form.

Please be advised that the free quizzes, or any quiz or exam that you take on the website, will take a few days to register in your Transcript. If you finish the exam and do not immediately see the credits reflected in your Transcript, do not be alarmed. Instead, check the Transcript page again in a few days. If the credits are still not there, please notify NEI.

Another important thing to check is that your Renewal shows up on your Transcript. If this is not the case, go to your Home Page. If you see that the Renewal is showing up as an Enrolled Course on your Home Page, click on it. From this page, you will be taken to the final

step of Renewal completion.

This page will tell you that, to renew successfully, you must hit the NEXT button on the bottom left of the screen. Hit NEXT and you'll be done. If the Renewal does not show up on your Home Page, please notify NEI.

Viewing your NEI Transcript is both simple and informative. It allows you to track your progress in the Program and to appeal anything you find incorrect. Please use this tool to make your CCS experience all it can be.

Broker Penalty Limits in Question by Lawrence M. Friedman

In each CCSContact issue, the lawyers of Barnes, Richardson & Colburn will provide useful information and insight into issues affecting importers, brokers, and customs compliance professionals. Feel free to contact them with comments and/or suggestions at www.barnesrichardson.com or lfriedman@barnesrichardson.com.

Customhouse brokers have been under the impression that Customs and Border Protection is limited in the penalties it might try and assess against them, and justifiably so. The source of this impression derives from the customs laws, specifically section 1641(d)(2)(A)), which says, in part, that "unless [otherwise specified], the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty

not to exceed \$30,000 in total for a violation or violations of this section."

Before this language became law, the brokerage community lobbied Congress and provided testimony indicating its understanding of its meaning. Under the interpretation apparently prevailing among brokers, this language limited Customs to either:

1. A single penalty action limited to \$30,000 for any violations of the statute that occurred before the required pre-penalty notice, or
2. Multiple penalty actions limited to \$30,000 in total for separate violations that occurred before the required pre-penalty notice.

As a result of litigation still making its way through the federal courts, the brokerage community needs to re-think its potential liability for violations of the law.

The UPS Case

The relevant case is [United States v. UPS Customhouse Brokerage, Inc.](#), a 2006 decision by Judge Carman of the U.S. Court of International Trade. The basic facts are straightforward. At some point prior to 2000, CBP became concerned about the potentially excessive use of tariff item 8473.30.9000.

At the time, that tariff item covered parts and accessories of automatic data processing machines that include a cathode ray tube. Customs sent letters to brokers and held training session on this issue. Despite its efforts, Customs found what it believed to be a continuing low level of compliance. Ultimately, it commenced penalty cases and

issued five pre-penalty notices to UPS for the alleged misclassification of equipment in HTSUS heading 8473.

In reliance on the statute discussed above, UPS asked the Court to dismiss the portions of the case that exceeded the \$30,000 limit or were not included in the first pre-penalty notice. The government argued that it had the authority to impose multiple penalties, each of which might reach the \$30,000 cap.

Judge Carman characterized the case as raising a new issue. However, as the judge stated in a detailed and well-written decision, he was not permitted to decide independently the meaning of the law. Rather, principles of administrative law require that federal judges give due consideration to the interpretation of a law by the agency charged with enforcing it. This is called “deference” and comes from a Supreme Court decision called Chevron.

Under Chevron, a reviewing court must apply a two step analysis. First, it must determine whether the meaning of the law is clear as written. If so, the court is required to adopt that interpretation of the law.

However, if the law is ambiguous, the court looks to how the agency—in this case Customs—interprets the law. If the agency’s interpretation is reasonable, the court must follow it, even if the court would disagree in an independent analysis. The court will uphold an agency’s interpretation even if it is not the most reasonable of the reasonable interpretations.

As you can see, UPS had a tough row to hoe.

The Decision, For Now

Judge Carman found the statute to be ambiguous. Thus, he examined Customs’ interpretation of the law to determine whether it was reasonable. He looked at the relevant regulation (19 C.F.R. § 111.91) and found that Customs

clearly articulated its understanding that a broker may be subject to multiple penalty actions, although the total amount of the penalties was unclear.

Because the regulation had been subject to public notice and comment, brokers had been provided an opportunity to object before it went into effect. Further, in its published guidelines for the mitigation of penalties Customs stated that it can pursue a maximum of \$30,000 for any violation or violations in any one penalty notice. Based on these public statements, the court found that Customs had adopted a reasonable interpretation of the law and, therefore, denied UPS’ request to dismiss.

That did not end the case. In a procedural move, UPS tried for an immediate hearing before the Court of Appeals for the Federal Circuit. That court denied the request leaving it to Judge Carman to decide whether the United States had proven its case based on the papers submitted or whether a trial would be necessary.

Back in the CIT, Customs relied primarily on the declaration of a single individual that Customs had determined whether the merchandise included a CRT based on the shipping documents, physical examination, or both. This did not satisfy Judge Carman, who held that the government had not proven that the goods lacked a CRT. Absent actual misclassification, there could be, given the claims in this case, no violation of the broker statute and, therefore, no penalties. As a result, the court denied the motion and told the parties to prepare for trial.

What to Do

It is exceedingly difficult to extrapolate strategy or advice from a decision of the CIT that remains subject to appeal. Thus, it is important that brokerage personnel responsible for

compliance keep a watchful eye on this case. Should the Court of Appeals agree with the Court of International Trade, brokers may wish to reconsider some of their internal compliance procedures. More important, brokers may wish to review their liability insurance coverage and the insurance coverage provided to directors and officers. This is something to discuss with your lawyers and insurance professionals. At the same time, brokers should recognize that even if the government prevails in UPS, their liability for violations of the statutes remains capped at \$30,000 per penalty action. That is a situation many importers would envy.

CBP Schedules ACE Exchange Conference

On October 15-17 in Atlanta, CBP is holding an ACE Exchange Conference for the trade community where the audience can speak openly, learn about, and provide input on ACE. In addition to earning 7 CCS CEUs per day, attendees can learn how ACE has helped companies comply with a new regulatory mandate and how ACE has given thousands of importers, brokers, and truck carriers an advantage over their competitors.

Newly released ACE functionality benefits Cartmen, Lightermen, Facility Operators, Foreign Trade Zone Operators, Sureties, Software Vendors, and Service Providers. Many regulatory and technical changes that will impact the business of importing goods into the United States are underway. Learn about these changes and how to prepare for them by attending this free conference

Topics being covered include:

Functionality Available Now:

- National View of Company’s Transactions
- Paying Duties and Fees on a Monthly Statement

- Reporting Tool with Transactional, Financial and Compliance Data
- Mandatory Submission of Electronic Manifest for Trucks
New ACE Capabilities:
 - Creating 5106 Online
 - Participation of other Government Agencies
 - Ability for Brokers, Cartmen, Lightermen and Facility Operators to meet CBP Regulatory Requirements
 - Highlights of Functionality to Come in the Longer Term
Up Coming CATAIR Changes
 - CBP will also hold a smaller session to discuss upcoming CATAIR changes such as CBP Forms 28 and 29, Census Warnings, and Corrections to Entry Summaries.
- *One-On-One Appointments*
 - The ACE Exchange also offers private appointments with CBP for ACE account assistance, reports training or other ACE related issues.
 - These appointments are in high demand and reserved on a first-come, first-serve basis. Only one session per company.
 - *Please check the full agenda before requesting an appointment time.*

Registration for this event is free, but required for each attendee. Please sign up early to attend and for a one-on-one appointment. Agenda and online registration form can be found at www.cbp.gov/modernization.

No Third Thursday In September

With the NCBFAA 2007 Government Affairs Conference calendared for September 24-25, no Third Thursday webinar is scheduled for September. The next one is scheduled for October 18 when Roanoke Trade Services will present ATA Carnet.

Remember, if you were counting on getting credits for a Third Thursday in September,

why not join us at the GAC where you can earn up to 7 toward your Continuing Education requirement? Just log on to www.ncbfaa.org, events and register to attend.

CBP Announces Modification, Extension of the PEA Processing Test

CBP has extended the test of the Post-Entry Amendment (PEA) program for another year. Effective August 15, CBP modified the PEA program to require that a PEA must be filed at least 20 days before the scheduled liquidation date of the underlying entry. (Previously, the PEA could be filed anytime prior to liquidation of the entry.) PEAs submitted less than 20 days before liquidation will be treated as untimely and returned to the filer. In those instances where single PEAs are submitted timely but the entry summaries are not unset or processed by the scheduled liquidation date and liquidation occurs without benefit of the requested amendment, CBP will treat them as protests under 19 U.S.C. 1514 or, if appropriate in the circumstances, as evidence warranting reliquidation under 19 U.S.C. 1501.

CBP has also indicated that the PEA test will be the only procedure in place for post summary adjustments prior to liquidation, and the SIL procedure (see Administrative Message 97-0727, August 3, 1997) will be discontinued.

Handling the New 2Z AMS Message, According to CBP

Questions have arisen about Administrative Message No. 07-0171 covering the new 2Z AMS message and instructing ABI Filers not to just submit a bill of lading update to correct it. This is not about an ABI problem; it is an AMS issue. The 2Z

message describes a mismatch from the carrier's manifest and what was transmitted for the advance manifest by a forwarder or NVOCC under their SCAC code.

For example, an NVO A books a container on the ABC Good Luck. They get a booking number for the transaction. ABC assigns a master bill number to the shipment and reports it to the booking NVO.

The NVO transmits its manifest with house bills for the ABC Good Luck. Each manifested house bill must reference an AMS carrier's master bill, but at the time the NVO's manifest is received, AMS only checks to see if the NVO is reporting a valid AMS carrier's SCAC as the first four characters of the master bill number.

Therefore, the NVO can report its house bill with master bill ABCUnnnnnnnn, and the manifest from the NVO will be accepted. If that number, ABCUnnnnnnnn, turns out to be the NVO's booking number, instead of ABC's actual master bill number, a 2Z message will be created, the NVO will NOT receive a 1Y (NVO-MVO match) message from AMS, and any entries filed against the correct master bill will not be released to the carrier's AMS records.

In fact, the lack of the 1Y message amounts to a "do not load" condition to the carrier, so the carriers have a very strong interest in making sure that the NVO reports the correct master bill for every booking.

In short, if the NVO doesn't get a 1Y within one or two days after its manifest is transmitted to AMS, red flags should go up and the NVO should immediately check with the carrier to confirm the master bill number."

This example shows how any incorrectly input bill of lading number by an NVOCC or forwarder can set off the 2Z

message. You should be ready to contact the NVOCC for them to correct the AMS transmission with the carrier. You should also pass along this example to help further prevent the problem from occurring.

Old Forms Renumbered, New Forms Debut

Whether tallying attendance or confirming eligibility, the NEI has a form designed to do the job and each has a unique number identifier. With the launch of our new Website and transcript updates, we have simplified many of them.

The Individual Verification of Attendance Form 111 is now Form 210 and should be used by individuals in case an organizer fails to submit an attendance sheet for an event. In addition, the organizer form, Organizer Verification of Attendance Form 110, is now Form 200.

You should use the Individual Request for

Recognition of Eligibility Form 222, which is now Form 110, in case an event organizer fails to get the event approved. The other event eligibility form, Request for Recognition of Eligibility for Organizations Form 111 (now Form 100), is for organizers to get events included in the portfolio of events for CCS continuing education units.

To accommodate our CCS participants as much as is reasonably possible, the NEI has put in place several new Forms for appealing its decisions. For example if the NEI exam or event schedule works a hardship on one of our candidates, the NEI invites the candidate to use the Appeal for Consideration of Special Needs for CCS Course or NEI Event Form 500. Use of this form to identify any special needs, if taking the CCS Course or attending an NEI-organized event, puts the NEI on notice that it must make any and all

reasonable efforts to accommodate those needs.

Those with exam location scheduling issues may use Appeal for Consideration of Test Center Form 600 to request an alternate proctored testing center in their area. NEI will consider such requests for persons who demonstrate difficulty in securing an existing NCBFAA sponsored location.

In connection with Form 600, the Approval of Request for Consideration of Test Center or Special Needs Form 601 notifies those, who have requested an alternate proctored testing center, that their request is approved.

Finally, the new Second Appeal for Recognition of Eligibility (Policy Committee) Form 120 is for event organizers and individuals to seek approval for inclusion in the portfolio of events for CCS continuing education units, if their first appeal was denied.

Old Forms Renumbered

<i>Use these to tally attendance for an event</i>	
Individual Verification of Attendance	
Old Form 111	New Form 210
Organizer Verification of Attendance	
Old Form 110	New Forms 200
<i>Use if event organizer fails to get the event approved</i>	
Individual Request for Recognition of Eligibility	
Old Form 222	New Form 110
<i>Use to get events included in the portfolio of events for CCS continuing education units.</i>	
Request for Recognition of Eligibility for Organizations	
Old Form 111	New Form 100

New Forms Debut

Appeal for Consideration of Special Needs for CCS Course or NEI Event	Form 500.
Appeal for Consideration of Test Center	Form 600
Approval of Request for Consideration of Test Center or Special Needs	Form 601
Second Appeal for Recognition of Eligibility (Policy Committee)	Form 120

Sept. – Oct. 15 Calendar of Approved CCS Courses

As of September 1, the following is a list of all the courses approved for CCS credit scheduled through October 15. Be sure to check the listings on the NEI Website for any added subsequent to September 1. In addition, the second free quiz for 10 CEUs will be available from September 3 – 30.

9/11	FDA Free Training Sessions for Importers	Mobile Association	Memphis, TN	Register	6
9/11	C-TPAT Mock Validation Program	FTASC	Long Beach	(818) 352-6753	3
9/11	Import Compliance	Braumiller Schulz & Co. LLP	Dallas	(214) 348-9306	7
9/11	Import Compliance	Braumiller Schulz & Co. LLP	Chicago	(214) 348-9306	7
9/11	Customs Bond Seminar	Roanoke Trade Services, Inc.	Atlanta	(843) 724-7575	3
9/12	Customs Bond Seminar	Roanoke Trade Services, Inc.	Atlanta	(843) 724-7575	3
9/12	Classification of Automotive Products	Sandler & Travis Trade Advisory Services	Detroit	Register	7
9/13	ACE Overview	Sandler & Travis Trade Advisory Services	Seattle	Register	3
9/13	ACE Advanced Reports	Sandler & Travis Trade Advisory Services	Seattle	Register	3
9/13	NAFTA Auto Products: Light Duty Vehicles	Sandler & Travis Trade Advisory Services	Detroit	Register	8
9/14	Trade Compliance Series: Introduction	Gonzalez Rolon Valdespino & Rodriguez	Dallas	Register	3
9/18	FDA Free Training Sessions for Importers	Mobile Association	Nashville, TN	Register	6
9/18	Basic Import Compliance	Braumiller Schulz & Co. LLP	On-Line Seminar	(214) 348-9306	1
9/18	AIAG Customs Town Hall	Automotive Industry Action Group (AIAG)	Pontiac, MI	Register	5`
9/18-21	Crossing Borders 2007	Livingston International Inc.	Atlanta	Register	18
9/18-20, 25-27	FDA Product Code Workshops	LACBFFA	San Pedro, CA	Register	6 each day
9/19	Improved Compliance	CBFFA of Charleston	Charleston, SC	edeaton@argents.com (843) 216-8301	3
9/19	Customs Broker's Exam Preparation Course	Sandler & Travis Trade Advisory Services	Detroit	Register	7 each day
9/20	Textile & Apparel Origin Verification: How To Handle CBP Documentation Requests	Sandler & Travis Trade Advisory Services	New York	Register	3
9/20	Making Sense of the Textile Free Trade Agreements and Trade Preference Acts	Sandler & Travis Trade Advisory Services	Miami	Register	1
9/20	Making Sense of the Textile Free Trade Agreements and Trade Preference Acts	Sandler & Travis Trade Advisory Services	Miami	Register	1
9/27	Importing Into The United	Sandler & Travis	Chicago	Register	6

	<u>States: Understanding Us Customs Law And Import Requirements</u>	Trade Advisory Services			
9/28	Trade Compliance Series: Classification and Quantity	<u>Gonzalez Rolon Valdespino & Rodriguez</u>	Dallas	<u>Register</u>	3
9/28	<u>Textile & NAFTA Qualification, Compliance And Recordkeeping</u>	Sandler & Travis Trade Advisory Services	Chicago	<u>Register</u>	6
9/30-10/3	<u>Logistics and Customs</u>	FTDC	Portland, OR	<u>Register</u>	14
10/2	Basic Export Compliance	Braumiller Schulz & Co. LLP	On-Line Seminar	(214) 348-9306	1
10/11-13	<u>Texas Brokers & Forwarders Conference</u>	HCBFFA	Galveston, TX	<u>Register</u>	13
10/11-13	2007 WESCCON	Pacific Coast Council	Denver	TBA	12
10/12	Trade Compliance Series: Value, Antidumping/CVD	<u>Gonzalez Rolon Valdespino & Rodriguez</u>	Dallas, TX	<u>Register</u>	3
10/15-17	<u>ACE Exchange - Atlanta</u>	CBP	Atlanta, GA	<u>Register</u>	7 per day