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## **NAFTZ Issue Brief**

### **Pilot Program CBP Form 216 and 5-Day Rule –Expansion of Direct Delivery**

#### **Background**

In June 2013, U.S. Customs and Border Protection (CBP) announced a pilot program to test elimination of the CBP Form 216 for repetitive activity in U.S. Foreign-Trade Zones and extension of the 5-Day Rule.

CBP Form 216 – 19 CFR 146.52 (a) requires a zone operator, prior to any action being taken, must apply for a permit on the CBP Form 216 to manipulate, manufacture, exhibit, sample or destroy merchandise in a zone or transfer merchandise for the specialized purpose of temporary removal (See Section 9.2 – CBP FTZ Manual) from a zone and return.

The CBP Form 216 is one of the few paper documents still utilized by Customs. It is not scheduled to be automated in ACE. As a result, CBP Headquarters has determined that the use of the form itself can be significantly reduced. Currently, the CBP Form 216 is filed periodically and annually by all zone Operators and approved by CBP authorizing the manipulation, production, and exhibition of merchandise within the zone. CBP Headquarters has determined that there is no need for CBP to provide authorization of such activity since the activity is approved by the Board Order issued by the Board. It is thus redundant and unnecessary for CBP to approve the CBP Form 216 for these three repetitive operations. The CBP Form 216 will continue to be utilized for destruction, sample, and temporary removal activities.

Extension of the 5-Day Zone Removal Requirement – 19 CFR 146.71 controls the release and removal of merchandise from a zone. Merchandise for which a CBP permit for transfer to the U.S. Customs territory has been issued must be physically removed from the zone within five (5) working days of issuance of the permit. The exact same provision in the bonded warehouse regulations was removed in the 1980's. The CBP FTZ Manual at Section 9.17(d)(2) provides for a Non-Processing Stipulation approved by a Port Director that eliminates the time limit under very specific circumstances.

During the CBP pilot, approved pilot operators have the option of allowing duty-paid merchandise that has been entered for consumption to remain in an activated zone area for up to 90 calendar days after CBP releases the merchandise, so long as the merchandise remains segregated, does not undergo further manufacturing, and is accurately recorded in the Inventory Control and Recordkeeping system within five (5) business days of release.

Elimination of the 5-day zone removal requirement will benefit the trade and align the regulations to bonded warehouses by focusing on production and accurate maintenance

of their Inventory Control and Recordkeeping system, rather than the timing of merchandise moving in and out of the zone. Order cancellations and other normal trade activity may require longer stays than 5 days and there is no revenue or security benefit to making the FTZ operator remove the merchandise. In addition, in situations where data or documentation from other government agencies is required, elimination of the 5-day zone removal requirement will simplify logistics in that merchandise will not have to be moved from a secure FTZ location pending receipt of that information.

The NAFTAZ worked with CBP prior to the announcement of the pilot program for the CBP Form 216 and 5-day Rule, and based on those discussions had anticipated that expansion of Direct Delivery privileges to FTZ Operator subsidiaries and non-owner Operators would also be included. The NAFTAZ requested clarification of several items and submitted a formal response with specific comments to improve the pilot so it is usable for FTZ Operators/Users and also provided supplemental comments regarding the extension of Direct Delivery filing procedures to non-owners of goods admitted to FTZs. CBP informed NAFTAZ that it was preparing an additional pilot that will extend Direct Delivery and C-TPAT certification to FTZ Operator subsidiaries and non-owner FTZ Operators.

The pilot was to be commenced on no earlier than July 17, 2013 and run for approximately two years with a final evaluation at the end of the testing period. Discussions with CBP on whether the June 2013 pilot would be expanded to include direct delivery have stalled. CBP supports direct delivery, but there have been other issues that complicate the expansion of the pilot to include direct delivery.

### **NAFTZ Position**

Over two years has passed since the initial announcement of the pilot program to test elimination of the Blanket 216 and extension of the 5-Day Rule. Currently CBP is revising the Part 146 regulations. The NAFTAZ views this is an opportunity and believes the following three changes should be included in the new Part 146 regulations:

Elimination of the CBP Form 216 – For Certain purposes the use of the CBP Form 216 will no longer be necessary. (The CBP Form 216 will continue to be used for destruction activities, sampling and temporary removal.)

Elimination of the 5-Day Rule – The elimination of the 5-Day zone removal requirement.

Expansion of Direct Delivery – The expansion of Direct Delivery privileges to FTZ Operator subsidiaries and non-owner Operators.

If the expansion of Direct Delivery privileges is not included in the new draft Part 146 regulations, NAFTAZ would like to secure a new pilot that expands Direct Delivery privileges to FTZ Operator subsidiaries and non-owner operators.

### **ABOUT THE NAFTAZ:**

The National Association of Foreign-Trade Zones (NAFTZ) is the leading advocate of productive investment through the U.S. Foreign-Trade Zones program. That program was established by Congress in 1934 and is administered by the Department of Commerce. A key feature of this program is to encourage economic activity and create and preserve jobs that would otherwise be enticed to relocate overseas to reduce U.S. Customs expenses. In this way the

program supports reshoring, international investment in U.S. factories, and preserving the manufacturing jobs we already have in this country. In the face of intense and growing competition from all over the world, Foreign-Trade Zones are playing an important role in revitalizing American manufacturing.

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