



August 7, 2018
Border Security Regulations Branch
Office of Trade
U.S. Customs and Border Protection
90 K Street NE, 10th Floor
Washington, D.C. 20229

Re: Docket Number USCBP-2018-0019

The Airforwarders Association (AFA) and the National Customs Brokers and Forwarders Association of America (NCBFAA) are national trade organizations that include air freight forwarders (known as “Indirect Air Carriers” or “IACs”) among their respective memberships. We have participated in the ongoing dialogue between the Transportation Security Administration (TSA) and U.S. Customs and Border Protection (CBP) and the air cargo transportation community about the Air Cargo Advance Screening (ACAS) pilot project. A number of our members have participated in the pilot. We therefore welcome publication of the Interim Final Rule and the request for comments.

In many ways, our views align with the carrier association, Airlines for America (A4A). It is important however for our organizations to outline some important distinctions and provide more clarity to our unique circumstances.

1. The carrier has the ultimate responsibility to file data within ACAS; however, there may be forwarders who are willing to meet prescribed terms and conditions in order to file instead of the carrier. We do not support duplicate filings, since minor or inadvertent differences may create anomalies in the targeting process. Having said that, there may be value in early transmittal of *partial* data (as opposed to the formal ACAS filing) that could address the agencies’ need to have information as soon as possible.

We incorporate the comments of Michael Ford of BDP International: *[In CBP’s summary of its regulatory requirements on page 27384,] you state that the House Air Waybill does not contain flight details and routing information. In the forwarder processes when creating a HAWB, we provide the full shipment details which include all transportation details that an exporter and the importer will need to identify their order as well as the flight details. In the case of moving airfreight cargo (not small pack courier shipments) full shipment details are 100% of the airfreight process. If there are changes to the original flight details, the changes will impact the entire consolidation of orders and normally be decided by the air carrier.*

We also associate ourselves with A4A comments on filing in ACAS: *While an ACAS filing party can likely start resolving data referrals immediately, even before it has come into physical possession of a shipment, it will not be able to complete screening resolution protocols until that party or its agent is in control of the shipment. The carrying out of DNL instructions for a shipment that is not yet in the possession of an ACAS filer, however, requires the US government to take the lead in contacting foreign law enforcement and other authorities. ACAS filers, as always, will do their utmost to provide CBP and TSA with all relevant information on a DNL shipment over which they have no physical control, including the likely location and the party likely in possession of it. But an ACAS filer generally would have no authority to ensure that CBP/TSA instructions are followed by those parties.*

We would urge CBP and TSA to carefully analyze multiple scenarios in which an ACAS filer is not in possession of a DNL shipment and to issue DNL instruction documentation that places the appropriate responsibilities on each stakeholder.

We [also] recommend that the language in the sentence referenced above be amended to simultaneously be less restrictive and to place resolution requirements on the proper party as follows: "Any party filing ACAS data may address the referral, but the ACAS filing party that will be loading the shipment onto an aircraft at the last point of departure must ensure that the referral has been addressed and resolved."

Master Air Waybill Transmission: 122.48b(d)(1) lists the mandatory ACAS data elements and states that they must be submitted at the lowest air waybill level.¹ This language appears to exempt master air waybill data from ACAS transmission requirements. We request CBP's clarification as to whether this is the intent.

2. The Interim Final Rule (IFR) calls for the bonding of forwarders who transmit the ACAS filing. Our associations understand the rationale behind such a requirement, but we hasten to urge CBP to recognize that this will serve to discourage forwarder participation in ACAS. While the very large forwarders may consider this the cost of doing business, the vast majority of the forwarding community are small and medium-size businesses. They have limited budgets and capacity for meeting expansive regulation.
3. Our respective members are concerned about the processing of the ACAS filing and the need to get timely results from the screening process. While we have heard that 90 seconds is a reasonable expectation, delays impact the movement of cargo. A delay that many forwarders have experienced with CBP's automated systems is caused by "down time." The air environment has created expectations that cargo will undergo speed, efficiency and reliability of movement. To impede the flow of air cargo would be unacceptable.

¹ p. 27389

4. A4A has objected to the term “loading” in making the requirement that ACAS data be transmitted “prior to loading.” We agree that this term is imprecise and, like A4A, believe that data should be transmitted prior to the completion of the loading process.
5. We believe that forwarders, in particular, may encounter circumstances where they are not able to address DNL instructions. To repeat A4A’s admonition: we would urge CBP and TSA to carefully analyze multiple scenarios in which an ACAS filer is not in possession of a DNL shipment and to issue DNL instruction documentation that places the appropriate responsibilities on each stakeholder. “Language seems to mix up data transmission with physical possession and does not accord well with the requirement that referrals be resolved before a shipment is transported by aircraft.”
6. CBP should consider the consequences of accepting data transmissions without an accompanying master air waybill or house air waybill at the lowest level. As A4A observes, a reasonable interpretation of the language of 122.48b(d)(1) appears to exempt master air waybill data from ACAS transmission requirements. As we have said previously, having multiple parties file duplicate data leaves the possibility for data errors since the airline is not familiar with the day-to-day operations of the forwarder.

Repeating the comments of Michael Ford, in his submission on behalf of BDP: *Additionally, one item not mentioned in the docket pertains to a common practice used by freight forwarders known as co-loading. Co-loading is the equivalent of ride-sharing for freight transportation. It is the consolidation of shipments across multiple companies on the same transportation vehicles.....The freight forwarder responsible for moving the ‘consolidation’ of cargo should be responsible for the transmission of ACAS data to CBP. We encourage CBP to review and understand these types of consolidations to create a communications process through which air carriers, consolidators and CBP are made aware of all HAWB information that has been filed in accordance with manifest filing requirements.*

7. The IFR calls for *restraint* in enforcement of ACAS requirements during the first twelve months. In other instances, CBP has used the term *informed compliance*. Greater definition must be given the term *restraint*, perhaps through some comparisons to CBP’s recent history of moderating its enforcement of new programs. We believe however that egregious, flagrant and knowing violations should not apply to this grace period.

We also express our appreciation to CBP and TSA for employing the single filing of ACAS data, thereby achieving multiple purposes and reducing the costs of data filing for those eligible to file.

Submitted by:

The Airforwarders Association

National Customs Brokers & Forwarders Association of America, Inc.