



U.S. Customs and
Border Protection

***Customs Broker Guidance
for the
Trade Community***

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FOREWORD

The U.S. Customs and Border Protection (CBP) Office of Trade (OT) is publishing this *Customs Broker Guidance* as a resource for brokers conducting customs business in compliance with CBP regulations.

This guidance not only aligns the current policies and practices on Broker Management at CBP Headquarters and fields offices, but also incorporates the Broker Modernization Regulations ([87 FR 63262](#) and [87 FR 63267](#)), including the elimination of a district permit and move to a national permit. The *Customs Broker Guidance* incorporates advances in Automated Commercial Environment (ACE) programming, the establishment of the Centers of Excellence and Expertise (Centers), and process changes.

Nothing in this document overrides statute, regulation, or binding judicial interpretations thereof.

CBP will ensure that the *Customs Broker Guidance* is updated as necessary. Any questions related to this guidance or other broker matters should be directed to the Office of Trade, Broker Management Branch at brokermanagement@cbp.dhs.gov.

Executive Director
Trade Policy and Programs
Office of Trade
U.S. Customs and Border Protection

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Chapter	Changes Summary
Entire document	Page numbers updated
Chapter 3 (Broker Examination Process)	Changed “appealers” to “appellants” throughout the chapter. Section D. Center Role in the Examination Process – License application instructions letter: Changed the 3rd bullet to “Link to online PDF of CBP Form 3124; changed the final bullet to “The email address, and/or the mailing address where the completed application may be sent.”
Chapter 4 (Broker License Process)	Section B, sub-section 2 – Changed to “The application (CBP Form 3124) with original legal signature of a partner who holds a broker license with sufficient agency to serve as the license qualifier and bind the brokerage.” Section B, sub-section 3 – Changed to “The application (CBP Form 3124) with original legal signature of an officer who holds a broker license with sufficient agency to serve as the license qualifier and bind the brokerage.”
Chapter 5 (National Permit)	Section A, sub-section 3 – Changed to “A licensed customs broker must employ a licensed individual broker who will exercise responsible supervision and control over the activities conducted under the national permit. The licensed employee exercising responsible supervision and control over the national permit is not required to be an officer of the corporation or member of the partnership.”
Chapter 9 (Filer Code Maintenance)	Added language to Section E. Suspension of a Filer Code

Chapter	Changes Summary
<p>Chapter 10 (Broker Oversight)</p>	<p>Section A. Responsible Supervision and Control – Added language on general broker duties and responsibilities.</p> <p>Section B. Broker Reporting Requirements – Revised language in the Submitting Documentation and Reporting to CBP list related to separation from a client.</p> <p>Section F. Power of Attorney – Language revised to “Brokers must keep POAs received from the client (email, mail, fax) on file with their other records. POAs must be retained until revoked, and revoked POAs and letters of revocation must be retained for five years after the date of revocation or for five years after the date the client ceases to be an active client, whichever period is later. An “active client” means a client from whom a broker has obtained a POA and for whom the broker has transacted customs business on at least two occasions within the preceding 12-month period.”</p>

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CHAPTER 1: INTRODUCTION

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia, and Puerto Rico), they are subject to certain formalities involving the U.S. Customs and Border Protection (CBP). In almost all cases, the goods are required to be “entered,” a process by which certain information is provided to CBP by paper or electronic means in order to secure the release of the imported merchandise. During this process, goods are subject to detention and examination by CBP Officers to ensure compliance with all laws and regulations enforced or administered by CBP.

When a formal “entry of merchandise” is made under the provisions of 19 U.S.C. 1484, the required documentation or information shall be filed or electronically transmitted by the “importer of record.” Under the statute, the “importer of record” is either the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license as a customs broker.

As part of the entry process, goods must be “classified” (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act (Public Law 103-182, 107 Stat. 2057), it is the responsibility of the importer of record to use “reasonable care” to “enter,” “classify” and “value” the goods and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met. These requirements can be complex. In order to assist importers in meeting their responsibilities, importers may employ experts within their organizations or seek advice or services from outside experts such as Customs brokers, attorneys who specialize in Customs matters or consultants. Of these outside experts, only Customs brokers may actually prepare and file entry documentation because the preparation and filing of entry documentation constitutes “customs business” which, by statute, may be performed on behalf of others only by a licensed Customs broker (19 U.S.C. 1641, 19 CFR 111.1).

For more information, please see [“What Every Member of the Trade Community Should Know About: Customs Brokers,”](#) a publication prepared by Regulations and Rulings of the Office of Trade.

A. NOTE ON SPELLING, HYPHENATION, AND CAPITALIZATION

Over the years, the spelling and hyphenation of “customhouse” has varied. Government and trade publications and even statutes refer to “custom-house,” “customhouse,” or “Custom House.” The hyphenated form “custom-house” was preferred in the nineteenth century, while the non-hyphenated form “customhouse” became popular in the twentieth century. The two-word form was often found on signs and buildings. The variations “Customs House,” and “customhouse” were never officially sanctioned but nonetheless appear in some publications. In this publication, we generally use “customhouse” except in quoted material where the format appears as in the original material quoted.

In recent CBP publications, “Customs” is capitalized when referring to a Customs and Border Protection Officer, U.S. Customs and Border Protection, or a specific building such as the New

York Customhouse, but is usually not capitalized when referring to customs duties, customs bonds or customhouses in general. The practice has varied since 1789 and consistency is often missing. In this publication, the current practice is followed except in quoted material where the format appears as in the original material.

B. SUMMARY OF THE CURRENT STATUTORY REQUIREMENTS

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person must hold a valid customs broker's license and permit in order to transact customs business on behalf of others. It sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in Part 111 of the Customs Regulations (19 CFR Part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

On December 8, 1993, amendments to certain customs and navigation laws became effective as the result of enactment of the NAFTA Implementation Act. Title VI of the Act set forth Customs Modernization provisions ("the Mod Act") that included, in section 648, certain amendments to section 641 of the Tariff Act of 1930. The substantive amendments to section 641 were as follows:

- The definition of "customs business" was amended to include "the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with CBP in furtherance of [the customs business activities already listed], whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to CBP."
- Inclusion of a provision for the issuance of a national permit for the conduct of such customs business as the Secretary of the Treasury prescribes by regulation.
- A new subsection was added to provide that when electronic filing (including remote location filing) of entry information with CBP at any location is implemented by the Secretary of the Treasury pursuant to the provisions of the National Customs Automation Program (codified at 19 U.S.C. 1411-1414), a licensed broker may appoint another licensed broker who holds a permit in a CBP district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted to be filed electronically. That subsection also provides that the broker who appoints a subagent remains liable for

all obligations arising under bond and for all duties, taxes and fees, and for any other liabilities imposed by law, and cannot delegate such liability to the subagent.

- During the process to suspend or revoke a broker's license or permit, the period within which a hearing is to be held was increased to 30 days after written notice of a hearing is provided to the broker, or later if the broker requests an extension and shows good cause, therefore.
- A provision was added which states that the Secretary of the Treasury may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business.
- Provisions were added which allow all data required to be retained by a customs broker to be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium; and which permit, pursuant to regulations, the conversion of data to such storage medium at any time subsequent to the relevant customs transaction and permitting the data to be retained in a centralized basis according to such broker's business system.

C. EFFECT OF CUSTOMS REORGANIZATION ON BROKERS

On September 27, 1995, Customs published the following documents in the *Federal Register* as a result of changes in the Customs Headquarters and field organizational structure:

- Treasury Decision (T.D.) 95-77 (60 FR 50008) amended the Customs Regulations on an interim basis. The amendments included extensive changes to the basic Customs field organization, involving the elimination of regions and districts for most purposes so that ports of entry would constitute the foundation of the Customs field structure and would be empowered with most of the functions and authority that had been held in the district and regional offices and also involving the designation of some ports as service ports having a full range of cargo processing functions, including inspection, entry, collection, and verification. The background portion of T.D. 95-77 pointed out that districts and regions would still exist as geographical descriptions for limited purposes such as for broker permits and certain cartage and lighthouse purposes, and T.D. 95-77 therefore set forth certain additional regulatory changes in order to reflect this fact; these changes included the addition of definitions for "district," "district director" and "region" in § 111.1 (19 CFR 111.1) to enable the current statutory broker licensing and permitting schemes to operate.
- T.D. 95-78 (60 FR 50020) also amended the Customs Regulations on an interim basis and involved nomenclature changes. The T.D. 95-78 changes, in most cases, involved the replacement of outdated references with new references to reflect the new Customs Headquarters and field organizational structure. The majority of these changes involved replacing "district" with "port" and replacing "district director" with "port director," or some variation thereof. The T.D. 95-78 changes involved almost every part within the Customs Regulations (19 CFR Chapter I) and included a large number of changes to Part 111.
- A general notice (60 FR 49971) informed the public of the geographic areas covered for purposes of customs broker permits and for certain cartage and lighthouse purposes where the word "district" appears in the Customs Regulations.

Based on a review of the changes to section 641 made by the Mod Act, Customs determined that the Part 111 regulatory texts should be amended as follows:

- to reflect the change to the definition of "customs business;"
- to provide for the issuance of national permits;
- to reflect the 30-day period within which a suspension or revocation hearing is to be held;
- to implement the proscription against prohibiting a broker from limiting its liability to other persons; and
- to reflect the amended recordkeeping provisions.

With regard to the appointment of subagents as authorized under amended section 641(c)(4), Customs determined that it would be premature to amend Part 111 at this time. Customs concluded that it would be preferable to address this issue at such time as related NCAP test procedures have been concluded, appropriate programming enhancements have become operational, and appropriate regulatory proposals have been formulated.

Customs also performed a general review of Part 111 to determine whether other regulatory changes should be made. Based on that review, Customs identified a number of other areas where significant improvement could be made to the existing regulatory texts. These improvements included:

- the elimination of obsolete or otherwise unnecessary provisions;
- the addition of new provisions where the regulations appeared to be incomplete or were otherwise in need of clarification;
- further textual changes arising out of the reorganization of Customs that were not fully addressed in the district/port terminology changes made by T.D. 95-77 and T.D. 95-78, including some changes to those previously-published changes and particularly in order to clarify certain procedural aspects of the regulations (for example, where to file permit applications and broker status reports and where to pay permit user fees); and
- a large number of non-substantive, editorial changes to improve the precision and clarity of the regulations, ranging from the reorganization or complete redrafting of existing texts to minor word changes within a particular regulatory provision.

Based on the above considerations, on April 27, 1999, Customs published in the *Federal Register* (64 FR 22726) a notice of proposed rulemaking (NPRM) setting forth a complete revision of Part 111. The NPRM included a detailed section-by-section discussion of the proposed amendments (other than those of a minor wording or other editorial nature) and provided a 60-day period for the submission of public comments on the proposed changes. On June 29, 1999, a notice was published in the *Federal Register* (64 FR 34748) to extend the public comment period to July 28, 1999. After reviewing all the comments and making any necessary changes, the final regulations were published in the *Federal Register* on March 15, 2000 (65 FR 13880), effective April 14, 2000.

Since that time, a variety of other technical amendments and substantive changes have been made to Part 111, which fell short of a complete revision. These changes have affected such matters as recordkeeping requirements, penalty provisions, remote location filing, fees, setting the date for

the broker examination, and other matters. For example, on August 11, 2003, CBP published in the *Federal Register* (68 FR 47455) a final rule concerning performance of customs business by parent and subsidiary corporations and “corporate compliance activity.” On December 5, 2003, pursuant to Section 343(a) of the Trade Act of 2002, CBP published in the *Federal Register* (68 FR 68140) a final rule requiring customs brokers, when applicable, to comply with certain advance electronic reporting requirements.

In addition, on August 26, 2010, CBP published a final rule in the *Federal Register* (75 FR 52456) amending 19 CFR 111.13 to more closely align the regulatory requirement with the statutory requirement of citizenship for obtaining a license pursuant to 19 U.S.C. 1641(b)(2). The new amendment stated that in order to take the written examination for an individual customs broker’s license, an individual is required to be a U.S. citizen on the date of examination and not be an officer or employee of the U.S. Government. CBP addressed public comments received in response to the preceding NPRM, published in the *Federal Register* (73 FR 30328) on May 27, 2008, and agreed to lower the eligibility age for taking the examination to 18 years of age, while still requiring a person to have attained the age of 21 prior to applying for a license. CBP acknowledged that a person who is 18 years old could take the examination and gain valuable working experience under the supervision of licensed individuals, and still be in a position to apply for a license upon attaining the age of 21.

On June 30, 2017, CBP published a final rule in the *Federal Register* (82 FR 29714) transitioning the written customs broker exam to an electronic exam platform and moving the delivery date of the exam from the first Monday in October and April to the fourth Wednesday in October and April. This modernization activity provided for improved and standardized exam delivery and shortened exam to results time.

On August 14, 2019, CBP published an NPRM in the *Federal Register* (84 FR 40302) proposing to amend the CBP regulations to require customs brokers to collect certain information from importers to enable the customs brokers to verify the identity of importers, including nonresident importers. CBP proposed these amendments pursuant to section 116 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which directs CBP to promulgate regulations to require brokers to verify the identity of the importers who are their clients.

On June 5, 2020, CBP published an NPRM in the *Federal Register* (85 FR 34836) proposing to amend the CBP regulations by modernizing the customs brokers regulations to coincide with the development of CBP trade initiatives, including the Automated Commercial Environment (ACE) and the Centers of Excellence and Expertise (Centers). Specifically, CBP proposed to transition all brokers to national permits and to eliminate broker districts and district permits. CBP also proposed, among other changes, to update the responsible supervision and control oversight framework, ensure that customs business is conducted within the United States, and require that the customs broker have direct communication with the importer. Additionally, CBP proposed to raise the broker license application fees to recover some of the costs associated with reviewing the customs broker license application and conducting the necessary vetting for individuals and business entities (i.e., partnerships, associations, and corporations). CBP published a concurrent NPRM in the *Federal Register* (85 FR 34549) proposing to amend CBP regulations to eliminate customs broker district permit fees.

On October 28, 2020, CBP published an Advance Notice of Proposed Rulemaking (ANPRM) in the *Federal Register* (85 FR 68260) informing the public that CBP is considering the amendment of its regulations to mandate continuing education for licensed customs brokers, and seeking comments on a potential framework of continuing education requirements for licensed customs brokers in order to assess the current situation among members of the customs broker industry and analyze the potential impact of such a framework on customs brokers. CBP took the public comments received in response to the ANPRM into consideration and, on September 10, 2021, published an NPRM in the *Federal Register* (86 FR 50794) proposing to amend the CBP regulations to require continuing education for individual customs broker license holders (individual brokers) and to create a framework for administering this requirement. By requiring individual brokers to remain knowledgeable about recent developments in customs and related laws as well as international trade and supply chains, CBP's proposed framework would enhance professionalism and competency within the customs broker community. CBP determined that the proposed framework would contribute to increased trade compliance and better protection of the revenue of the United States.

D. CUSTOMS BROKER REGULATIONS MODERNIZATION CHANGES

The provisions of the Broker Modernization Regulations ([87 FR 63262](#) and [87 FR 63267](#)), published on October 18, 2022 and effective on December 19, 2022, have expanded the scope of the national permit authority to allow national permit holders to conduct any type of customs business throughout the customs territory of the United States without the need for a district permit. To accomplish this, CBP has assigned national permits to all district-only permit holders, implemented ACE programming changes to allow customs business transactions to flow through a national permit and eliminated broker districts and district permits, which in turn removes the need for the maintenance of district broker offices, and obtaining district permit waivers.

- CBP also updated, among other changes, the responsible supervision and control oversight framework, ensuring that customs business is conducted within the United States, and requiring that a customs broker have direct communication with the importer. These changes are designed to enable customs brokers to meet the challenges of the modern operating environment while maintaining a high level of service in customs business. Further, CBP increased the broker license application fees to recover some of the costs associated with the review of the customs broker license applications and the necessary vetting of individuals and business entities (i.e., partnerships, associations, and corporations). Additionally, CBP announced the deployment of a new online system, the eCBP Portal, for processing broker fees and associated submissions electronically. Lastly, CBP updated language to reflect current broker management processes within CBP and interactions with customs brokers. The references to “port Director” have been updated to “processing Center”. Customs brokers will continue to interact with the Center Broker Management Officers (BMO) based upon physical port locations through which the license and national permit are issued, this is the “processing Center”. “Processing Center” means the broker management functions performed by Center of Excellence and Expertise (Center) personnel that process an application for a broker’s license under § 111.12(a), an application for a national permit under § 111.19(b) for an individual, partnership,

association, or corporation, as well as submissions required in this part 19 CFR 111 for an already-licensed broker.

- Regulation references appear at the end of applicable sections.

CHAPTER 2: WHAT IS A CUSTOMS BROKER?

A. CUSTOMS BROKER DEFINED

The statutory authority for the licensing of customs brokers by the Secretary of the Treasury is found in section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641). Rules and regulations related to the licensing of customs brokers are set forth in Part 111 of the CBP Regulations (19 CFR 111.0, *et seq.*). Licenses are issued to persons (i.e., individuals, corporations, partnerships, and associations) to conduct "customs business" on behalf of other persons. (Refer to [Chapter 4](#)).

The customs broker is a highly knowledgeable professional. Customs brokers must possess thorough knowledge of tariff schedules and Customs regulations and must also keep abreast of the amendments made through constant changes in the law and regulations. The customs broker must be well versed in determining proper classifications and dutiable value and be fully aware of the vast number of commodities subject to quota and other admissibility requirements. The customs broker's base of knowledge must also encompass the requirements of more than 45 governmental agencies, such as the U.S. Department of Agriculture (USDA) on meat import questions, the Environmental Protection Agency (EPA) on vehicle emission standards, and the Food and Drug Administration (FDA) on product safety.

Once licensed, Parts 111 and 171 Appendix C of the CBP Regulations prescribe the duties and responsibilities of brokers, and the grounds and procedures for disciplining brokers, which may include the assessment of monetary penalties, and the revocation or suspension of licenses for violations of 19 U.S.C. 1641 or the CBP Regulations.

(19 U.S.C. 1641 & 19 CFR 111.0 *et seq.*)

B. LICENSE REQUIRED

1. "CUSTOMS BUSINESS" DEFINED

No person may conduct "customs business" (other than solely on behalf of that person) unless that person holds a valid customs broker license.

"Customs business" means those activities involving transactions with CBP concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by CBP on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. "Customs business" also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with CBP in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, "customs business" does not include the mere electronic transmission of data received for transmission to CBP and does not include a corporate compliance activity.

(19 U.S.C. 1641 & 19 CFR 111.1)

C. LICENSE NOT REQUIRED

TRANSACTIONS FOR WHICH A LICENSE IS NOT REQUIRED:

- An importer or exporter transacting customs business solely on his own account, as defined by his importer of record number excluding the suffix (see 19 CFR 24.5) and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.
- An employee of a broker, acting solely for his employer, is not required to be licensed where:
 - The broker has authorized the employee to sign documents pertaining to customs business on his behalf and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with CBP, but must provide proof of its existence to CBP upon request; or
 - The broker has filed with the processing Center a statement identifying the employee as authorized to transact customs business on his behalf. However, where an employee has been given the authority, pursuant to § 111.2(a)(2)(ii), the broker must exercise sufficient supervision of the employee to ensure proper conduct on the part of the employee in the transaction of customs business, and the broker will be held strictly responsible for the acts or omissions of the employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen. The broker must promptly notify the processing Center if authority granted to an employee is withdrawn. The withdrawal of authority will be effective upon receipt by the processing Center.
- A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be a licensed broker.
- Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry, for transportation in bond, without being a licensed broker.
- An individual may enter noncommercial merchandise for another party, without being a licensed broker, provided that the requirements of 19 CFR 141.33 are met.
- A foreign trade zone operator or user, not licensed as a broker, may engage in activities within a zone that do not involve the transfer of merchandise to the Customs territory of the United States.

(19 CFR 111.2(a)(2))

Any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid customs broker's license is subject to monetary penalties for each such transaction, as well as for each violation of any other provision of 19 U.S.C. 1641.

(19 CFR 111.4)

D. BECOMING AN INDIVIDUALLY LICENSED CUSTOMS BROKER

The following are the requirements that must be met by anyone applying to become an individually licensed customs broker:

- ✓ Achieve a passing score (75 percent or higher) on the Broker License Exam
- ✓ Be a United States citizen on the date of submission of the broker's license application
- ✓ Attain 21 years of age prior to the date of submission of the broker's license application
- ✓ Be of good moral character and business integrity (Pass the background investigation)
- ✓ Pay the following fees:
 - Current Exam Application Fee
 - Current License Application Fee
 - Current Fingerprint Processing Fee

To apply for a broker license, an applicant must first apply for and pass the broker license examination. To be eligible to take the examination, an individual must be, on the date of the examination, a United States citizen, who has attained the age of 18 years, and who is not an officer or employee of the United States Government. (Refer to [Chapter 3](#))

An individual who intends to take the examination must complete an application at least 30 calendar days prior to the scheduled examination. The examination fee is payable at the time an individual submits an application to sit for the examination. If a prospective examinee advises the CBP Broker Management Branch at least 2 working days prior to the date of a regularly scheduled examination that he will not appear, CBP will refund the examination fee.

After passing the examination, an individual applicant has 3 years from the date the passing notification is issued by CBP to submit an application for a license. At the time of application, the individual must be at least 21 years of age and a United States citizen. The application must be accompanied by the license fee and fingerprint processing fee. An application for a license may be withdrawn at any time prior to issuance of the license by providing written notice of the withdrawal to the Center Director (or designee). Withdrawal of the application does not entitle the applicant to a refund of the license application fee.

(19 CFR 111.11(a); 111.12(a) & (c); 111.13(b) & (d); and 111.96(a))

E. STANDARD INFORMED COMPLIANCE FOR BROKERS

Informed Compliance and Shared Responsibility are two concepts that emerged from Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) of December 8, 1993, also known as the Customs Modernization or "Mod" Act. These concepts are premised on the idea that maximizing voluntary compliance with the laws and regulations of CBP requires a trade community that is clearly and completely informed of its legal obligations. The Mod Act imposes a greater obligation on CBP to provide the public with information concerning the trade community's rights and responsibilities under customs regulations and related laws. Both the trade community and CBP share responsibility for carrying out these requirements.

CBP's Informed Compliance program for brokers includes education, counseling, overall communication, and risk management. CBP's informed compliance publications are written by CBP Office of Trade, Regulations and Rulings to provide guidance to importers. Brokers are expected to be versed in the subject matter contained in CBP's informed compliance publications and provide guidance to importers to ensure lawful importations.

CBP suggests that Brokers review the following publications on the CBP website:

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

<https://www.cbp.gov/document/publications/reasonable-care>

What Every Member of the Trade Community Should Know About: Informed Compliance Publications

<https://www.cbp.gov/trade/rulings/informed-compliance-publications>

CHAPTER 3: BROKER EXAMINATION PROCESS

A. PURPOSE OF THE EXAMINATION

The purpose of the examination is to “determine the individual’s knowledge of Customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters.”

(19 CFR 111.13(a))

B. GENERAL INFORMATION

The Customs Broker License Examination (CBLE) is an open-book, multiple-choice examination. The passing score is 75%. The examination lasts 4.5 hours. Examinees are responsible for monitoring their time and for pacing themselves accordingly.

Questions will generally be based on Title 19 of the Code of Federal Regulations and the Harmonized Tariff Schedule of the United States, Annotated (HTSUS). Applicants are apprised of the appropriate versions of the reference materials to be used on a particular exam in the “CBLE Information” section posted on the Customs Brokers webpage at CBP.gov, hereafter referred to as CBLE Information. Examination topics typically include entry, classification, trade agreements, value, prohibited and restricted merchandise, drawback, intellectual property rights, and other subjects pertinent to a broker’s duties.

C. APPLICATION FOR EXAMINATION

Examinees are responsible for staying informed on the current CBLE requirements using the CBLE Information. The CBP.gov website provides examinees with the most current information on the CBLE registration and administration process. Failure to stay informed with the CBLE Information on CBP.gov could result in failure to meet deadlines for registration, updates to reference materials, and changes to the policy.

1. APPLICATION FOR CUSTOMS BROKER LICENSE EXAMINATION

Individuals applying to take the exam must apply via the [eCBP portal](#) during open registration. Registration opens approximately 2 months prior to the examination date and closes 30 days prior to the exam, please check the Notice of Examination for updates on the registration period. (See [Appendix A](#) for a sample exam application)

The Customs Broker License Exam fee is \$390 as of July 31, 2017. This fee is not refundable if the applicant fails to appear for the examination without providing the required timely withdrawal notice, fails to appear for the examination on time, fails to provide the proctor with the approved identification or proof of citizenship, or fails to pass the examination.

2. SPECIAL TREATMENT OF A DISABILITY

Standard Operating Procedures for examination applicants requesting reasonable modifications based on disability needs during the exam:

Applicants requesting reasonable modifications through the Americans with Disabilities Act (ADA) must do so upon registration through the eCBP portal and provide the required information:

- The limitations resulting from their disability,
- Barriers to their effective participation in the standard electronic version of the exam based on their limitations; and
- Their preferred or suggested reasonable modifications to remove the barriers to effectively participate in the exam.

Please note that selecting remote testing does not require a reasonable modification request unless other provisions (i.e., extra testing time, food, etc.) are needed. Applicants who fail to indicate their need of a reasonable modification request will not be granted one. However, candidates who have successfully registered but did not indicate their need for a reasonable modification, and if registration is still open, are allowed to submit a request via email to the Broker Management Branch (BMB). Requests made after registration has closed will not be considered.

Applicants who request a reasonable modification will be advised of CBP's determination regarding their modification via e-mail from BMB and the determination will be forwarded to the testing site to prepare the requested modification before the exam. Prior to exam day, the applicants will be notified of their testing site and expected modifications. (See [Figures 3-6](#) in Appendix A)

3. EXAMINATION DATES

The broker examination is given twice a year; the fourth Wednesday in April and the fourth Wednesday in October. The date will be adjusted if it coincides with a national holiday, religious event or other foreseeable conflict on the day of the exam. The date change notice will be published in the Federal Register and adequate notice will be given on the CBLE Information on the CBP website.

(19 CFR 111.13(b))

4. EXAMINATION LOCATIONS

The exam is offered at various brick and mortar (on-site) exam locations throughout the country and a remote proctored option which may be available upon exam application. The on-site offering and the remotely proctored option can vary based on the exam contractor being used by CBP to provide testing services. The best location to find the current testing time and date and whether alternatives to the on-site exam will be offered is through the CBLE Information on the CBP website.

After the exam application period closes, the applicant will be notified by email to set up an account with the exam contractor and select their preferred on-site exam location or remote exam

time. After scheduling the exam site/time, the contractor will send out the admission notice containing the selected exam site/time to each examinee via email.

Examinees are responsible for following the most current guidelines on the Identification and Proof of Citizenship requirements outlined on the CBLE Information on the CBP website.

(19 CFR 111.13(b))

5. MATERIALS NEEDED FOR THE EXAMINATION

Exam Admission:

Please visit the CBLE Information on the CBP website for information on proof of admission requirements for in-person exams, as well as where examinees should login for remote proctored exams. This information may change with each exam administration, and it is the responsibility of the examinee to stay informed on these requirements.

Reference Materials:

CBP prefers that examinees use the electronic reference materials provided by the exam administrators instead of paper references. If examinees prefer to use hard copy reference materials and hard copy reference materials are permitted in the testing center the examinee is responsible for bringing the appropriate version of the approved reference materials. Approved reference materials include but are not limited to the CBP Regulations and the HTSUS. All approved reference materials will be outlined on the CBLE Information on the CBP website, and examinees are responsible for finding that information online before the CBLE. Please visit the CBLE Information on the CBP website for more information on the shelves and racks approved to hold the reference materials for testing at on-site exam locations, as this could vary by the exam contractor administering the exam.

Use of any editions other than those published on the CBLE Information on the CBP website and in the exam instructions provided to the examinee is at the examinee's own risk as they may not be current. Reference materials can be obtained from the Government Printing Office. No references beyond those identified on the CBLE Information on the CBP website are permitted for use in either hard copy or electronic format during the examination. Annotations (notes, illustrations, etc.) will be permitted if they are not deemed excessive, and do not contain information that by itself would be considered an unauthorized reference. The final call rests with the exam administrator and CBP. No additional pages can be added to any approved reference material.

Examinees are responsible for reviewing the CBLE Information on the CBP website for the materials allowed at the testing site or in the remote testing environment.

Identification and Proof of Citizenship:

Examinees are responsible for following the latest guidelines on the Identification and Proof of Citizenship requirements outlined on the CBLE Information on the CBP website.

6. AFTER THE EXAMINATION

Answer Records:

Each individual examinee will be given a copy of their answer record once they have finished the exam either in person or via email.

Exam Copies and Answer Keys:

A copy of the exam, and answer key will be uploaded to the CBLE Information on the CBP website after the exam.

Examination Results Letters:

All examinees will be notified of their results by CBP BMB via an email with an attached letter signed by CBP Executive Director, Trade Policy and Programs, Office of Trade (or designee). The results letter will be emailed to the examinee within three to six weeks following the exam. Examinees are expected to notify CBP of any changes to their contact information. If an examinee does not notify CBP of a change in contact information and an exam results letter is emailed to an old or inactive email address, CBP is not responsible, and the 60-day appeal deadline from the notification date on the letter will still apply. (See [Figures 7-9](#) in Appendix A)

(19 CFR 111.13(e))

Customs Broker License Applications:

For those examinees that have passed the CBLE, the processing Center will provide the individual a license application instruction letter to include the link to the PDF application form and contact information for questions. The instruction letter will be emailed to the email address provided by the examinee in the eCBP portal. Any changes in the contact information must be communicated to CBP in a timely manner; if CBP is not notified of changes to the applicant's contact information, the examinee may not receive important application information and documents.

Appeals and Retesting:

Examinees who fail the examination may submit a written appeal, referred to as first appeal, within 60 days of the date of exam results notification letter. Extensions will not be granted if an examinee cannot locate the letter as a result of user error or fails to notify CBP of an email or address change. Applicants whose first appeal is denied may submit a second appeal for further consideration. A second appeal must be submitted within 60 days of the date on the first appeal notification letter to be considered. Finally, examinees whose second appeal is denied may file an action in the Court of International Trade. Additional appeal information is provided in [Chapter 3: Section F](#). The most current information on appeals can be found online on the Notification of Examination page on the CBP website.

Individuals who fail the CBLE may reapply and take a future examination. A new application with applicable fees will be required.

(19 CFR 111.13(e) & (f))

D. CENTER ROLE IN THE EXAMINATION PROCESS

GENERAL INFORMATION

BMB will provide an exam results letter to the examinee by email.

An examinee with a failing score may appeal the exam results by submitting a compelling written argument substantiating why an appealed question has a better choice than the official answer. See [Section F](#) of this chapter for appeal information.

After each round of appeals, both first and second appeals, BMB will issue decision letters to the appellants either by email and/or mail.

The processing Center will transmit a license application instruction letter (See [Figures 10 and 11](#) in Appendix A) to successful examinees within 60 days of the exam results letter or successful appeal decision, measured from the date marked on the letter issued by BMB.

The license application instruction letter will include:

- BMO point of contact information (email address).
- Instructions for applying for a license.
- Link to the online PDF of CBP Form 3124.
- Fee guidelines (application fee, fingerprint fee).
- Identification requirements for license application.
- The email address, and/or the mailing address where the completed application may be sent.

E. "NO SHOWS", WITHDRAWALS AND REFUNDS

FAILURE TO APPEAR FOR EXAMINATION (NO SHOWS)

Withdrawals and Refunds:

Any applicant who wishes to withdraw from the exam and receive a refund must sign in to the [eCBP](#) portal, select Broker License and then select the 'Withdraw from Exam' option no later than 8:30 a.m. Eastern time, two working days prior to the examination date. Refunds for examination withdrawals will generally be processed within 45 days after the exam date. Refunds will be returned to the same account that was used to pay for registration.

The Examinees **MUST NOT** use the withdrawal option to make a correction to their submitted application because they **WILL NOT** be allowed to reapply for the same exam once withdrawn. Corrections to exam registration information must be requested by the exam applicant through email to brokermanagement@cpb.dhs.gov.

No Shows:

An applicant who does not show up for the in-person exam, and an examinee who does not login to take the remote proctored exam by their scheduled appointment time, will not receive a refund.

F. EXAMINATION APPEAL PROCESS

1. GENERAL INFORMATION

CBP will discard faulty questions identified before the scores are posted. Potentially faulty questions are those questions which appear to give examinees more difficulty in selecting the one correct answer than as designed and anticipated by CBP. All examinees will receive credit for any questions discarded before the examination is scored.

2. FIRST APPEAL REQUEST

If an examinee wishes to appeal, he/she must submit a compelling written argument, in their own words, for every question the examinee intends to challenge throughout both the first and second appeals process, explaining why their selected answer is the better choice than the official answer, or why the appealed question has no possible correct answer. An examinee may consult with external parties to assist with preparing the appeal. However, the appeal should be written in the examinee's own words, not by a third party.

A complete appeal package must be structured as follows:

- A cover letter containing exam payment receipt number (e.g.: 3001-401312345), name and address, date, and location of the exam (e.g.: Dallas, Los Angeles), and a list of the specific question(s) appealed.
- A copy of the exam results notification letter.
- A copy of the appellant's answer sheet.
- The questions that the examinee is appealing.

For each question that is appealed, the examinee must:

- Present each appealed question in its entirety with the question number (e.g., "Q 24"). Follow each question with the argument that supports the appeal for that question.
- Present each question on a separate page, i.e. begin each appealed question on its own piece of paper. The argument may begin on the same page as the question appealed. If multiple pages per question are used, begin each subsequent page with "(Q X, cont.)," where X is the number of the question being addressed.
- Each page should include a header with the examinee's name.

The appeal package will be denied if it is incomplete as described above or untimely as stated below.

The appellant will not receive credit for a question if he/she:

- Does not provide a compelling argument.
- Argues for an answer the examinee did not select.

CBP encourages appeals to be submitted electronically to brokermanagement@cbp.dhs.gov with the subject line "Exam Appeal." If submitted electronically, the appeal package must be contained

in one PDF document. To be timely, electronic appeal submissions must be received no later than the 60th day from date of the exam results letter.

Alternatively, appeals may be submitted by mail to the address below and to be timely must be post marked no later than 60 days from the date of the exam results letter:

U.S. Customs and Border Protection
Office of Trade
Trade Policy and Programs
1331 Pennsylvania Ave NW
9th Floor - Broker Management Branch
Washington, DC 20229-1142

Once the appeal period closes, the appealed questions are reviewed, and a determination is made as to whether credit will be granted based on the argument(s) presented by the examinee. Appeal decision letters are emailed to the examinees typically within 45 days after the appeal period closes.

(19 CFR 111.13(f))

3. SECOND APPEAL REQUEST

If the CBP decision on the first appeal affirms the result of the examination, the examinee may request review of the decision on the appeal, in writing. CBP encourages appeals to be submitted electronically to brokermanagement@cbp.dhs.gov with the subject line “Exam 2nd Appeal.” If submitted electronically, the appeal package must be contained in one PDF document and received no later than the 60th day from the date marked on the 1st appeal results notification letter. If mailed, the appeal package should be addressed to:

U.S. Customs and Border Protection
Office of Trade
Trade Policy and Programs
1331 Pennsylvania Ave NW
9th Floor - Broker Management Branch
Washington, DC 20229-1142

The appeal package must be postmarked no later than 60 days from the date marked on the 1st appeal results notification letter.

Once the appeal period closes, the appealed questions are reviewed in depth at an elevated level and a determination is made whether credit is due for any question based on arguments received. Decision letters are emailed to the appellants typically within 90 days after the appeal period closes.

4. COURT OF INTERNATIONAL TRADE

After the second appeal process is completed, an applicant may appeal an adverse decision of the Executive Assistant Commissioner, Office of Trade, U.S. Customs and Border Protection, by filing an action in the Court of International Trade (CIT) pursuant to 19 U.S.C. 1641(e)(1) and 19 C.F.R.

111.17. CIT information can be found on the [U.S. Court of International Trade website \(https://www.cit.uscourts.gov/.\)](https://www.cit.uscourts.gov/)

CHAPTER 4: BROKER LICENSING PROCESS

A. APPLICATION FOR CUSTOMS BROKER LICENSE (CBP FORM 3124)

Individuals passing the Customs broker exam will receive a Customs broker license application instruction letter from the appropriate processing Center within approximately 60 days after issuance of the Office of Trade official letter advising the examinee of their successful performance on the Customs broker exam.

The application must be executed on the Application for Customs Broker License ([CBP Form 3124](#)) form. All applicants must complete blocks 1 through 6 of the application.

- ❑ If a fictitious name is being used, evidence of the applicant's authority to use the name must accompany the application. Refer to [Chapter 6](#) of this Handbook.
- ❑ If applying for an individual broker license, complete Sections I and III of the application.
- ❑ If applying for an association, corporation or partnership license, complete Section II and Section III of the application with appropriate attachments: Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or Articles of Incorporation.
- ❑ The application must be accompanied by the license application fee and current fingerprint processing fee.

Individual Application Fee - \$300.00

Organization Application Fee - \$500.00

The application, application fee, fingerprint processing fee and any additional documentation as required may be submitted in writing to the Broker Management Officer (BMO) location identified in the application instruction letter or to any other BMO location for processing. Once it becomes available, the application package must be submitted to a CBP-authorized electronic data interchange (EDI) system.

(19 CFR 111.12(a) & 111.96(a))

1. INDIVIDUAL LICENSE

An application for an individual license must be submitted within the three-year period after the applicant took and passed the written examination (i.e., 3 years from the date of the passing notice issued by Broker Management Branch). The processing Center will require an individual applicant to provide a copy of the passing notification issued by the Broker Management Branch (BMB), which documents that the applicant passed the examination. The applicant must submit a recent (within 90 days of submission of the application) credit report issued by a recognized credit reporting agency. The processing Center will also require the applicant to submit fingerprints at the time of the interview.

An applicant must be a citizen of the United States and twenty-one (21) years of age prior to the date of submission of the application. An applicant in the process of becoming a citizen, who is

not officially a citizen yet, is NOT eligible to apply for a license. Officers of the United States Government CANNOT apply to become a licensed Customs broker. Exceptions may be granted on a case-by-case basis (i.e., those who serve as reservists in the National Guard.)

The processing Center may return an application as improperly filed if the application demonstrates that one or more of the basic requirements of 19 CFR 111.11 have not been met. In such event, the application and fees will be returned to the applicant without further action.

(19 CFR 111.11(a)(1), (2) & (4), 19 CFR 111.12(a) & 111.13)

2. PARTNERSHIP LICENSE

In order to qualify for a Customs broker license, a partnership must have at least one member of the partnership who is a licensed Customs broker. The Partnership Agreement must show this individual is a full partner with authority to bind the partnership. The agreement MUST state that the partnership is empowered to transact customs business as a Customs broker.

(19 CFR 111.11(b))

3. ASSOCIATION OR CORPORATION LICENSE

In order to qualify for a Customs broker license, an association or corporation must have at least one officer of the association or corporation who is a licensed Customs broker. The officer must be identified by internal company documentation as an officer and supported by registered/certified documentation from the authority (normally the state) granting the Articles of Incorporation, Certificate of Formation, Articles of Association, Articles of Organization, etc. There are states that do not record officers of companies, except the chief executive officer. An association or corporation must be empowered under its Articles of Association or Articles of Incorporation to transact customs business as a Customs broker. Limited Liability Companies (LLC) are considered Associations for purposes of having at least one officer who is a licensed Customs broker. The individual must have the same authorities granted to an officer of an Association or Corporation. In a manager managed LLC, unless the licensed broker is a managing manager, the broker may not have appropriate authorities.

(19 CFR 111.11(c)(1) & (2))

B. CENTER REVIEW OF LICENSE APPLICATION

1. INDIVIDUAL LICENSE APPLICATION

The processing Center must receive the following from an individual license applicant:

- The application ([CBP Form 3124](#)) with original legal signature.
- License and fingerprint fees.
- Recent credit report (not more than 90 days old from the date of application submission).
- Copy of exam passing notification issued by BMB.

The processing Center will review the license application to determine whether the application can be accepted. The processing Center will:

- Ensure the application is signed and dated.
- Ensure the correct fees are tendered with the application, and that the check or money order is payable to U.S. Customs and Border Protection.
- Review the application to determine whether the applicant meets the age and citizenship requirements.
- Ensure the date of the passing notification letter is within three (3) years of the date of the application.
- Review the credit report to see if it is recent (i.e., dated within the last 90 days of application submission).

If these requirements have not been met, the application and fees will be returned to the applicant without further action.

(19 CFR 111.11 & 111.12)

If the CBP Executive Director, Trade Policy and Programs (TPP), Office of Trade (OT), finds that the applicant is qualified and has paid all applicable fees prescribed in 19 CFR 111.96(a), the CBP Executive Assistant Commissioner, OT, will issue a license. A license for an individual who is a member of a partnership, or an officer of an association or corporation will be issued in the name of the individual licensee and not in his or her capacity as a member or officer of the organization with which he or she is connected. The license will be forwarded to the processing Center, who will deliver it to the licensee.

2. PARTNERSHIP LICENSE APPLICATION

The processing Center must receive the following from a partnership license applicant:

- The application ([CBP Form 3124](#)) with original legal signature of a partner who holds a broker license and has sufficient authority to serve as the license qualifier and bind the brokerage.
- License and fingerprint fees for each partner (if needed).
- A copy of the Partnership Agreement or affidavit.
- If applicant proposes to use a trade or fictitious name, a copy of the applicant's authority to use the name issued by the state where the application is filed.
- A credit report for each individual listed in blocks 22 and 23 of the CBP Form 3124 application.
- A credit report for the partnership. If one is not available due to recent formation, proof of an attempt to generate one should be provided.

The processing Center will review the license application to determine whether the partnership license application can be accepted. The reviewing entity will:

- Ensure the application is signed and dated.

- Ensure the correct fees are tendered with the application, and that the check or money order is payable to U.S. Customs and Border Protection.
- Review the application to ensure one member of the partnership is an individually licensed Customs broker.
- Ensure the qualifying licensee's license is valid.
- Ensure the Partnership Agreement or affidavit signed by all partners, required by Block 21 on the application, is included.
- Ensure the partnership is empowered under its agreement to transact customs business as a broker.
- If the applicant is using a trade or fictitious name, ensure evidence of the applicant's authority to use the name in the State of its office of record is included.

If these requirements have not been met, the application and fees will be returned to the applicant without further action.

(19 CFR 111.11 & 111.12)

3. ASSOCIATION OR CORPORATION LICENSE APPLICATION

The processing Center must receive the following from an association or corporation license applicant:

- The application ([CBP Form 3124](#)) with original legal signature of an officer who holds a broker license and has sufficient authority to serve as the license qualifier and bind the brokerage.
- License and fingerprint fees for each officer (if needed).
- A copy of the Articles of Organization or Articles of Incorporation.
- A copy of the individual license, which qualifies the association or corporation license, if that individual license was not issued by the Center with which the application is filed.
- If applicant proposes to use a trade or fictitious name, a copy of the applicant's authority to use the name issued by the state where the application is filed.
- A credit report for each individual listed in blocks 22 and 23 of the CBP Form 3124 form
- A credit report for the association or corporation. If one is not available due to recent formation, proof of an attempt to generate one should be provided.

The processing Center will review the license application to determine whether the association or corporation license application can be accepted. The processing Center will:

- Ensure the application is signed and dated.
- Ensure the correct fees are tendered with the application and the check or money order is payable to U.S. Customs and Border Protection.
- Review the application to ensure that one officer of the association or corporation is an individually licensed Customs broker.
- Ensure the qualifying licensee's license is valid.
- Ensure the Articles of Organization, Formation or Incorporation, required by Block 21 on the application, are attached.

- Ensure the association or corporation is empowered under its articles to transact customs business as a Customs broker.
- If the applicant is using a trade or fictitious name, ensure evidence of the applicant's authority to use the name in the state is included.

If these requirements have not been met, the application and fees will be returned to the applicant without further action for failure to submit a properly executed application.

(19 CFR 111.11 & 111.12)

C. COLLECTION OF LICENSE & FINGERPRINT FEES

Currently Fees are collected on a Collection Receipt (CF 368)

CSRA Function

License Fee:	\$300.00 Individual	060/038 Accounting Class/User Charge
	\$500.00 Organization	

Fingerprint Fee:	\$11.25 (current amt) *	060/054 Accounting Class/User Charge
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*Fingerprint fee is paid per set of fingerprints. For each officer of the organization requiring fingerprints, the fee is \$11.25 per set of prints to be processed.

(19 CFR 111.96(a))

WITHDRAWAL OF APPLICATION

An application for a Customs broker's license may be withdrawn by the applicant at any time prior to the issuance of the license by providing written notice of withdrawal to the processing Center or through a CBP-authorized EDI system, if available. **The license fee is not refunded when an application is withdrawn.**

(19 CFR 111.12(a) & (b))

D. LICENSE APPLICATION PROCESSING

A background investigation will be conducted to ascertain facts relevant to the question of whether the applicant is qualified to be a licensed customs broker and will cover, but is not limited to:

- The accuracy of the statements made in the application and interview.
- The business integrity and financial responsibility of the applicant.
- When the applicant is an individual (including a member or a partnership or an officer of an association or corporation), the character and reputation of the applicant, including any association with any individuals or groups that may present a risk to the security or to the revenue collection of the United States.

E. DENIAL OF LICENSE

If the license application review and investigation identify sufficient grounds for denial, CBP will send a notice of denial to the applicant. The notice to the applicant, sent by a trackable mailing service, will state the reasons why the license application was denied. The notice establishes the sixty (60) day period during which an applicant may file an appeal of the denial.

(19 CFR 111.15 & 111.16)

APPEAL PROCESS FOR DENIAL OF LICENSE

The applicant may file with the CBP Executive Director, TPP, OT, a written appeal of the denial within the 60-day period, containing information or arguments in support of the application and may request to appear in person, by telephone, or by other acceptable means of communication. If the appeal is granted, the applicant's packet will be forwarded for license issuance. If the appeal is denied, the applicant and Center Director (or designee) are notified in writing. This notice establishes the 60-day period during which an applicant may file a second appeal with the CBP Executive Assistant Commissioner, OT. The second appeal is reviewed by the Executive Assistant Commissioner, OT, (or designee) to determine whether the information or arguments presented in the appeal support the denial or approval. If the second appeal is granted, the applicant's packet will be forwarded for license issuance. If the second appeal is denied, the applicant and Center Director (or designee) are notified in writing.

Upon a final decision by the CBP Executive Assistant Commissioner, OT, affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade within 60 days after the Executive Assistant Commissioner's decision.

(19 CFR 111.17)

REAPPLICATION FOR LICENSE

An applicant who has been denied a license may reapply at any time for a license by complying with the provisions of 19 CFR 111.12, Application for License, and 19 CFR 111.18, Reapplication for License. Upon reapplication a broker must address how deficiencies, which resulted in denial of the prior application, have been remedied.

F. LICENSE ISSUANCE

If the applicant is qualified and has paid all applicable fees, BMB will issue a license through ACE. A license for an individual will be issued in the name of the individual. The license for a partnership, association, or corporation will be issued in the legal name of the company. The physical license will be signed by the CBP Executive Assistant Commissioner, OT, and forwarded to the processing Center, for delivery to the licensee.

(19 CFR 111.15)

CHAPTER 5: NATIONAL PERMIT

A. NATIONAL PERMIT

Under the new Broker Modernization Regulations ([87 FR 63262](#) and [87 FR 63267](#)), district permits no longer exist and all brokers who wish to transact customs business must obtain a national permit. A national permit is the official required document that allows a licensed Customs broker to conduct customs business on behalf of others throughout the territory of the United States. An individual or an organization (corporation, partnership or association) must first obtain a Customs broker license before they may receive a national permit.

1. RESPONSIBLE SUPERVISION AND CONTROL

An applicant for a national permit must have an office of record within the territory of the United States and must identify the licensed individual who qualifies the permit and will exercise responsible supervision and control over all activities conducted under the permit. A broker applying for a national permit on or after the effective date of the Broker Modernization Regulations ([87 FR 63267](#)) must provide a supervision plan describing how responsible supervision and control will be exercised over the customs business conducted under the national permit.

Any brokers with an active license and permit prior to the publication of the Broker Modernization Regulations ([87 FR 63267](#)), regardless of whether it was a district or national permit, are not required to provide a supervision plan to CBP. However, development of a supervision plan is recommended as a best practice to ensure responsible supervision and control is maintained over the broker's customs business.

(19 CFR 111.19(b)(8) and (f))

2. NATIONAL PERMIT APPLICATION PROCESSING

The national permit application may be submitted concurrently with or after the submission of an application for a broker's license. There is no waiver of the permit application fee if the permit application is submitted concurrently with the license application. An applicant applying for a national permit on behalf of a partnership, association, or corporation must be a licensed broker employed by the partnership, association, or corporation. An application for a national permit must be submitted in the form of a letter to a processing Center or to a CBP-authorized electronic data interchange (EDI) system if one is available. The national permit application must contain the following information:

- The applicant's broker license number and date of issuance;
 - If the applicant is an individual broker, it will be the individual's license number and date of issuance;
 - If the applicant is a partnership, association, or corporation it will be the corporate license number and date of issuance;

- If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: the name of the partnership, association, or corporation and the title held by the applicant within the partnership, association, or corporation;
- If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: a copy of the documentation issued by a State, or local government that establishes the legal status and reserves the business name of the partnership, association, or corporation;
- The address, telephone number, and email address of the office designated by the applicant as the office of record as defined in § 111.1. This office will be noted in the national permit when issued;
- The name, telephone number, and email address of the point of contact described in § 111.3(b) to be available to CBP to respond to issues related to the transaction of customs business;
- If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: the name, broker license number, office address, telephone number, and email address of each individual broker employed by the partnership, association, or corporation;
- A list of all employees together with the specific employee information prescribed in § 111.28 of this part for each employee;
- A supervision plan describing how responsible supervision and control will be exercised over the customs business conducted under the national permit, including compliance with § 111.28 of this part (see the exception above in [Chapter 5: Section A, subsection 1](#));
- The location where records will be retained (see § 111.23);
- The name, telephone number, and email address of the knowledgeable employee responsible for broker-wide records maintenance and financial recordkeeping requirements (see § 111.21(d)); and
- A receipt or other evidence showing that the permit application fee and annual user fee have been paid.

(19 CFR 111.19(b) & 111.96(b) and (c))

3. QUALIFYING LICENSED INDIVIDUAL

A licensed customs broker must employ a licensed individual broker who will exercise responsible supervision and control over the activities conducted under the national permit. The licensed employee exercising responsible supervision and control over the national permit is not required to be an officer of the corporation or member of the partnership.

(19 CFR 111.19(b), 19 CFR 111.19(f))

An individually licensed broker **may not** qualify more than one corporate license. An individually licensed broker **may not** qualify more than one national permit.

(HQ Rulings 222007, 222136, and 224459 are [Figures 12-18](#) in Appendix C).

An individual who is the qualifying employee for the permit of one broker may not act as the qualifying employee for the permit of a second broker. A permit qualifier may be employed by a

second broker as long as the work is performed at each broker's office during prescribed, non-concurrent hours, and the qualifying employee is under responsible supervision and control while working for the second broker.

An individual may qualify a license and a permit for his/her sole proprietorship and be employed by a second broker as long as the work is done at each broker's office during prescribed, non-concurrent hours and the licensed employee is under responsible supervision and control while working under the employ of the second broker.

(HQ Rulings 225011 and 222573 are [Figures 19-25](#) in Appendix C.)

4. NUMBERING THE PERMIT

ACE will assign the permit number when the approved permit application information is added into ACE.

5. APPROVAL OF NATIONAL PERMIT APPLICATION

The Center Director will issue a national permit to a broker if s/he meets the following requirements:

- ✓ Submits an application meeting the requirements of 19 CFR 111.19(b);
- ✓ Pays the fees required by 19 CFR 111.19(c);

When CBP determines these requirements have been met, the national permit will be issued.

6. DENIAL OF NATIONAL PERMIT APPLICATION

If the processing Center Director is of the opinion that the national permit should not be issued, and the reasons are sufficient, the CBP Executive Director, Trade Policy and Programs (TPP), Office of Trade (OT), will provide written notice of the denial to the applicant and Center Director.

Upon the denial of an application for a permit, the applicant may file additional information or arguments in support of the denied application. The application must be in writing and submitted, within 60 calendar days of the date marked on the written notice of denial, to the CBP Executive Assistant Commissioner, OT. The applicant may also request that further opportunity be given for the presentation of information or arguments in support of the application, by personal appearance, in writing, by phone or other acceptable means of communication.

If the CBP Executive Assistant Commissioner, OT, affirms the denial of an application for a permit, the applicant may appeal the decision to the Court of International Trade, within 60 calendar days of the date of the Executive Assistant Commissioner's decision.

7. LIST OF PERMITTED BROKERS

CBP will maintain and make available to the public on cbp.gov an alphabetical list of permitted brokers.

(19 CFR 111.19(d))

8. BROKER'S PERMIT MAINTENANCE RESPONSIBILITY

- ✓ Notify CBP of any changes to permit qualifier and/or any other changes in the information required in 19 CFR 111.19(b) through the appropriate means.
- ✓ Timely payment of annual user fees.

B. COLLECTION OF PERMIT FEES

The [current annual permit user fee](#) and the \$100.00 Permit Application Fee must accompany a national permit application.

The user fee is assessed for a national permit held by an individual, partnership, association, or corporate broker, and is payable each calendar year. For each subsequent calendar year, the annual user fee is due on or about January 30. The due date is published annually in the Federal Register, at least sixty (60) days before the due date. A reminder notice will also be issued to the broker community by the processing Centers.

All fees under section 111.96, must be paid by check or money order, payable to U.S. Customs & Border Protection and collected on a cash receipt unless a CBP-authorized electronic data interchange (EDI) system is available. (Refer to [Chapter 7](#) for fees associated with triennial status reports)

(19 CFR 111.96(b) & (c))

ANNUAL USER FEES

All brokers who hold a valid national permit will be reminded of the due date of the annual user fee by a CSMS notice.

The annual national permit user fee must be submitted to the processing Center at the port through which the broker's license is delivered. (19 C.F.R. 24.22(h))

If a broker fails to pay the annual user fee, by the published due date, the appropriate processing Center will notify the broker in writing of his/her failure to pay and will revoke the permit to operate. This notice will constitute a revocation of the permit. Refer to [Chapter 8: Section B](#). for more permit revocation information.

(19 CFR 111.96(c))

CHAPTER 6: FICTITIOUS NAMES, NAME CHANGES, MERGERS & ACQUISITIONS

A. FICTITIOUS NAMES

1. GENERAL INFORMATION

A licensed customs broker, whether an individual, corporation, partnership or association, may operate under a fictitious name (also referred to as a trade, assumed, or DBA (doing business as) name. A broker must receive approval from the CBP Executive Director, Trade Policy and Programs (TPP), Office of Trade (OT), (or designee) to conduct customs business under the proposed fictitious name.

Once approved, the broker must use the fictitious name at all times in a consistent manner in order to avoid confusion with other brokers with similar names. The broker may not choose to use the approved fictitious name for certain transactions and not use it for other transactions. Only one fictitious name may be used by the broker.

A broker may choose to use the approved fictitious name as the sole unique identifier of the brokerage business (i.e., “XYZ CUSTOMS BROKERS”) or may choose to use it in conjunction with the name as it appears on the customs broker license (i.e., “JOHN DOE DBA XYZ CUSTOMS BROKERS”). The choice belongs to the broker, as long as the licensed name and approved fictitious name are used in an appropriate and consistent manner. However, the name in which the license is granted (i.e., as the name appears on the broker license) **MUST** appear in conjunction with the fictitious name (i.e., “JOHN DOE DBA XYZ CUSTOMS BROKERS”) when signing customs forms or documents that are or may potentially be presented to CBP (e.g., powers of attorney, surety bonds, CBP Form 5106).

The CBP Executive Director, TPP, OT, (or designee) will not grant approval to use a fictitious name that gives the appearance of changing the business form (i.e., individual, partnership, corporation or association) of the licensed entity. A broker conducting customs business as a sole proprietor will not be given approval to use an assumed name which includes the terms "Inc.", "LLP" or "LLC". No licensed customs broker will be granted approval to use a fictitious name that is identical or confusingly similar to another fictitious name which a different broker has been approved to use. The determination of what is identical or confusingly similar in this context is in the sole discretion of CBP.

2. BROKER MANAGEMENT BRANCH PROCESSING

Before seeking approval to use a fictitious name by the CBP Executive Director, TPP, OT, (or designee) a broker must provide proof of the authority to use that fictitious name by submitting documentation issued by the state or local authority within the state where the broker intends to use the proposed fictitious name. Such requests are to be submitted directly to the Broker Management Branch (BMB) by email at brokermanagement@cbp.dhs.gov, or by mail at Broker Management Branch, Office of Trade, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW, Washington, DC 20229-1154, which will do the following:

- ✓ CBP needs to know in which states the applicant is doing customs business, along with the fictitious name associated with the applicant's business. If the address provided by the broker for the national permit office is in a different state than the address provided for the broker license office, then CBP will require documentation from both states. A BMB staff member will verify that the documentation submitted evidences the broker's authority to use the proposed fictitious name in each of the states which s/he conducts customs business as a broker. Consultation with the processing Center through which the national permit was or is to be issued may be needed to ensure the sufficiency of the documentation. No request to use a fictitious name will be approved if the proposed name includes wording which gives the appearance, or implies, a change in the legal structure of the license that was issued (e.g., Individual to Corp). Such requests will be returned to the licensee with a statement of the reason(s) for denial.
- ✓ If, after review, the documentation is deemed sufficient to support the broker's request, a BMB staff member will provide the broker with written notice of approval signed by the CBP Executive Director, TPP, OT, (or designee). The notice will state that the broker must affix the name in which the license was issued in conjunction with the approved fictitious name when signing customs documents.
- ✓ A copy of the approval will be provided to the processing Center through which the license was delivered. BMB will enter the fictitious name in the holder's ACE account in the DBA field of the national permit. The processing Center will update the national permit issued to the broker to reflect the fictitious name.

4. BROKER RESPONSIBILITIES

- ✓ Submit appropriate documentation to BMB, which supports the right to operate under the proposed fictitious name.
- ✓ Conduct customs business only in the name and geographical areas authorized by BMB.
- ✓ Upon approval of the fictitious name, if the broker has a bond on file:
 - ❑ Submit a bond rider adding the fictitious name in Section III of the bond pursuant to 19 CFR 113.24(d)(3) to the Office of Finance-Revenue Division.
 - ❑ Submit a CBP Form 5106 to update the ACE importer account.

(HQ Rulings 225071, 115576, H031295; See [Figures 26-36](#) in Appendix C).

(19 CFR 111.30(c))

B. NAME CHANGES

Before using a new name to conduct customs business, the broker must submit evidence of the legal authority to do so. The request must be submitted directly to BMB for processing. The request may be mailed or emailed to brokermanagement@cbp.dhs.gov.

1. INDIVIDUALS

Individually licensed brokers who legally change their name must submit a written request to BMB that their name also be changed on their customs broker license so that it reflects their new legal name. Copies of documents issued by a state or federal authority (i.e., marriage certificate, divorce decree, social security card, etc.), which document the individual's right to use the new name, must be submitted to BMB. BMB personnel will record the new name and issue an amended license with the original issue date.

Once signed by the CBP Executive Assistant Commissioner, OT, (or designee), the amended license will be forwarded by BMB to the appropriate processing Center to distribute the license to the broker. Arrangements will be made for the surrender of the original license before the replacement license is delivered to the broker. A permit previously issued must be reissued to reflect the new name. The original permit must be surrendered before the reissued permit is delivered to the broker.

If an individual is transacting customs business as a sole proprietor broker and the broker has a bond on file and the principal name has changed, a bond rider to change the name of the principal on the bond must be submitted to the Office of Finance – Revenue Division in accordance with 19 CFR 113.24(d)(1). In addition, the broker must submit a CBP Form 5106 to update their importer account in ACE.

2. ORGANIZATIONS

Organizations that legally change their name must submit a written request to BMB that the name change be reflected on their customs broker license. Copies of documents, approved by the state in which the organization was formed, must be submitted to BMB as evidence of the new legal name. If the documentation submitted provides sufficient evidence that the name change was properly administered and filed with the appropriate state authority, a BMB staff member will record the new name and reissue the license in the new name.

Once the new license is signed by the CBP Executive Assistant Commissioner, OT, (or designee), it will be mailed to the appropriate processing Center to distribute the license to the broker. Arrangements should be made for the surrender of the original license before the replacement license is delivered to the broker. A permit previously issued to the organization must be reissued to reflect the new name. The original permit must be surrendered before the reissued permit is delivered to the broker.

If the name change has occurred as a result of a merger or acquisition, then it is not considered a simple name change and the broker should follow the procedures as described in Section C of this chapter.

When the broker has a bond on file and the principal name has changed, a bond rider to change the name of the principal on the bond must be submitted to the Office of Finance – Revenue

Division in accordance with 19 CFR 113.24(d)(1). In addition, the broker must submit a CBP Form 5106 to update the importer account in ACE.

(19 CFR 111.30(c) & 111.51)

C. MERGERS & ACQUISITIONS

This section applies to organization brokers (corporation, partnership, association, LLC). Individual license holders who transact customs business (sole proprietors) cannot merge their license (and its associated permit/filer code) with another individual or organization broker, nor can they sell their license to another individual or organization broker. An individual's license belongs solely to the individual (sole proprietor) and cannot be merged or sold.

1. CHANGE IN LEGAL NATURE OF AN ORGANIZATION

Brokers are required to report in writing to the processing Center, any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization. Examples of such transactions include (but are not limited to):

- Conversion of a general partnership to a limited partnership.
- Merger with another organization.
- Conversion of a sole proprietorship to an organization (i.e., incorporation or LLP or LLC formation).
- Divestiture (transfer or sale) of a part of the organization.
- Entry into bankruptcy protection.

The action required will vary depending on the type of organization resulting from the change.

In general, if both organizations continue to exist, except that one is now a wholly owned subsidiary of the other, and each licensed entity continues to conduct customs business, no action is usually required except to ensure that each licensed entity continues to meet the basic requirements for a license and permit.

If only one organization remains, which basically resembles the original licensed entity with the same corporate structure, the broker may retain its license and permit(s). If only one organization remains, which does not resemble the original licensed entity and this organization has undergone a change in corporate structure, the license and permit associated with the original licensed entity must be canceled, and the resulting organization must apply for a new license.

If an individual transacting customs business as a sole proprietor converts his/her sole proprietorship to an LLC or Corporate structure, in order for the formed organization to transact customs business, it must submit an application for a broker's license and be approved. An individual licensee may not use his or her license for the purpose of an organization to engage in "Customs business" even if the licensee is sole owner of that organization. The organization would need to obtain its own customs broker license.

Organizations that convert from a corporate structure to an LLC structure are reviewed on a case-by-case basis. Generally, if the resulting LLC continues to meet the basic requirements for a license, the state in which the entity was formed has approved a conversion and the tax ID remains intact, the license may remain viable and an amended license will be issued.

In the case of brokerages working through the merger/acquisition process, BMB will grant the acquiring brokerage up to 180 days to convert from the filer code of the entity being acquired to the filer code of the acquiring entity (surviving brokerage). If the broker continues to use the filer code belonging to the subsumed brokerage after the 180-day period (or shorter period granted) has expired, the acquiring brokerage may be subject to penalty. However, BMB will consider requests for an extension of the time limit on a case-by-case basis.

The CBP Executive Director, TPP, OT, and the processing Center at the port through which an entity has been granted their national permit, must be given notice of all mergers/acquisitions. The notice must specify the date of the merger/acquisition. The 180-day clock begins on the date when the merger/acquisition was legally effective.

When a new organization is created and a new license issued, a new filer code is required. Issuance of a unique filer code is the only way in which CBP can designate responsibility for entries and maintain proper control of the filers (for filer code issuance, refer to [Chapter 9: Section A](#)). If applicable, the new organization may also need to file a bond application to the Office of Finance – Revenue Division and submit a CBP Form 5106 to add the account in ACE.

For guidelines concerning the effect that changes to the legal nature of an organization may have on the viability of a previously executed power of attorney, refer to [Chapter 10: Section E](#) of this document.

(19 CFR 111.30(b))

2. CHANGE IN OWNERSHIP

For purposes of this section, a "principal" means any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in the business of the broker.

In addition to reporting changes to the legal nature of an organization, brokers are required to report any change in the ownership of a licensee whose shares are not publicly traded, to the CBP Executive Director, TPP, OT, and the processing Center. If individual license holders are transacting customs business when a change in ownership results in the addition of a new principal to the licensed organization, (irrespective of whether the shares are publicly traded), CBP reserves the right to conduct a background investigation of the new principal. The processing Center will determine whether a background investigation is needed and notify the broker if determined to be required. New principals which are already licensed as customs brokers do not have to undergo a background investigation.

If the investigation of the new principal yields derogatory information, sufficient to constitute the basis for the denial of a broker license application, a discussion will occur between the processing Center and the Chief, BMB, to determine whether to request removal of the new principal. If appropriate, the processing Center will notify the broker that the new principal must be removed. If, after notice, the broker has not terminated the principal's interest or made arrangements to otherwise satisfy the concerns of the processing Center, then suspension or revocation proceedings may be initiated against the corporate license.

(19 CFR 111.28(e) & 111.30(b))

CHAPTER 7: TRIENNIAL REPORT PROCESS

A. PURPOSE AND DEFINITION

The triennial process consists of a triennial status report (TSR) and fee payment that must be submitted to CBP every three years by each individual and organization (corporation, limited liability company, partnership, or association) holding a valid broker's license. Valid brokers licenses requiring a TSR are those in active, inactive, voluntarily suspended, and suspended status, unless a written agreement has been established with CBP that exempts a suspended license from TSR submission.

- Each broker is required to file a TSR with CBP on February 1, 1985, and on February 1 of each third year after that date. A report received during the month of February will be considered filed timely.
- ALL license holders must file a report, including licensed individuals that serve as a Qualifier of an organization license. A license qualifier filing on behalf of the organization does not satisfy the TSR requirement for that individual license holder.
- The report should be submitted through the eCBP portal and will not be considered received by CBP until payment of the TSR fee of \$100 is also received.
- The eCBP portal will be available for TSR submission on or about December 15th of the year preceding the reporting year unless otherwise notified by BMB.
- If the licensed broker fails to file the required report by March 1 of the reporting year, the license is suspended by operation of law on that date.

(19 CFR 111.30(d) & 111.96(d))

B. NOTIFICATION TO BROKER

CBP will post information about TSR filing on the broker page at CBP.gov by December 1st prior to the reporting year. CBP will also issue a CSMS message announcing the TSR reporting requirement.

C. TSR INFORMATION REQUIRED

TSRs should include the following information as is set out in 19 CFR 111.30(d).

Individual License Report

- ✓ Name
- ✓ If engaged in transacting business as a sole proprietor:
 - Name under which the broker's business is conducted.
 - Address at which the business is conducted.
 - Email address.
- ✓ If engaged in transacting business as an employee of a broker:
 - Name and address of employer.
- ✓ If not actively engaged in transacting business as a broker or employee of a broker:

- ❑ Current mailing address.
 - ❑ Email address.
- ✓ State whether s/he has engaged in any conduct that could constitute grounds for suspension or revocation of his/her license.
- ✓ Must be signed/submitted by the individual license holder.

Organization License Report

- ✓ Name under which its business as a broker is being transacted (license name).
- ✓ Office of record address.
- ✓ Name, address and email address of each licensed member of the partnership or licensed officer of the association or corporation including the license qualifier
- ✓ Name of the licensed employee who is the national permit qualifier.
- ✓ Statement whether the organization is actively engaged in customs business.
- ✓ Statement whether the organization has engaged in any conduct that could constitute grounds for suspension or revocation of his/her license.
- ✓ A partnership, association or corporation must state the name under which it is operating as a broker, the business address, and the name and address of the licensed member(s) who qualifies the license.
- ✓ Must be signed/submitted by a licensed member or officer of the organization.

D. eCBP PORTAL TSR SUBMISSION

The eCBP portal enables license holders to electronically submit TSR information and the fee payment required by regulation. Subject to concurrence by their employer, a broker's employee may elect that their employer submit the report payment on their behalf. For such a submission to occur, the broker's employee must select 'Broker as Payer' within the report AND eSign and save their TSR into a 'Payment Pending' status. The broker employer must then sign into eCBP and submit payment for the employee's TSR fees to effect 'submission' of the TSR.

Once the TSR is submitted, the information provided is saved in a pdf for the license holder to print or save, and a payment receipt is emailed to the payer. Payment notifications are also sent to the license holders who had their fee paid by their broker employer. The pdfs of both the report and receipt are stored in eCBP and can be accessed by the license holder at any time (See [Figure 37](#) in Appendix D). eCBP will be available to accept payments on or about December 15th of the year preceding the reporting year through the 60th day following suspension letter issuance.

Updated information submitted by the license holder through the eCBP portal will be uploaded into ACE, including the mailing address, office of record address and fee payment details.

The processing Center is responsible for assessing the TSR information provided and identifying potential violations.

E. MANUAL TSR SUBMISSION

If available, the TSR and fee should be submitted via the [eCBP portal](#). However, CBP will accept a payment submitted at the processing Center if accompanied by a TSR. A report will not be

considered received by CBP until the report and payment of the fee are received. Any TSR filed directly with the processing Center will be reviewed to ensure all required information is submitted. All updated information, including the fee collection, will be input into ACE.

Any fee and report submitted to a location other than a processing Center will be returned to the broker for proper submission to either the appropriate processing Center or via eCBP. If a broker's license has been revoked, CBP will not accept TSR fees and will return all monetary payments to the revoked license holder with a letter of explanation.

If the manual payment of a TSR results in a debit voucher, the TSR will be considered unpaid, and may result in suspension or revocation of the license.

(19 CFR 111.96)

F. 60-DAY SUSPENSION NOTICE PROCESS

If a broker fails to file a TSR by March 1st of the reporting year, the broker's license is suspended by operation of law. A 60-day suspension notice will be sent by certified mail, 'return receipt requested', to the license holder by March 31st.

- ❑ The BMO determines which brokers have not submitted a TSR and fee.
- ❑ The BMO verifies and updates the mailing address of each license holder as needed. The suspension letter is mailed to the license address most recently reported to CBP (19 CFR 111.30(a)).
- ❑ By March 31st of the reporting year, the BMO mails the 60-day written notice of suspension to the licensee via certified mail, "return receipt requested," at the office of record address (or mailing address if different) reflected in CBP records.
- ❑ If the license holder files the required report within 60 days of the mailing date of the suspension notice, the license will be reinstated upon submission of the TSR and payment of the fee.

(19 CFR 111.30(d)(4))

G. REVOCATION PROCESS

- ❑ If the license holder (individual, corporation, partnership, association) does not file the required report and pay the associated fee within the 60-day suspension period, the license will be revoked (by BMO) on the 61st day without prejudice to the filing of an application for a new license. eCBP access will be blocked for the submission of a TSR at the 61st day.
- ❑ The BMO transmits to HQ via email a list of licenses revoked by operation of law for failure to submit a TSR.
- ❑ BMB will assemble and verify the revoked license information transmitted from the BMOs. HQ will ensure that the revocation of the licenses of all brokers who failed to file the report and pay the fee is published in the Federal Register.

CHAPTER 8: REVOCATION/CANCELLATION/SUSPENSION OF LICENSE OR PERMIT

A. REVOCATION BY OPERATION OF LAW

1. REVOCATION OF LICENSE – FAILURE TO FILE STATUS REPORT & FEE

A broker's failure to file a triennial status report (TSR) and pay the TSR fee by the end of February of each third year, starting February 1, 1985, will result in revocation of the broker's license by operation of law. The \$100.00 fee helps to defray the cost of administering the reporting requirements. The broker's license is suspended by operation of law on March 1 of the reporting year when a licensed broker fails to file a TSR and pay the fee.

CBP will send a notice of suspension to the license holder by March 31st of the reporting year by certified mail, "return receipt requested." If the broker files the TSR with payment of the fee within 60 calendar days of the suspension notice mailing date, the license will be reinstated. If no response is received during the 60-day time frame, the license is revoked by operation of law on the 61st day without prejudice to the filing of an application for a new license. CBP will publish a notice of the revocation in the Federal Register. (Refer to [Chapter 7](#) for detailed procedures)

(19 CFR 111.30(d)(4))

2. REVOCATION OF LICENSE – FAILURE TO EMPLOY LICENSE QUALIFIER

An entity that holds a broker license as a corporation, association, or partnership and fails to have, for any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who holds a valid individual broker license, will, in addition to any other sanction that may be imposed under 19 CFR Part 111, result in the revocation of the organization's broker license by operation of law. The license and permit issued to the partnership, association, or corporation will be revoked on the 121st day.

A corporation, partnership or association must provide written notice to the processing Center within 10 calendar days of the date on which a licensed member or officer ceases to be the qualifying member or officer, for purposes of qualifying the organization's license, and the name of the broker who will succeed as the qualifying member or officer. If a successor is not identified in the notification letter, CBP will issue a warning letter to the broker specifying the date on which the license will be revoked by operation of law if the broker fails to replace the qualifying officer. If the qualifier is not replaced by the 120th day, the license will be revoked by operation of law on the 121st day. CBP will notify the broker of the revocation and publish a courtesy notice of revocation in the Federal Register.

- ❑ The license of an individual broker who becomes deceased, doing business as a sole proprietor, is not subject to the 120-day period. When an individual broker, operating as a sole proprietor dies, his/her brokerage operation ceases to exist as a legal entity for customs purposes and the broker's license and permit issued thereunder become void. The

brokerage operation may no longer conduct customs business, even if it employs another licensed individual. The license will be marked as “cancelled” in ACE with a remark that it is due to death. (See [Chapter 8: Section D](#))

(19 CFR 111.45(a) & (c) & 19 CFR 111.30(b)(1))

3. REVOCATION OF PERMIT – FAILURE TO EMPLOY PERMIT QUALIFIER

A licensee who has been granted a national permit must employ a licensed individual who qualifies for the national permit and will exercise responsible supervision and control over the activities conducted under the national permit. If the broker fails to employ a licensed customs broker who is the national permit qualifier for the broker, for any continuous period of 180 days, the failure will, in addition to any other sanction that may be imposed under 19 CFR Part 111, result in the revocation of the national permit by operation of law on the 181st day.

Every individual acting as a sole proprietor and every corporation, partnership and association is required to provide electronic (or written if electronic capability is not available) notice within thirty calendar days of the termination of any employee. If the broker has notified CBP of the termination of the permit qualifier, the BMO will send a warning letter to the broker reminding the broker of the permit qualifier obligation and noting the date on which the permit will be revoked by operation of law if the broker does not employ a permit qualifier. If the qualifier is not replaced by the 180th day, the license will be revoked by operation of law on the 181st day. CBP will notify the broker of the revocation and publish notice of revocation in the Federal Register.

(19 CFR 111.45(a))

B. REVOCATION OF PERMIT - FAILURE TO PAY PERMIT USER FEE

A user fee is assessed on an annual basis for each national permit held by an individual, corporation, partnership or association. BMB publishes the due date for payment of the fee in the Federal Register at least sixty (60) days before the due date.

A local reminder notice will also be issued by the processing Center.

Failure to pay the [current permit annual user fee](#) for a national permit held by an individual, partnership, association or corporate broker may result in revocation of the permit. The BMO will issue a letter of revocation to each broker that failed to remit a user fee. The permit will be revoked on the day of mailing. A list of the revoked permits will be published in the Federal Register. (Refer to [Chapter 5](#))

(19 CFR 111.45(b) & (c) and 111.96(c))

C. SUSPENSION / REVOCATION OF LICENSE OR PERMIT (FOR CAUSE)

1. REASONS FOR SUSPENSION / REVOCATION

The appropriate processing Center may initiate proceedings for the suspension of a license or permit, for a specific period of time, or the revocation of a license or permit, of any broker for any of the following reasons:

- ✓ The broker has made or caused to be made on any application for any license or permit under 19 CFR Part 111, or in a report filed with CBP, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or which omitted a material fact;
- ✓ The broker is convicted, at any time after the filing of an application for a license, of any felony or misdemeanor which:
 - Involved the importation or exportation of merchandise
 - Arose out of the conduct of customs business
 - Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds
- ✓ The broker has violated any provision of any law enforced by CBP, or the rules or regulations issued under any provision of any law enforced by CBP;
- ✓ The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by CBP or the rules or regulations issued under any provision of any law enforced by CBP;
- ✓ The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of that employment from the CBP Executive Director, Trade Policy and Programs (TPP), Office of Trade (OT);
- ✓ The broker has, in the course of customs business, acting with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client; or
- ✓ The broker has been convicted of committing or conspiring to commit an act of terrorism as described in 18 U.S.C. 2332b;
- ✓ The broker no longer meets the basic license or permit requirements of 19 CFR 111.11 and 111.19.

(19 CFR 111.53)

2. PROCEDURES FOR SUSPENSION / REVOCATION

- Investigation of Complaints – Any complaint or charge against a broker, which may result in disciplinary action, may be forwarded to the appropriate investigative authority within DHS, so that an investigation may be performed and a report issued to the processing Center and a copy to the CBP Executive Director, TPP, OT.
- Report of Investigation or Inquiry – The processing Center will review the report that is prepared, following the investigation or inquiry, and determine if there is sufficient basis to recommend charges against the broker. If, after consultation with the appropriate Associate or Assistant Chief Counsel office, the processing Center Director (or designee) wishes to recommend charges, the supporting reasons will be submitted to the CBP Executive Director, TPP, OT, for final determination. The supporting reasons will be submitted with a proposed statement of charges if the processing Center recommends that charges be proffered. The CBP Executive Director, TPP, OT, will decide if charges are to be proffered and notify the Center Director (or designee) of the decision.
- Preliminary Proceeding – The Center Director (or designee) will advise the broker in writing of the opportunity to participate in preliminary proceedings in order to avoid formal proceedings against his/her license or permit. The Center Director (or designee) will serve upon the broker written notice as provided for in 19 CFR 111.59(b). This notice shall be served in the manner set forth in 19 CFR 111.63, *Service of notice and statement of charges*.
- Decision on Preliminary Proceedings – The Center Director (or designee) will prepare and forward to the CBP Executive Director, TPP, OT, a summary of any oral presentations by the broker together with a copy of each paper filed by the broker. The summary will include the Center Director's recommendation on the action to be taken as a result of the preliminary proceedings. If the CBP Executive Director, TPP, OT, is satisfied that no further proceedings are warranted, the Center Director (or designee) will be notified and will, in turn, notify the broker. If no response is received from the broker and/or the CBP Executive Director, TPP, OT, decides further proceedings are warranted, the Center Director (or designee) will be advised and instructed to prepare, sign, and serve a notice of charges along with a statement of charges. If one or more charge is satisfactorily answered by the broker, the Center Director (or designee) will be instructed to omit those charges from the statement of charges.
- Contents of Notice of Charges - The notice of charges must inform the broker of the following:
 - Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;
 - The broker may be represented by counsel;
 - The broker will have the right to cross-examine witnesses;
 - The broker will be notified of the time and place of a hearing on the charges;
 - Prior to the hearing on the charges, the broker may file, in duplicate with the Center Director, a verified answer to the charges.

- Service of notice and statement of charges – Once the CBP Executive Director, TPP, OT, has instructed the Center Director (or designee) to serve a notice and statement of charges, the processing Center will prepare the package for delivery in one of the manners set out in 19 CFR 111.63. The manner of service may be different depending on whether it is for an individual license holder or a partnership, association, or corporation license.
- Notice of Hearing – The hearing officer is an administrative law judge (ALJ) appointed pursuant to 5 U.S.C. 3105. The Processing Center and the appropriate Associate or Assistant Chief Counsel shall coordinate to make the necessary arrangements for securing the services of an ALJ to conduct the hearing. After the notice and statement of charges have been served, the Center Director (or designee) will provide the broker with written notification of the time and place of the hearing (unless otherwise directed by the assigned ALJ). The hearing will take place within 30 days after service of the notice of hearing, unless otherwise directed by the ALJ. The broker can request, in writing, a delay in the hearing for good cause. The ALJ may reschedule the hearing and will notify the broker of that fact. If the broker fails to appear for the scheduled hearing, the hearing officer will proceed with the hearing.
- Hearing – The broker or his/her attorney will have the right to examine all exhibits, to cross-examine witnesses and present witnesses. Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing will be given reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, will be permitted to cross-examine any witnesses. The deposition will become a part of the hearing record. For the hearing, the Center Director (or designee) will provide for a competent reporter, unless otherwise directed by the ALJ. The Center Director (or designee) will provide a copy of the transcribed hearing to the hearing officer, the broker, and the government representative without charge.
- Proposed Findings – The hearing officer will allow the parties a reasonable period to submit proposed findings and conclusions as contemplated by 5 U.S.C. 557(c). After a review of the proposed findings and conclusions submitted by the parties, the hearing officer will make his/her recommended decision and certify the entire record to the CBP Executive Assistant Commissioner, OT. The CBP Executive Assistant Commissioner, OT, will afford the parties a reasonable opportunity to make any additional submissions that are permitted under 5 U.S.C. 557(c) and will disregard any immaterial evidence. If the CBP Executive Assistant Commissioner, OT, finds that the evidence does not support a proper disposition of the case on the proffered charges, s/he may instruct the Center Director (or designee) to serve appropriate charges as a basis for new proceedings.
- Decision and Notice of Suspension or Revocation or Monetary Penalty – If the CBP Executive Assistant Commissioner, OT, issues an order to suspend or revoke the broker's license or permit or assesses a monetary penalty in lieu thereof, the CBP Executive Director, TPP, OT, will provide written notification to the broker and prepare a notice to

be published in the Federal Register. If no appeal to the order is filed, the suspension or revocation or penalty (including payment) will become effective 60 calendar days after the written notification of the order and the notice will be published in the Federal Register. An appeal of a revocation or suspension order may be filed by the broker in the Court of International Trade.

- Reopening the Case – The broker can request the case be reopened on the grounds that new evidence has been discovered or that important evidence was not available at the original hearing. The CBP Executive Director, TPP, OT, will forward the request to the CBP Executive Assistant Commissioner, OT, for a decision. If granted, the Executive Director will set a time and place for the hearing and give notice to the applicant.
- Settlement and Compromise – the CBP Executive Assistant Commissioner, OT, may settle and compromise any disciplinary proceeding which has been instituted according to the terms and conditions agreed to by the parties, including an assessment of a penalty in lieu of a proposed suspension or revocation.

(19 CFR 111.55 – 111.95)

D. CANCELLATION OF LICENSE OR PERMIT

1. CANCELLATION OF BROKER LICENSE OR PERMIT “WITHOUT PREJUDICE”

The CBP Executive Director, TPP, OT, may cancel a broker license or national permit “without prejudice” upon the broker’s written request if CBP determines that the request was not made in order to avoid proceedings for the suspension or revocation of the license or national permit. If the CBP Executive Director, TPP, OT, determines that the written request for cancellation was made to avoid such proceedings, s/he may cancel the license or national permit “without prejudice” only with the authorization from the CBP Executive Assistant Commissioner, OT.

Requests for cancellation of a license or national permit are sent by the broker to the processing Center.

Upon submission of the license cancellation request, the processing Center will review the broker’s transactional history to ensure all entry summaries and preliminary duties owed, including daily and monthly statement payments, have been filed. Once the processing Center has verified all outstanding customs transactions are complete, it will forward the request to BMB. BMB will acknowledge the cancellation of a license with a letter to the broker and copy the processing Center.

Upon submission of the national permit cancellation request, the processing Center will review the broker’s transactional history to ensure all entry summaries and preliminary duties owed, including daily and monthly statement payments, have been filed. Once the processing Center has verified all outstanding customs transactions are complete, it will cancel the permit through ACE.

The returned physical license and/or permit will be retained in the processing Center's broker management file.

(19 CFR 111.51(a))

2. CANCELLATION OF LICENSE OR PERMIT “WITH PREJUDICE”

The CBP Executive Director, TPP, OT, may cancel a license or permit “with prejudice” when specifically requested to do so by the broker. The effect of a cancellation “with prejudice” is, in all respects, the same as if the license or permit had been revoked for cause by the CBP Executive Assistant Commissioner, OT, (or designee) except that it does not allow for a right of appeal.

A request for cancellation of a license or permit “with prejudice” should be submitted to a processing Center. Once the processing Center has verified all outstanding customs transactions are complete, it will forward the request to HQ for final processing. Once the request for cancellation with prejudice is approved by the CBP Executive Director, TPP, OT, BMB will ensure that a notice of cancellation of the license “with prejudice” is published in the Federal Register. Cancellations of permits do not require Federal Register Notice (FRN) pursuant to FRN Doc. 2014-28858.

(19 CFR 111.51(b))

3. CANCELLATION OF LICENSE (AND PERMIT) - DEATH

When the processing Center is notified in writing of the death of an individual licensee, the processing Center will request that the CBP Executive Director, TPP, OT, cancel the broker's license and associated permit, if applicable. The notification, showing cause of cancellation for reason of death, becomes a permanent part of the broker's file.

When a processing Center becomes aware of the death of a broker, the processing Center will make a reasonable attempt to verify this information by requesting the deceased person's license, permit (if applicable), and a copy of the death certificate or other evidence of decease from the next of kin, or notifier, if available.

A copy of the written notification, along with a copy of the death certificate (or other evidence), will be forwarded to BMB for cancellation of the license for reason of “death”. BMB will provide notice of the license (and permit) cancellation to the broker's next of kin or notifying entity and copy the processing Center.

E. VOLUNTARY SUSPENSION OF LICENSE OR PERMIT

1. VOLUNTARY SUSPENSION

The CBP Executive Director, TPP, OT, may accept a broker's written voluntary offer of suspension of the broker's license or permit for a specific period of time, under any terms and conditions to which the parties may agree. The agreement must be signed by the Executive Director

and the subject broker. A broker may or may not be required to tender a TSR and fee as specified in the agreement. The broker normally retains physical possession of the license during the period of suspension.

A customs broker must submit a written request to the CBP Executive Director, TPP, OT, when she/he wishes for the license/permit to be reinstated. The Executive Director will advise the broker and processing Center, in writing, of whether the reinstatement request will be granted or denied.

(19 CFR 111.52)

2. FEDERAL EMPLOYEES

A licensed customs broker who becomes a federal employee subsequent to receiving his/her license must, within 90 calendar days of becoming a federal employee, submit a written request to the CBP Executive Director, TPP, OT, to voluntarily suspend his/her license without prejudice. Upon receipt, BMB will send to the employee a suspension agreement to be signed by the customs broker and the Executive Director. The specific period for the voluntary suspension will be defined as the length of the federal employment.

3. FILING OF STATUS REPORT & PAYMENT OF FEE

A person or organization whose license has been voluntarily suspended is required to file the TSR provided for in 19 CFR 111.30(d) and may be required to pay the corresponding fee unless advised otherwise in an agreement referenced in “1” above. The failure to submit a timely TSR and fee may result in revocation of the broker’s license by operation of law if there is no agreement between CBP and the broker that the broker does not have to file the TSR.

F. DISPOSITION OF LICENSE OR PERMIT

The chart below illustrates the legal implications of the revocation, suspension or cancellation of a license or permit, either with or without prejudice. A broker may have the right to retain his/her license or permit under certain circumstances. A broker may be prohibited from conducting customs business or have certain appeal rights when his/her license is revoked, suspended or canceled. In addition, a broker whose license is suspended may be obligated to continue to file his/her TSR and fee depending on the circumstances.

Disposition of License or Permit

	<i>Cancellation</i>	<i>Suspension</i>	<i>Revocation</i>
<i>Voluntary Or Involuntary</i>	Always Voluntary i.e., at the request or death of the broker	Voluntary or Involuntary	Always Involuntary
<i>Retention Of License or Permit</i>	License or permit is taken away from broker	Broker retains license or permit	License or permit is taken away from broker
<i>Customs Business</i>	Broker cannot conduct customs business	Broker cannot conduct customs business <u>for a specified period of time</u>	Broker cannot conduct customs business
<i>Appeal Rights</i>	No appeal rights when canceled “with prejudice”	Appeal rights when suspended involuntarily	Appeal rights except when revoked by operation of law
<i>Triennial Report/Fee Payable</i>	No Triennial report/fee is due	Triennial report/fee is due during the suspension agreement, unless otherwise agreed upon	No Triennial report/fee is due

G. TERMINATION OF BROKERAGE BUSINESS

Upon permanent termination of a brokerage business, the brokerage must provide to the processing Center written notification of the name, address, email and telephone number of the party having legal custody of the brokerage records.

An individual broker is responsible for providing the aforementioned notification when he/she has been conducting customs business as a sole proprietor. It is the responsibility of the officer/member/partner of a corporation/association/partnership to provide such written notice when an organization terminates its operations.

Entry summaries and monies owed may be accepted until the date the license has been surrendered to the port. Brokers are responsible for resolving all outstanding entry filings, duties, and liquidated damages cases and any and all other outstanding customs business issues. A license should not be surrendered to CBP, and CBP should not cancel a license, until a broker has closed all their customs business conducted under that license.

The original license and permit must be surrendered to the processing Center that oversees the license and permit. A written request that the license and permit be canceled “without prejudice” should accompany the surrendered license and/or permit.

A broker may retain a license in an inactive status but must continue to meet the minimum requirements of 19 CFR 111.11 and file the Triennial Status Report (TSR) and fee. If the broker is a corporation, association or a partnership, the organization must maintain:

- one member of a partnership, or one officer of a corporation or association who is a licensed broker,
- a valid state registration of the partnership, association or corporation, and
- a place of business within the U.S. to retain its license in inactive status.

(19 CFR 111.30(e), 111.51, 111.96 & 143.37(b))

CHAPTER 9: FILER CODE MAINTENANCE

CBP will assign a unique 3-character (alphabetic, numeric, or alpha numeric) entry filer code to all licensed brokers filing CBP entries. CBP will assign an entry filer code to certain importers filing CBP entries based on the importers' entry volume, frequency of entry filing, and other considerations. The assigned filer code is used as the beginning three characters of the entry number for all CBP entries, regardless of where the entries are filed.

A. FILER CODE REQUEST AND ASSIGNMENT

A filer code is a unique identifier assigned to a legal entity when approved by CBP. The filer code may be used by a filer to file entries on their own behalf or a broker to file entries on behalf of another. A filer may file entries in a manual mode or be authorized to file in an automated mode through Automated Broker Interface (ABI). A broker who files on behalf of another must be able to transmit through ABI. However, a filer who files on their behalf may be approved to file manually depending on the volume of transactions, frequency of transactions, and other considerations.

Filer Code for a Customs Broker

A customs broker who wants to obtain a filer code should submit a request to Broker Management Officer (BMO) based upon physical port location through which the license was issued (*i.e.* the processing Center), along with the following information:

- Confirmation that the processing Center is in receipt of a national permit application that it is approving
- A written filer code request from the broker
- Legal name of the broker as it appears on the license
- Trade name, if approved
- License number
- Name of license holder (if organization request)
- Name of qualifying officer (if organization request)
- Business address
- Business telephone number

After obtaining a filer code, the broker should submit a Letter of Intent ([LOI](#)) to receive assignment of an ABI Client Representative if they are interested in filing ABI transactions. The Client Rep will work with the broker to test the ABI setup and authorize the broker to file ABI transactions.

Note that filer codes are non-transferrable. Filer codes are unique and dedicated; assigned to specific individuals, corporations, partnerships, or associations. As such, an individual who later obtains a corporate license to engage in customs business and intends to conduct customs business as a corporation must obtain a separate corporate filer code.

Filer Code for an Importer

CBP grants a filer code to certain importers filing CBP entries based on the importer's entry volume, frequency of entry filing, and other considerations. An importer seeking to obtain a filer code should submit a request to BMO at the port through which they will conduct customs business along with the following information:

- Legal Name
- Employer Identification Number, Internal Revenue Service Number, Social Security Number or CBP Assigned Number
- Contact Name
- Business Address
- Contact's Email and Phone Number

After obtaining a filer code, the importer should submit an [LOI](#) to receive assignment of an ABI Client Representative if they are interested in filing ABI transactions. The Client Rep will work with the filer to test the ABI setup and authorize the filer to file ABI transactions.

CBP issues a filer code to an importer with a specific EIN/IOR#. Therefore, the CBP assigned filer code can only be used by the importer with the EIN/IOR# for their own account. Misuse of the importer's filer code may result in a temporary or indefinite suspension of the filer code usage.

All Other Types of Filer Codes

All other types of filer code requests (e.g. FTZ, ISF) should be requested through a LOI filed with an ABI Client Representative at letterofintent@cbp.dhs.gov. More information on the LOI process may be found at www.cbp.gov/document/guidance/letter-intent-instructions

B. BROKER HOLDING MORE THAN ONE FILER CODE

Note that CBP has a one filer code per entity policy. CBP allows an importer or a customs broker to have only one filer code to conduct customs business. However, a customs broker may hold and operate under more than one filer code temporarily in certain circumstances.

- **Merger and Acquisition (M&A):** A broker is transitioning to a new filer code due to an M&A with another broker. During this transition time, the broker will be allowed to use both filer codes to conduct customs business for up to 6 months with permission from CBP. Once the transition is complete, the broker should operate under the remaining broker's filer code and the absorbed broker's filer code will be retired upon request from the surviving broker to cancel the license of absorbed broker.
- **Exhaustion of check digits/entry numbers under a current filer code:** When a broker expects to exhaust the check digit/entry numbers under its current filer code, it must notify CBP and request a new filer code. The broker should not make the request until it is within 2 months of exhaustion, or it reaches check digit 9. When a new filer code is issued, the broker should immediately start making necessary arrangements to transition to the new filer code and prepare for the retirement of the current filer code. During this transition time, the broker will be allowed to use both filer codes to conduct customs business. However, within 90 days from the date of when the broker begins to use the new filer code, CBP will deactivate the

exhausted filer code. On case-by-case basis, BMB may allow more than 90 days to transition to the new filer code.

C. LISTING OF PERMITTED BROKERS

The CBP website contains a listing of permitted brokers by port. The items that can be included on the web page are the broker's name, filer code, address, email and telephone number. Only brokers with an active national permit will appear on the CBP web page. The webpage is updated quarterly.

A customs broker who wants to be added to the list or wants to update already existing information on the list should contact BMO at its processing Center for assistance.

D. OTHER FILER CODE TYPES

CBP issues filer codes for purposes other than filing consumption or drawback entries. Filer code requests may be issued to different types of entities that transmit ABI transactions for activities that are not "customs business" such as ISF filing and inbond movements. Those types of filer code requests are submitted through the LOI process.

All other types of filer code requests (e.g. FTZ, ISF) should be requested through a Letter of Intent (LOI) filed with ABI Client Representative at letterofintent@cbp.dhs.gov. More information on LOI process can be found at www.cbp.gov/document/guidance/letter-intent-instructions

Refer to LOI Instruction page here: [Letter of Intent Instructions | U.S. Customs and Border Protection \(cbp.gov\)](#)

The following listing represents the different types of entities that may request a filer code using the LOI process:

- Carrier
- FTZ Admissions
- Inbond Filer
- ISF Filer
- Surety

E. SUSPENSION OF A FILER CODE

Pursuant to 19 CFR 142.3a(d), the CBP Executive Assistant Commissioner (EAC), Office of Trade, (or designee) may refuse to allow use of an assigned entry filer code if it is misused by the importer or broker. Circumstances might require the temporary or indefinite suspension of the use of a broker's or importer's filer code by CBP to fulfill CBP's national security and/or trade enforcement mission. CBP has a multi-layered review and decision process in place prior to suspending a filer code whether the final decision on the suspension of a filer code is made by the EAC (or designee).

The following examples may be considered to be within the scope of “misuse” of a filer code. However, this is not an all-encompassing list of possible misuse of a filer code:

Customs Brokers

- The broker conducts customs business, with the intent to defraud, or in any manner willfully and/or knowingly deceived, misled or threatened a client or CBP (e.g., the broker is not in possession of a valid power of attorney.)
- The broker, while conducting customs business, fails to timely and accurately adhere to CBP informed compliance measures and corrective actions. (e.g., CBP issues repeat CBP Forms 28 on identical and/or strikingly similar issues but the broker fails to adhere to the informed compliance measures.)
- The broker allows unlicensed persons and employees of unlicensed persons to use the broker’s filer code for the purpose of conducting customs business.
- The broker is involuntarily removed from CBP security and compliance focused programs.

Importers

- The importer uses its filer code for a different account (e.g., continuing to use an importer filer code that was previously assigned to a company that is now under a different or new corporate structure, using an importer filer code for its affiliated incorporated business division and/or subsidiary, etc.)
- The importer uses its filer code on another company’s behalf.
- The importer uses its filer code to enter goods in violation of Priority Trade Initiative(s).
- The importer uses its filer code to facilitate a violation of laws and regulations (e.g., an importer filer code used to facilitate the unlawful entry of controlled substances).
- The importer lacks reasonable care in the use of its importer filer code.
- The importer fails to adhere to repeat CBP Form 28 instructions concerning similar issues such as classification, valuation, appraisalment, etc.
- The importer fails to adhere to CROSS rulings and/or Informed Compliance Letters.

CHAPTER 10: BROKER OVERSIGHT

Licensed Customs brokers have duties and responsibilities as identified in 19 U.S.C. 1641 and 19 CFR 111, Subpart C. Those duties and responsibilities include but are not limited to exercising responsible supervision and control over the customs business they conduct; reporting changes to broker employees and broker organization; due diligence in making financial statements, answering correspondence and preparing or assisting in preparing and filing of customs business documents; maintaining appropriate relationships with third parties; exercising due diligence to ascertain the correctness of information the broker imparts to a client; and negotiating a valid power of attorney directly with a client. Brokers are required to adhere to the duties and responsibilities. The violation of a broker's duties and responsibilities can result in an informed compliance notice, a warning letter, a written reprimand, an assessment of monetary penalties or license revocation or suspension, depending on the nature of the violation. (See [Chapter 11, Broker Penalties](#))

A. RESPONSIBLE SUPERVISION AND CONTROL

Every individual broker operating as a sole proprietor, every licensed member of a partnership that is a broker, and every licensed officer of an association or corporation that is a broker must exercise responsible supervision and control (see § 111.28(a)) over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation. A sole proprietorship, partnership, association, or corporation must employ a sufficient number of licensed brokers relative to the job complexity, similarity of subordinate tasks, physical proximity of subordinates, abilities and skills of employees, and abilities and skills of the managers, among other relevant considerations.

While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon each broker's particular circumstance, certain factors which CBP may consider in its discretion and to the extent any are relevant include, but are not limited to the following:

- The training provided to broker employees;
- The issuance of instructions and guidelines to broker employees;
- The volume and type of business of the broker;
- The reject rate for the various customs transactions relative to overall volume;
- The level of access a broker's employees have to current editions of CBP regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances;
- The availability of a sufficient number of individually licensed brokers for necessary consultation with employees of the broker;
- The frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have an individually licensed broker;
- The frequency of audits and reviews performed by an individually licensed broker of the customs transactions handled by their employees;
- The extent to which the individually licensed broker who qualifies the permit is involved in the operation of the brokerage and communicates with CBP;

- Any circumstances which indicate that an individually licensed broker has a real interest in the operations of a broker;
- The timeliness of processing entries and payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client;
- Communications between CBP and the broker, and the broker's responsiveness and action to communications, direction, and notices from CBP; and
- Communications between the broker and its officer(s) and member(s); and the broker's responsiveness and action to communications and direction from its officer(s) and member(s).

Note: An ACE system reject of attempted data submission, which is not considered filed, would not be considered under factor four. A reject occurs when a broker successfully submits a filing in ACE, which is considered filed, and because of the lack of accuracy of the filing, is rejected. Customs Directive 099-3550-67, Entry Summary Acceptance and Rejection Policy, includes the types of rejections that would be considered under factor four, e.g., entries rejected for classification issues, valuation issues, bond issues, duty payment issues, repetitive clerical errors.

1. FACTOR CIRCUMSTANCES EXAMPLES

To demonstrate some of the particular circumstances that may be relevant when CBP considers the above-mentioned factors, examples are provided below. Each example is merely illustrative in nature as to some of the possible circumstances and considerations relevant to certain factors. It is important to note that each determination is fact-specific and varies depending upon the particular circumstances surrounding the customs business being conducted.

For factor one, examples include whether a broker

- provides a developed training program and/or materials for new employees;
- provides access to CBP webinars specific to the employee's job;
- provides a mentoring program within the brokerage;
- provides updated training and materials to reflect operational changes.

For factor two, examples include whether

- a broker maintains an internal handbook or manual;
- the resources provided to employees account for recent changes to CBP regulations.

For factor three, examples include

- the number of commodities a broker handles;
- the number of clients a broker manages;
- the complexity of the entry transactions;
- the number of entries filed annually.

For factor four, examples include whether a broker

- reviews transactions for completeness/correctness prior to submission to CBP;
- addresses rejected transactions to ensure that future transactions of a similar nature do not result in the same reject.

For factor five, examples include whether a broker

- provides current electronic resources accessible on the employee's computer and/or sufficient current paper resources to be shared by employees within the office;
- maintains CBP issued guidance such as CSMS messages and port issued Trade Notices.

For factor six, examples include whether a broker

- employs enough individually licensed brokers (ILBs) to provide broker employees with timely attention (e.g., assistance, guidance, consultation) in the course of customs business;
- considers the ratio of employees to ILBs (e.g., a larger brokerage may need more licensed brokers than a smaller brokerage for oversight);
- considers the amount of varied and complex customs business that may need more experienced ILBs to provide guidance to broker employees;
- considers the amount of broker locations and ease of employees' ability to obtain advice, concurrence, and vetting from an ILB who is on site or readily available by email, messaging or phone.

For factor seven, examples include whether a broker

- maintains an office visit schedule based on identified business needs of the offices without an ILB;
- documents visits to offices without an ILB.

For factor eight, examples include whether an ILB

- maintains an audit and review schedule of the employees' work;
- documents when audits and reviews are performed.

For factor nine, examples include whether the qualifying ILB

- maintains oversight responsibility over some or all of the customs business conducted;
- conducts periodic reviews of the customs business conducted to determine whether any new guidance, operational changes, etc. are needed;
- independently handles or reviews certain high-risk customs business transactions;
- audits entry rejects and other entry communications from CBP and other government agencies to ensure timely and appropriate responses are provided.

For factor ten, examples include whether an ILB

- conducts periodic reviews of all customs business transacted by the employees he/she manages;
- pursues continuing education opportunities specific to the industry focus of the brokerage.

For factor eleven, examples include whether a broker

- maintains an accounting system to ensure duty payments provided by the importer to the broker are submitted in a timely fashion to CBP and duty payments provided by the importer that are not owed to CBP are reported to the importer;
- has a procedure in place to file an entry and notify CBP when an importer has failed to provide duty payment.

For factor twelve, examples include whether a broker

- maintains evidence of timely responses to CBP inquiries and notices;
- maintains evidence that the broker takes appropriate action when provided direction from CBP.

For factor thirteen, examples include whether a broker

- maintains evidence that problems with a customs transaction or employee's conduct are immediately reported to officers/members, and promptly resolved;
- maintains evidence that the broker is keeping its officers/members informed of the volume of operations so officers/members can assess whether additional ILBs are needed;
- maintains evidence reflecting that the broker is responding to communication and following direction from the officers/members.

(19 CFR 111.28(a))

2. SUPERVISION PLAN

Any broker who first applies for a permit after the effective date of the Broker Modernization Regulations ([87 FR 63267](#)) (Dec. 19, 2022) must file a supervision plan at the time of filing their national permit application. The plan must describe how the broker intends to ensure responsible supervision and control will be exercised over the customs business and should include information concerning how compliance with the above expectations will be performed. It is recommended as a best practice that the broker update the plan as needed when the business grows or changes in order to ensure responsible supervision and control is maintained over its customs business.

Any licensed brokers with an active permit in place on the effective date of the Final Rule ([87 FR 63267](#)), regardless of whether it was a district or national permit, are not required to provide a supervision plan to CBP. However, development of a supervision plan is recommended as a best practice to ensure responsible supervision and control is maintained over the broker's customs business.

(19 CFR 111.19(b)(8))

B. BROKER REPORTING REQUIREMENTS

Pursuant to Part 111 of Customs Regulations, licensed brokers are required to submit to CBP various information, reports and fees. A failure to comply with reporting requirements may lead to disciplinary actions including, but not limited to, penalty against the broker.

1. EMPLOYEE INFORMATION

Each broker that intends to transact customs business must provide in writing, the following information on each of its employees upon application for a national permit (see [Section D](#) of this chapter for BMO processing of employee reports):

- Name of employee
- Social security number of employee
- Date and place of birth of employee
- Current home address of employee
- Date of hire of employee

After the initial employee information submission, an updated list must be submitted to a CBP-authorized electronic data interchange (EDI) system if any of the above required information on a current employee changes. The update must be submitted within thirty (30) calendar days of the change through the broker's ACE portal account. If the broker does not have an ACE portal account or ACE reporting functionality is not yet available, then the information must be provided in writing to the processing Center. BMO will update the employee information in ACE if submitted in writing.

(19 CFR 111.28(b)(1))

2. NEW EMPLOYEES

A broker must submit a list of new employees with the information listed in [Section A](#) of this chapter within 30 calendar days of the start of employment. The broker must submit the new employee information through the broker's ACE portal account. The broker may submit a list of the new employees or an updated list of all employees, specifically noting the new employee(s). If the broker does not have an ACE portal account or ACE reporting functionality is not yet available, then the information must be provided in writing to the processing Center. BMO will update the employee information in ACE if submitted in writing.

(19 CFR 111.28(b)(2))

3. TERMINATED EMPLOYEES

Within thirty calendar days after the termination of employment, a broker must submit a list of terminated employee(s) through the broker's ACE portal account. If the broker does not have an ACE portal account or ACE reporting functionality is not yet available, then the information must be provided in writing to the processing Center. BMO will update the employee information in ACE if submitted in writing.

(19 CFR 111.28(b)(3))

4. CHANGE IN POINT OF CONTACT

A licensed customs broker, or partnership, association, or corporation conducting customs business under a national permit must designate a knowledgeable and current point of contact (POC) available to CBP during and outside of normal operation hours to respond to customs business issues (“24/7 POC”). The broker must report any updates to the POC information in ACE. If the broker does not have an ACE portal account or ACE reporting functionality is not yet available, then the information must be provided in writing to the processing Center and BMO will update the POC in ACE.

The broker should add and update the “24/7 POC” contact to the national permit “Contacts tab” in ACE through the broker’s account portal access. If ACE functionality is not available for brokers, BMO will add/update the “24/7 POC” to the national permit Contacts tab when the broker provides the information.

(19 CFR 111.3(b))

5. TERMINATION OF QUALIFYING MEMBER OR OFFICER

An individual who is the qualifying member of a partnership or who is the qualifying officer of an association or corporation, **MUST IMMEDIATELY** provide written notice to the CBP Executive Director, Trade Policy and Programs (TPP), Office of Trade (OT), when his/her employment terminates and must send a copy to the processing Center

(19 CFR 111.28(d))

6. CHANGE IN OWNERSHIP

If the ownership of a brokerage changes and shares in the brokerage are not publicly traded, the broker must immediately provide written notice to the CBP Executive Director, TPP, OT, and a copy of that notification to the processing Center (See [Chapter 6: Section C, subsection 2](#) for processing procedures). If the change in ownership results in the addition of a new principal of the organization, CBP reserves the right to conduct a background investigation on the new principal. ("Principal" is defined as any person having at least a 5% capital, beneficiary or other direct or indirect interest in the business of a brokerage).

(19 CFR 111.28(e))

7. CHANGE OF ADDRESS

A broker must maintain current address information with CBP. Address information includes office of record address, email address and, if the broker is not actively engaged in transacting customs business as a broker, the broker’s non-business address. If the broker does not receive mail at the office of record address, the broker must also provide a mailing address.

If a broker's office of record, mailing, or non-business address changes, s/he must update the address information within 10 calendar days through his/her ACE portal account. If ACE functionality is not available, then address updates must be provided in writing within 10 calendar days to the processing Center. BMO will update the address information in ACE if submitted in writing.

(19 CFR 111.30(a))

8. CHANGE IN AN ORGANIZATION

A partnership, association, or corporation must immediately notify the processing Center, in writing, of the following information (Refer to [Chapter 6](#) for processing):

- The date on which the licensed member or officer ceases to be the qualifying member or officer, and the name of the licensee who will succeed as the qualifying member or officer;
- The date on which a licensed employee ceases to be the national permit qualifier for purposes of § 111.19(a), and the name of the licensed employee who will succeed as the national permit qualifier; and
- Any change in the Articles of Agreement, Charter, or Articles of Incorporation, relating to the transaction of customs business, or any other change in the legal nature of the organization (i.e., for example, conversion of a general partnership to a limited partnership, merger with another organization, selling ("divestiture") all or part of the organization, or the entry into bankruptcy proceedings). (Refer to [Chapter 6](#))

(19 CFR 111.30(b))

9. CHANGE IN NAME

A broker who undergoes a change in name through marriage, divorce, or other legal means, or who proposes to operate under a trade or fictitious name, in one or more states, and is authorized by State law to do so, must submit to the CBP Executive Director, TPP, OT, evidence of the authority to use that name. The name cannot be used until HQ approval has been received. (Refer to [Chapter 6: Section B](#) for processing)

(19 CFR 111.30(c))

10. CUSTODY OF RECORDS UPON CESSATION OF OPERATIONS

Upon permanent termination of a brokerage business, the brokerage must provide to the processing Center written notification of the name, address, email and telephone number of the party having legal custody of the brokerage records.

Upon the termination of a partnership brokerage business, each member of a partnership who holds an individual broker's license must provide written notification to the processing Center of the name, address, email and telephone number of the party having legal custody of the brokerage records.

Upon the termination of an association or corporate brokerage business, each association or corporation officer who holds an individual broker's license MUST provide written notification to the processing Center of the name, address, email and telephone number of the party having legal custody of the brokerage records.

BMO will update ACE with the Designated Recordkeeping and Record Location contact information on the permit record.

(19 CFR 111.30(e))

11. SEPARATION FROM CLIENT

CBP works collaboratively with the broker community to protect the U.S. economy from the effects of unfair trade practices and guard against the entry of products that could pose a threat to health and safety. The role of a licensed broker is to facilitate an importer's engagement in legitimate trade activities. To foster a collaborative effort and provide a framework to brokers for reporting illegitimate trade practices, CBP has set in regulation (19 CFR 111.32) the existing practice of broker notifications to CBP when the broker identifies a client that is intentionally attempting to use the broker to defraud or commit any criminal act against the U.S. Government.

The regulatory reporting mechanism enables brokers to identify legitimate concerns about clients from whom they have separated because the client was attempting to use the broker to defraud or commit a criminal act against the U.S. Government. Codifying the reporting expectation in regulation also puts bad actor importers on notice that brokers will report illegitimate trade practices to CBP as part of their duties as licensed customs brokers. This is distinguished from situations where a broker advises the client on the proper corrective actions required (19 CFR 111.39), the client agrees to follow and completes the corrective actions, and the broker determines it is unnecessary to separate from or cancel representation of a client because they are not intentionally attempting to use the broker to defraud or commit any criminal act against the U.S. Government.

To further foster collaboration with brokers in redressing illegitimate trade practices, CBP has developed the below bullet points to detail how brokers may comply with the requirement under 19 CFR 111.32 to “document and report to CBP when the broker separates from or cancels representation of a client as a result of determining the client is intentionally attempting to use the broker to defraud the U.S. Government or commit any criminal act against the U.S. Government.”

- Documentation - A customs broker must document any information or records that the broker deems to be counterfeit, altered, or intended for fraudulent use, by a client which intentionally attempts to use the broker to defraud, or otherwise commit any criminal act, against the U.S. Government.
 - The information or records documented may constitute a violation of law, serve as potential evidence of criminal intent, or identify specific intent to deceive or defraud the U.S. government.

- The information or records relevant for documentation may be in the format of an email, letter or note, interview, consultation, or summarized phone conversation, etc.
 - Brokers should compile all documents relating to a client's separation or termination in addition to documents evidencing why the broker determined the client had intentionally attempted to use the broker to defraud or commit a criminal act against the U.S. Government.
 - A broker should prepare a written explanation of their determination that a client intentionally attempted to use the broker to defraud or commit a criminal act against the U.S. government.
- Examples of Reportable Offenses - A customs broker must document and report to CBP when the broker separates from or cancels representation of a client as a result of determining the client is intentionally attempting to use the broker to defraud or commit any criminal act against the U.S. Government.

In addition, a customs broker must report to CBP if it has determined that, after the broker has given corrective action guidance to the client and the client is not taking such guidance, that the client is intentionally attempting to violate U.S. laws or defraud the U.S. Government, by intentionally attempting to use the broker to defraud or commit any criminal act against the U.S. Government, and as a result, the broker decides to separate from or cancel representation of a client.

The violation or potential violation of a law which causes the broker to determine a client has committed or is attempting to commit a fraudulent or criminal act is not limited to U.S. trade laws and may include other U.S. fraud or criminal laws. However, brokers are not expected to make a determination as to the precise nature and repercussions of a fraudulent or criminal act. Brokers need only report to CBP the identity of a client from whom the broker separates and retain any evidence documenting the client's fraudulent or criminal act.

- Examples of conduct which may cause a broker to separate from a client and, therefore, would require a broker to report to CBP may include, but are not limited to, the following:
 - Providing any intentionally false or fraudulent statement, information, or documents to CBP to obtain an improper duty rate or duty refund, etc.
 - Falsely and intentionally declaring country of origin information in order to avoid anti-dumping and/or countervailing duties, or to import restricted or prohibited merchandise to the U.S.
 - Any activity that is intentionally meant to deprive the government of duties, taxes, and fees, such as undervaluing or misclassifying imported goods to evade the actual customs duties owed.
 - Evidence of intentional forced labor violations such as fraudulently misrepresenting the manufacturing process or shipping documents a broker reviews as part of an entry.
 - Refusing to identify and declare the anti-dumping and/or countervailing duty order which the broker advised is applicable to the listed merchandise.

- Evidence of the intentional illegal importation of any prohibited or restricted merchandise, such as counterfeit/fake goods or other controlled or unlawful items or substances.
 - The intentional importation of merchandise which threatens the health and safety of consumers, such as contaminated produce.
 - Any unlawful activity arising from the shipment of merchandise, such as smuggling, Jones Act violations, intentional improperly documented transshipment, or intentional diversion of in-bond merchandise.
 - Financial crimes such as money laundering.
 - Cybercrimes such as website fraud.
 - International crimes such as theft of cultural artifacts, art, or antiquities.
- Submitting Documentation and Reporting to CBP - A customs broker may report to CBP the separation from/cancellation of representation of a client, in accordance with 19 CFR 111.32, by phone, email, or mail to a supervisory point of contact at the client's assigned Center of Excellence and Expertise and/or through CBP's e-Allegations program as long as all required information is reported.
 - The following information should be reported:
 - The broker's contact information.
 - The former client's business name(s) and address(es).
 - Date of separation or cancellation.
 - A description of the potentially fraudulent or criminal activity conducted by the former client.
 - Documentation evidencing how/why the broker determined their former client was engaged in possible fraud or criminal activity.
 - Any other information that would assist CBP's investigation.
 - Helpful resources:
 - CBP's e-Allegations program: <https://www.cbp.gov/trade/e-allegations>
 - CBP's Centers of Excellence and Expertise directory: <https://www.cbp.gov/trade/centers-excellence-and-expertise-information/cee-directory>
 - *Privacy Considerations* - A broker's identity and any other information submitted will be protected to the extent possible in accordance with law, including but not limited to the Privacy Act, the Freedom of Information Act, the Trade Secrets Act, and CBP and DHS regulations.

(19 CFR 111.32)

12. BREACH OF CUSTOMS BUSINESS RECORDS

A broker must provide electronic notification to the CBP Office of Information Technology Security Operations Center (CBP SOC) within 72 hours of discovery of a breach of electronic or physical records relating to the broker's customs business. The notification must include any known compromised importer's Employer Identification Numbers (EIN). Then, within 10 business days of notification of the breach the broker must provide an updated list of any additional known compromised EINs. If after that notification any additional information is found to have

been disclosed in the breach, the broker must continue to provide the information within 72 hours of the discovery.

Contacts for Reporting a Breach of Electronic or Physical Records to CBP: All security incidents that have any effect on the security posture of CBP must be reported to the CBP Office of Information Technology (OIT) Security Operations Center (CBP SOC).

- During business hours (6:30 am-7:30 pm EST): Contact CBP OIT SOC at cbpsoc@cbp.dhs.gov. Questions as to the reporting of the breach or if any guidance is needed may be directed to 703-921-6507. If applicable, contact the party's ABI Client Representative. If the Client Representative is unknown, please contact gmb.clientrepoutreach@cbp.dhs.gov.
- After business hours (after 7:30 pm EST): Contact CBP OIT SOC at cbpsoc@cbp.dhs.gov and the CBP Technology Service Desk at ACE.SUPPORT@cbp.dhs.gov (with the ABI Client Representative email address on copy, as appropriate).

(19 CFR 111.21(b))

13. CHANGE IN PARTY RESPONSIBLE FOR RECORD KEEPING REQUIREMENTS

If the knowledgeable individual responsible for brokerage-wide recordkeeping requirements changes, the brokerage must update the relevant contact information within 30 days of the change through his/her ACE portal account. If ACE functionality is not available, then the update must be provided in writing to the processing Center. BMO will update the contact information in ACE if submitted in writing.

C. RECORDKEEPING RESPONSIBILITIES

1. RECORD OF TRANSACTIONS

A broker must keep current in a correct, orderly, and itemized manner the records of account reflecting all his/her financial transactions as a broker. A broker must maintain copies of all his/her correspondence and other records relating to his/her customs business. A broker's responsibility includes keeping a record of communication with the client regarding the advice provided on the proper corrective actions in case of any error, omission or non-compliance on part of the client, and any response received by the client on a corrective action.

(19 CFR 111.21(a) and 111.39)

“Records” means any information made or normally kept in the ordinary course of business. The documents, data and information required to be maintained by a broker are defined in 19 CFR §163.1(a). Documents may include but are not limited to:

Statements; declarations; documents; electronically generated or machine readable data; electronically stored or transmitted information or data; books; papers; correspondence; accounts; financial accounting data; technical data; computer programs necessary to retrieve

information in a usable form; and entry [records](#) (contained in the (a)(1)(A) list).

2. PLACE OF BROKERAGE RECORDS

At the time of applying for a permit, the broker applicant must identify the place where the brokerage records will be retained, and the name of the designated recordkeeping contact responsible for brokerage-wide recordkeeping requirements. The broker must maintain the accurate and current recordkeeping point of contact information in the broker's permit record in ACE through the portal account access or, if portal access is not available, in writing through the processing Center.

(19 CFR 111.19 (b)(9) and (10) and 111.21(d))

3. RETENTION OF RECORDS

A broker must maintain originals of all records required by regulation, including records stored in electronic format, within the customs territory of the United States. However, a broker's duplicate or backup records may be stored outside of the customs territory of the U.S., as long as the recordkeeping requirements for the original records are met.

Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an "active client" (See [19 CFR 111.29\(b\)\(2\)\(ii\)](#) for a definition of "active client").

All other records pertaining to broker business as described in [Section C, subsection 1](#) of this chapter must be retained for at least 5 years after the date of entry.

(19 CFR 111.23)

4. RECORDS CONFIDENTIAL

Records are to be considered confidential and the broker must not disclose their contents or any information connected with the records to any persons other than the client, their surety on a particular entry and representatives of the Department of Homeland Security (DHS), or other duly accredited officers or agents of the U.S., except on subpoena or court order, or when authorized in writing by the client. The confidentiality requirement does not apply to information properly available from a source open to the public.

(19 CFR 111.24)

A broker as an agent of the importer may obtain a written release from a client allowing for the sharing of client information with third parties for certain purposes. The scope of client information to be shared is determined by the client.

5. RECORDS MADE AVAILABLE

During the period of retention, the broker must maintain the records in a manner that they may be readily examined. The records must be made available upon reasonable notice for inspection, copying, reproduction or other official use by representatives of DHS within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker. Upon request, the records must be made available to DHS within 30 calendar days, or such longer period of time as specified by DHS, at the location specified by DHS.

(19 CFR 111.25)

A broker must not refuse access to, conceal, remove, or destroy the whole or any part of any record relating to his transactions as a broker which is being sought or which the broker has reasonable grounds to believe may be sought by DHS or any representative of DHS, nor may he/she interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in those records.

(19 CFR 111.26)

D. BROKER COMPLIANCE REVIEWS AND BROKER VISITS

Broker compliance reviews may be scheduled to assess newly permitted brokers, as a routine established broker review (no apparent problem areas with the broker), or for a specific cause (issue has been detected with one or more areas of the broker's operation, in any discipline, including release, classification, etc.).

1. BROKER COMPLIANCE INDICATORS

Broker compliance data consists of, among other things, the issuance of entry summary rejection data, CBP Form 28 (Request for Information), CBP Form 29 (Notice of Action), and CBP Form 4647 (Marking Notice) issuances.

The collection and analysis of this data helps show the broker how many entry summaries were rejected and for what reasons, and how many CBP Form 28s, CBP Form 29s and CBP Form 4647s were issued and the reasons.

High numbers do not necessarily indicate that there is a problem with the broker. These are compliance indicators, not necessarily broker specific problems. A goal in gathering and analyzing this data is to provide the broker with specific data regarding their day-to-day interactions with CBP.

- ✓ The number of CBP Form 28 issued to a broker does not necessarily imply a low compliance rate, as CBP Form 28s are routinely issued when CBP needs to communicate with the importers to make a positive determination on an entry.

- ✓ The number of CBP Form 29 issued to a broker does not necessarily imply a low compliance rate, as a CBP Form 29 is a tool to notify the importer of a CBP determination which could be positive or negative.
- ✓ Marking Notices (CBP Form 4647) are issued for marking issues, which are usually out of the broker's control. Likewise, when a CBP Form 4647 is used as a Notice to Redeliver, the conditions that precipitated the redelivery demand may or may not be out of the broker's control. The number of CBP Form 4647 issued should be used as a general indicator, not a measurement of broker compliance.

2. BROKER COMPLIANCE REVIEW

Broker compliance reviews generally occur at the broker's office, however, a routine review could be conducted through a virtual meeting platform such as MS Teams or WebEx.

Licensed customs brokers are obligated to comply with Part 111 of Customs Regulations and all other applicable laws and regulations. They are subject to the revocation or suspension of their license, or monetary penalties in lieu thereof, in accordance with Title 19, U.S.C. 1641(d).

E. POWERS OF ATTORNEY

There are two requirements under the new § 111.36(c)(3): (1) brokers must execute a power of attorney (POA) directly with a client or drawback claimant, without going through a third-party intermediary such as a freight forwarder; and (2) the compensation agreement between the broker and forwarder cannot forbid or prevent direct communication between a party in interest and the broker.

A POA is a written statement legally authorizing a person to act for another. The person granting the authority is known as the principal or grantor (importer of record or drawback claimant), while the person being authorized to act is the agent or grantee (broker). Brokers are required to execute a POA directly with their client, and not via a freight forwarder or other third party, before transacting customs business in their client's name. However, a POA is unnecessary when the broker is acting as importer of record in the transaction.

CBP accepts both the CBP Form 5291 Power of Attorney and private alternatives. The wording and format of private alternatives do not have to match the wording and format found on the CBP Form 5291. However, the language should indicate that the principal is granting authority to the broker to act as the principal's agent for customs business transactions. Also, brokers are required to include the alternative method of payment statement of 19 CFR 111.29 (b)(1) on POAs, or on an attachment to the POA, executed after 1982. If the principal is a nonresident corporation, the POA must contain a clause authorizing the agent to accept service of process on behalf of the principal. Nonresident corporations are also required to support the POA with documentation establishing the authority of the grantor to execute the power of attorney.

POAs may be granted for unlimited periods, with one exception. POAs issued by a partnership are limited to a period not to exceed two years from the date of execution. Consequently, a broker must obtain new POAs from partnership clients every two years.

Brokers must keep POAs received from the client (email, mail, fax) on file with their other records. POAs must be retained until revoked, and the revoked POAs and letters of revocation must be retained for five years after the date of revocation or for five years after the date the client ceases to be an active client, whichever period is later. An “active client” means a client from whom a broker has obtained a POA and for whom the broker has transacted customs business on at least two occasions within the preceding 12-month period.

The POA should list the full legal name of the principal and of the broker as well as any authorized trade or fictitious names. A simple name change or the acquisition of a new trade or fictitious name, by either the principal or the broker, will not affect the validity of the existing POA. However, any POAs executed in the future should list the new name.

A broker must obtain new POAs from existing clients when a business restructuring results in the termination of the legal existence of either the principal or the broker. For example, when two brokerages merge and all customs business operations continue under the authority of the one survivor’s license, the survivor must secure new POAs from the clients of the brokerage that ceased existence. CBP requires such clients to be notified prior to the merger but grants the surviving brokerage an extendable 30-day grace period following the merger to obtain new POAs. (See [*Position Statement on Execution of New Powers of Attorney Due to Merger, etc., 57 Federal Register 3083, January 27, 1992*](#)). If the foregoing merger results in the creation of one new company, that company must apply for its own broker’s license and get new POAs from all clients before starting customs brokerage operations. In another example, when a parent corporate customs broker dissolves a subsidiary corporate customs broker, the POA issued by the importers to the subsidiary are not transferable to the parent corporation. The parent corporation must obtain new POAs in its own name from those importers.

The new requirement for brokers to execute a POA directly with a client does not prohibit a Broker A-Broker B relationship. A client may authorize its broker (Broker A) to allow other brokers (Broker B) to transact any portion of the customs business conducted on behalf of the client. The grant of authority to Broker B is accomplished by including special appointment language in the POA executed between the client and Broker A. The language frequently used is that the grantee broker (Broker A) is empowered “to authorize other customs brokers to act as the grantor’s agent”, however similar language is also acceptable. When Broker A exercises this authority and appoints another broker, the other broker (Broker B) will be working directly as an agent of the client, not as a subagent of Broker A. Broker A creates a new agency relationship between the client and Broker B by executing a “subsidiary power of attorney” on the client’s behalf. The client is listed as the principal and Broker B as the grantee agent, and Broker A signs the POA on the client’s behalf in its capacity as attorney-in-fact.

A freight forwarder or other unlicensed third party to a customs business transaction may no longer use special appointment language to execute a POA with a broker on a client’s behalf. An unlicensed third party such as a freight forwarder is not in a position to determine what type of

customs business necessitates a customs broker or to identify an appropriately qualified broker for the import transaction. The POA must be executed directly between the client and the broker.

(19 CFR 141.36)

(19 CFR 141.37)

(19 CFR 141.34)

(19 CFR 141.46)

(19 CFR 111.23(a)(2))

(19 CFR 111.29(b)(2)(ii))

(19 CFR 111.36(c)(3))

F. BROKER COMPLIANCE AND REGULATORY AUDIT

1. REGULATORY AUDIT AS A COMPLIANCE TOOL

The Regulatory Audit and Agency Advisory Services (RAAAS) can be useful in managing broker compliance. RAAAS staff follow government auditing standards to ensure protection of U.S. government revenue and compliance with applicable laws and regulations.

The areas that RAAAS can investigate and examine include, but are not limited to: the broker's exercise of due diligence; possible financial irregularities; adherence to record keeping requirements, proper supervision and control of a broker's business, etc.

RAAAS presents their findings in a report, which may include recommendations for the processing Center.

2. BACKGROUND OF RAAAS

RAAAS is headquartered in Washington, D. C. The Executive Director reports directly to the Deputy Executive Assistant Commissioner, Office of Trade. RAAAS Headquarters is responsible for the general overview of the program and for providing policy, planning, and technical direction to the auditors at field offices.

3. FINANCIAL COMPLIANCE AUDIT

When CBP questions the compliance of a customs broker concerning financial issues, due diligence in paying monies, or supervision and control, etc., BMO may request that RAAAS conduct an audit of the broker's financial records. The scope of this type of audit may include compliance testing for the following areas:

- Duties and Fees: Accuracy and timeliness.
- Notice of Method of Payment: Informing brokerage clients they may pay CBP directly.
- Refunds to clients: Notification and payment accuracy and timeliness.
- Supplemental Duties: Notification and payment accuracy and timeliness.
- Power of Attorneys

4. BROKER AUDIT PROGRAM

The audit program is a guide which may be modified to meet particular audit conditions. All steps may not apply in every situation. Auditors revise the audit program to supplement coverage of the major audit objectives and concentrate on the most significant deviations or anomalies.

The steps of a broker audit are listed below. The objective of a broker audit is to determine the broker's level of compliance with the Code of Federal Regulations (CFR) Title 19, Part 111 and other applicable laws and regulations.

- ✓ Planning and Preparation: Auditors review information from various customs disciplines to determine the broker's previous and current relationship with CBP.
- ✓ Systems Review: Auditors look at the broker's systems to develop compliance tests. (Systems include accounting, data processing, customs procedures and related internal controls.)
- ✓ Licensing & Permit: Auditors review information to determine whether the broker is properly licensed and permitted to transact customs business on behalf of others.
- ✓ Sampling Plan/Sample Selection for Compliance Tests: Auditors develop a sampling plan and select statistical samples to test the broker's level of compliance.
- ✓ Compliance Testing: Auditors examine how the broker conducts its business to determine their level of compliance. Areas include, but are not limited to:
 - Powers of Attorney: Accuracy and maintenance of client and designated employee files.
 - Recordkeeping: Maintenance, storage and production (accuracy is tested in other steps).
 - Automated Broker Interface (ABI) Statement Processing: Accuracy and timeliness.
 - Entry Documents: Accuracy and timeliness.
 - Duties and Fees: Accuracy and timeliness.
 - Notice of Method of Payment: Notification to clients of optional payment directly to CBP.
 - Refunds to Clients: Notification and payment accuracy and timeliness.
 - Supplemental Duties: Notification and payment accuracy and timeliness.
 - Bond Sufficiency: When the broker acts as importer of record.
 - Responsible Supervision and Control over customs business.
- ✓ Completion of the audit and issuance of the audit report to the Center Director. The report will contain findings uncovered in the audit and may include recommendations for possible courses of action that the Center may take.

CHAPTER 11: BROKER PENALTIES

A. INFORMED COMPLIANCE/NON-EGREGIOUS VIOLATIONS

A high standard of broker performance is critical to the efficiency of U.S. Customs and Border Protection (CBP) and the accomplishment of the CBP mission. Accordingly, the fundamental goal of the oversight of broker performance by CBP is to promote compliance through counseling and education, and to encourage a high standard of professionalism in the brokers' transaction of customs business.

CBP's response to a broker violation depends upon whether it is egregious (flagrant) or non-egregious. In the case of non-egregious violations, CBP will first attempt to work with the broker through the informed compliance process of communication and education as an effort to improve the broker's performance. A penalty, or penalties, will only be assessed if the non-punitive approach fails to produce satisfactory corrective action.

For non-egregious violations, brokers will be clearly informed in writing of any unacceptable performance and given an opportunity and a reasonable amount of time to improve the deficiencies identified. CBP personnel will follow a stepped approach starting with the lowest level of action and increase action depending on the violation. Progression to each subsequent step will only occur if the issue is not corrected or resolved.

When brokers respond to a CBP informed compliance action, CBP will follow up with a response, at a minimum to acknowledge receipt in accordance with the steps below.

Step 1

The identified deficiency is communicated to the broker and she/he is advised to take corrective action. The initial deficiency notification may be in writing via mail, email or a meeting with the brokerage followed up by a written notification via mail or email.

If step one does not correct or resolve the issue:

Step 2

A warning letter is issued. This letter informs the broker once again about the deficiency, what steps CBP has taken to advise and educate the broker, what steps the broker has taken to resolve the deficiency and indicate that continued deficiencies may result in the initiation of a broker penalty, or penalties, under 19 U.S.C. 1641.

If step two still does not correct or resolve the issue:

Step 3

A penalty action, or actions, will be initiated.

If step three still does not correct or resolve the issue:

Step 4

A larger penalty, or penalties, will be issued and the broker will be warned of the possibility of a having her/his license suspended or revoked.

If step four still does not correct or resolve the issue:

Step 5

An action to suspend or revoke the broker's license may commence with the coordination of the local Assistant or Associate Chief Counsel.

B. EGREGIOUS VIOLATIONS

An egregious violation is an act or omission that shows irresponsibility beyond that of a nonrepetitive clerical mistake or a good-faith oversight. An egregious violation may warrant the issuance of a CBP penalty, or penalties, under 19 U.S.C. 1641 and when appropriate, proceedings to suspend or revoke the violating broker's license, even if that broker has no previous violations.

The following are some examples of egregious violations. However, this is not an exhaustive list of possible egregious violations:

- The misuse of clients' funds (i.e., failure to pay CBP monies given to the broker by the client for customs duties, taxes and fees and Multiple Debit Vouchers) (19 U.S.C. 1641(d)(1)(C) & 19 CFR 111.29).
- Conducting customs business without a license (19 U.S.C. 1641 (b)(6)).
- Making a false or misleading statement or an omission as to material fact, which was required to be stated in any application for a license or permit (19 U.S.C. 1641 (d)(1)(A)).
- Broker convicted of certain felonies or misdemeanors subsequent to filing a license application (19 U.S.C. 1641 (d)(1)(B)).
- Counseling, commanding, inducing, procuring or knowingly aiding and abetting violations by any other person of any law enforced by CBP (19 U.S.C. 1641 (d)(1)(D)) or filing or procuring or assisting in the filing of any claim, or of any document, affidavit or other papers, known by such broker to be false, or giving, or soliciting or procuring the giving of, any information or testimony that the broker knew or should have known was false or misleading in any matter pending before the Department of Homeland Security or to any representative of the Department of Homeland Security (19 CFR 111.32).

- Knowingly employing or continuing to employ any person who has been convicted of a felony, without written approval of such employment from the Secretary of Homeland Security (19 U.S.C. 1641 (d)(1)(E)).
- In the course of customs business, with intent to defraud, knowingly deceiving, misleading or threatening any client or prospective client (19 U.S.C. 1641 (d)(1)(F)).
- Broker convicted of committing or conspiring to commit an act of terrorism described in section 2332b of title 18, United States Code (19 U.S.C. 1641 (d)(1)(G)).
- The failure of a customs broker that is licensed as a corporation, association or partnership to have, for any continuous period of 120 days, at least one officer of the corporation or association or one member of the partnership validly licensed (19 U.S.C. 1641 (b)(5)).
- Failure of a customs broker granted a national permit to conduct business to employ, for a continuous period of 180 days, at least one individual who is a licensed customs broker (19 U.S.C. 1641(c)(3)).

The following are some examples which may be considered egregious violations depending on the facts and circumstances surrounding the violations. However, this is not an exhaustive list of possible egregious violations:

- Providing or omitting entry information which would result in avoidance of inspection or entry review by another agency thereby affecting the admissibility decisions regarding the entered merchandise.
- Providing or omitting entry information which would result in avoidance of anti-dumping or countervailing duties or would result in significant loss of revenue.
- Providing incorrect information or omitting entry information relevant to merchandise associated with CBP Priority Trade Issues (PTIs).
- Failing to identify merchandise that is subject to quantitative restrictions or government licenses or permits.
- Failing to properly execute powers of attorney or customs bonds, failing to retain records, or engaging in prohibited relations with unlicensed persons.
- Failing to respond to CBP requests for information, telephone calls, requests for meetings or any other reasonable attempts to confer about customs business.
- Changing importer information in the Automated Commercial Environment (ACE) without authorization from the importer or submitting importer information into ACE which is inaccurate or false.

C. PENALTIES ISSUED UNDER 19 U.S.C. 1641

CBP may initiate a monetary penalty, or penalties, under 19 U.S.C. 1641 as follows:

- In an amount not to exceed an aggregate of \$30,000 for one or more of the reasons listed in 19 CFR 111.53, except 19 CFR 111.53(b)(3), provided that no license or permit suspension or revocation proceeding has been instituted against the broker for any of the same reasons.
- In the case of a person who is not a broker, in an amount not to exceed an aggregate of \$30,000 for all violations and \$10,000 for each violation of 19 CFR 111.4.
- Generally, CBP will take disciplinary action against a customs broker for a violation pursuant to 19 U.S.C. 1641. However, if a broker commits a violation of 19 U.S.C. 1592 which involves fraud, or the broker commits a grossly negligent or negligent violation and shares in the benefits of the violation to an extent over and above customary brokerage fees, CBP will issue a monetary penalty against the broker pursuant to 19 U.S.C. 1592.

If the assessment of a monetary penalty is contemplated, the CBP Fines Penalties and Forfeitures (FP&F) Officer will issue a written notice (a pre-penalty notice) which advises the broker of the allegations or complaints against him (See [19 CFR 111.92\(a\)](#)). The notice will explain that the broker or other person has the right to respond to the allegations or complaints. The broker has up to 30 calendar days to file a response to the pre-penalty notice and to show cause as to why s/he should not be subject to the monetary penalty.

If the broker or other person files a timely response to the pre-penalty notice, CBP will review the response. After the review is completed, CBP will either cancel the case, issue a penalty notice in an amount lower than that provided in the pre-penalty notice or issue a penalty notice in the same amount as the pre-penalty notice. If no response is received to the pre-penalty notice, the penalty notice will be issued in the same amount as the pre-penalty notice.

Once a penalty notice is issued, the broker may petition for relief in accordance with the provisions of Part 171 of the CBP Regulations ([19 CFR Part 171](#)). If the final determination, after review of any petition for relief and any timely filed supplemental petition for relief, is that the broker is liable for the monetary penalty, the broker must pay the penalty, or make arrangements for payment of the penalty, within 60 calendar days of the date of the written decision. If payment, or arrangements for payment, of the penalty are not made timely, the matter will be referred to the Office of Chief Counsel by the FP&F Officer for referral to the Department of Justice to institute the appropriate judicial proceedings to collect the penalty.

IMPORTANT NOTE: Civil monetary penalties issued under 19 U.S.C. 1641 are in lieu of a revocation or suspension action. A fact situation in which a broker fails to pay a monetary penalty or fails to respond to a pre-penalty notice or penalty notice may be the subject of a license or suspension action for that failure.

Customs Broker Management Guidance
for the Trade Community
(EXTERNAL DISTRIBUTION)

APPENDIX

Office of Trade
U.S. CUSTOMS & BORDER PROTECTION

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APPENDIX A: Chapter 3

Figure 1. Sample Completed Exam Application for Customs Broker License Exam


 DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection APPLICATION FOR CUSTOMS BROKER LICENSE EXAM 04/06/2022 19 U.S.C. 1641; 19 CFR 111.13		OMB APPROVAL NO. 1651-0034 EXPIRATION DATE 10/31/2021	
Applicant Name:	Test MiddleName User Jr	Residence Address:	1234 XXXX XXXXX CITY, STATE, ZIP USA
Primary Phone:	(111) 111-1111	Mailing Address:	1234 XXXX XXXXX CITY, STATE, ZIP USA
Primary Business:	(777) 777-7777		
Email Address:	test.user@gmail.com		
Date of Birth:	01/01/XXXX	Place of Birth:	Fairfax, VA USA
I am a United States citizen (on exam date: 04/06/2022):		Yes	
I have attained 18 years of age (on exam date: 04/06/2022):		Yes	
I am an officer or employee of the United States (on exam date: 04/06/2022):		No	
I seek modifications under the American Disabilities Act:		Yes	
ADA Request Details: The Nationals unofficially revealed what their Opening Day infield would look like when they optioned Luis García to Triple-A at the start of this week. With no Ryan Zimmerman this season, Josh Bell now figures to start pretty much every game at first base. César Hernández will be the team's leadoff hitter and near-everyday second baseman. Alcides Escobar will likely take most of the reps at shortstop but could be spelled from time to time. And with Carter Kieboom on the 60-day Injured List to start the year, Maikel Franco is poised to be the starting third baseman to open the season. On the bench, Ehire Adrianza* was signed to a one-year major league deal to be a versatile utility man who can play most positions on the dirt and in the outfield and will be ready to fill in when any of the starters need a day of their feet. The final infielder might be a bit of a surprise, but Dee Strange-Gordon has caught the eye of manager Dave Martinez this spring and filled in for Victor Robles in center field when the Nationals trotted out their pseudo-Opening Day lineup while Robles was working on his swing on the backfields. With the versatility to fill in up the middle on the infield as well as center field and corner outfield, he looks in pole position to make the roster. The Nationals unofficially revealed what their Opening Day infield would look like when they optioned Luis García to Triple-A at the start of this week. With no Ryan Zimmerman this season, Josh Bell now figures to start pretty much every game at first base. César Hernández will be the team's leadoff hitter and near-everyday second baseman. Alcides Escobar will likely take most of the reps at shortstop but could be spelled from time to time. And with Carter Kieboom on the 60-day Injured List to start the year, Maikel Franco is poised to be the starting third baseman to open the season. On the bench, Ehire Adrianza* was signed to a one-year major league deal to be a versatile utility man who can play most positions on the dirt and in the outfield and will be ready to fill in when any of the starters need a day of their feet. The final infielder might be a bit of a surprise, but Dee Strange-Gordon has caught the eye of manager Dave Martinez this spring and filled in for Victor Robles in center field when the Nationals trotted out their pseudo-Opening Day lineup while Robles was working on his swing on the backfields. With the versatility to fill in up the middle on the infield as well as center field and corner outfield, he looks in pole position to make the roster. The Nationals unofficially revealed what their Opening Day infield would look like when they optioned Luis García to Triple-A at the start of this week. With no Ryan Zimmerman this season, Josh Bell now figures to start pretty much every game at first base. César Hernández will be the team's leadoff hitter and near-everyday second baseman. Alcides Escobar will likely take most of the reps at shortstop but could be spelled from time to time. And with Carter Kieboom on the 60-day Injured List to start the year, Maikel Franco is poised to be the starting third baseman to open the season. On the bench, Ehire Adrianza* was signed to a one-year major league deal to be a versatile utility man who can play most positions on the dirt and in the outfield and will be ready to fill in when any of the starters need a day of their feet. The final infielder might be a bit of a surprise, but Dee Strange-Gordon has caught the eye of manager Dave Martinez this spring and filled in for Victor Robles in center field when the Nationals trotted out their pseudo-Opening Day lineup while Robles was working on his swing on the backfields. With the versatility to fill in up the middle on the infield as well as center field and corner outfield, he looks in pole position to make the roster. The Nationals unofficially revealed what their Opening Day infield would look like when they optioned Luis García to Triple-A at the sta			
Port of Affiliation:	1303 Baltimore, MD		
I request the remote proctored exam option:	Yes		
I affirm I read the remote proctored exam requirements at CBP.gov's website and successfully performed the system checks:	Yes		
DHS Privacy Act Statement-Application for Customs Brokers License Exam: Pursuant to 5 U.S.C. § 552a(e)(3), this Privacy Act Statement serves to inform you of the following concerning the collection of the information on this form. A. AUTHORITY: The authority to collect Customs Brokers License Exam application information is pursuant to 19 U.S.C. § 1641; 5 U.S.C. 301; Revised, as amended; and 19 CFR § 111. The collection of applicants social security numbers is pursuant to Executive Order (E.O.) 9397, as amended by E.O. 13478. 10.; 31 U.S.C. §7701(c); and 26 U.S.C. §6109(d). B. PURPOSE: The primary purpose for soliciting this information is to enable you to register and pay for the Customs Broker License Exam. Additionally, CBP uses this same information to conduct a background investigation once you meet the criteria established for the issuance of a Customs Broker's License. The information requested on this form is used by CBP to verify that the individual applying for the Customs Broker License is the same individual applying to take the Customs Broker License Exam. C. ROUTINE USES: Specific information from the form is shared with the exam vendor (applicant name, mailing zip code, email address, phone number, and exam ID). This information is necessary for the contractor to communicate with the individual. Information will also be shared with pay.gov in order to complete the exam application process. A complete list of the routine uses can be found in the system of records notice associated with this form. "Department of Homeland Security/U.S. Customs and Border Protection - DHS/ICBP-010 Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities." The Department's system of records notices can be found on the Department's website at http://www.dhs.gov/system-records-notices-soms D. CONSEQUENCES OF FAILURE TO PROVIDE INFORMATION: Providing this information is not legally required, however failure to do so may result in you being unable to register for the Customs Brokers License Exam.			
Paperwork Reduction Act Statement: An agency may not conduct or sponsor an information collection and a person is not required to respond to this information unless it displays a current valid OMB control number and an expiration date. The control number for this collection is 1651-0034. OMB is currently reviewing the information collection and a new expiration date will be provided upon approval. The estimated average time to complete this application is 1 hour. If you have any comments regarding the burden estimate, you can write to U.S. Customs and Border Protection, Office of Regulations and Rulings, 90K Street, NE, Washington DC 20229			
WARNING: Any misstatement of pertinent facts in this application constitutes sufficient grounds for denial of the application. If a passing score is achieved and it is later determined that a misstatement of pertinent facts is identified, the applicant's license application will be denied.			
I, <u>Test User</u> certify that the statements contained in the foregoing application are true and correct to the best of my knowledge and belief. I acknowledge that if I wish to withdraw from the exam and receive a refund, I must utilize the "Withdrawal" feature in eCBP no later than 04:10 AM Eastern time on 12/01/1999.			
Signature: Test User	Date: 04/06/2022		

Figure 2. Sample Exam Fee Collection Receipt

 U.S. Customs and Border Protection DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection 19 U.S.C. 1641; 19 CFR 111.12; 19CFR 111.13; 19CFR 111.19, CFR 111.30(d) COLLECTION RECEIPT Receipt No. 1001-123456789 Date Issued: 08/28/2021

Applicant Name: John X. Doe Residence Address: 1234 XXXX XXXXX CITY, STATE ZIP USA Primary Phone: (XXX) XXX-XXXX Business Phone: (XXX) XXX-XXXX Email Address: John_Doe123@gmail.com	Exam Date: 10/21/2021 Mailing Address: 1234 XXXX XXXXX CITY, STATE, ZIP USA
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------

Class Code	Description	Rate	Quantity	Amount
060	038 - Broker Exam fee	\$390.00	1	\$390.00
Total Collection Amount				\$390.00

Payment Type: Online - PLASTIC_CARD	Pay.Gov Tracking ID: 1234ABCD	Agency Tracking ID: 123456789
-------------------------------------	-------------------------------	-------------------------------

NvpFg1rfSneyNngm28FI3HT1b1/gI6TaUclq6u3bYc=

Figure 3. Sample Admission Notice for Customs Broker License Exam, page 1



U.S. Customs and Border Protection

****PLEASE DO NOT RESPOND TO THIS E-MAIL****

CUSTOMS BROKER LICENSE EXAM

Admission Notice

This e-mail contains important information about the examination(s) you scheduled, the location and the rules. Please ensure these details are correct. If any information is not correct, please contact [Exam Administration](#) immediately.

YOUR APPOINTMENT DETAILS:

Order Number: 0000-1234-5678

Examination Title:	CBLE - Customs Broker License Examination - English (ENU)
REGISTRANT NAME:	John X. Doe
Candidate ID:	ABCDEFG01TEST001
Registration ID:	123456789
Date:	Monday, April 10, 2021
Exam Start Time:	08:30 AM Eastern Daylight Time (Time shown is test center local time.)
Appointment Length:	270 Minutes
Test Center Location (Directions shown below)	TEST LOCATION 1234 XXXX XXXXX CITY, STATE ZIP UNITED STATES

Admission Policy

Figure 4. Sample Admission Notice for Customs Broker License Exam, page 2

Admission Policy

Expect to spend approximately 5 hours at the exam site. This includes 30 minutes for check-in/check-out and 4 ½ hours of testing time. Please plan your schedule accordingly. The exam will begin promptly at 8:30AM. Arriving early will permit all candidates to be checked in on time. Please arrive no later than 8:00AM as there will be a number of applicants to check in.

Once the administrators have closed the doors to the examination room at 8:30 AM, applicants will not be permitted into the examination room and will not be allowed to sit for the exam. There will be no exceptions. Please allocate sufficient time for travel to the exam site, as no exceptions will be made for traffic delays, late trains, or similar incidences. Once the test has started no one will be permitted to leave early.

WHAT TO BRING WITH YOU:

This Admission Notice, a valid form of identification, **AND** verification of citizenship are required for entry. All documents must be current and unexpired. All Applicants **MUST** be U.S. Citizens.

You must bring a valid form of identification that bears a PHOTO to be accepted. **The ID must be original. No photocopies, electronic images or faxes will be accepted. The ID must be current and legible and is only valid through the expiration date printed on it.** The name listed on this admission notice must be the same name appearing on your ID.

Acceptable IDs are issued by the U.S. Federal or State Government and must be:

- U.S. Driver's License
- U.S. State Issued ID Card
- U.S. Passport
- U.S. Military ID
- U.S. Territory ID (Puerto Rico, Guam, etc.)

You must **ALSO** bring one of these approved forms of citizenship verification. **This must be the original and unexpired – no photocopies, electronic images or faxes will be accepted:**

- U.S. Passport
- Certificate of Naturalization
- Final adoption decree
- Birth Certificate
- Certificate of Citizenship

The name listed on the valid form of identification must match the name on the proof of citizenship. Please note that an original marriage or a divorce certificate can be provided to corroborate a name discrepancy between the two forms of ID presented.

Please make arrangements with CBP (via email: brokermanagement@cbp.dhs.gov) ahead of the test date to authorize any recent name changes that would cause different names to appear on the forms of identification listed here. You will be asked to provide proof of name change ahead of the testing date.

You may bring any reference materials permitted under the CBP exam notice (see: <http://www.cbp.gov/trade/broker/exam/announcement>).

Figure 5. Sample Admission Notice to Customs Broker License Exam, page 3

You will be unable to take the test if you do not meet the identification and citizenship requirements, if your name does not match on both forms of identification, or if you are late. There will be no exceptions to the rules and you will not be refunded for the cost of the exam if you are turned away for any of the aforementioned reasons on the day of the exam.

EXAM RESULTS:

Notification of examination results will be communicated via e-mail from CBP. You will receive a copy of your answer record upon completion of your exam. If you need a copy, please contact Test Administrator.

PROHIBITED ITEMS: No personal items or electronic devices should be brought to the testing center. Cell phones are permitted in the testing center, but not in testing rooms. They must be turned completely off, not just on silent, while inside the testing center. Lockers may not be available at the test center for these items. The test center will not be responsible for any personal items you bring, and suggest that you leave such items at home, stored in your vehicle, or in another safe place of your choosing.

- Prohibited electronic devices include, but are not limited to laptops, kindles, mp3 devices (iPods, etc.), mobile tablets (iPad, etc.), personal digital assistant organizers, cameras, recording devices, paging devices, smart watches, google watches, etc.
- Simple calculators are permitted, but graphing calculators or other calculators with storage capability are prohibited.
- Possession of these items will result in immediate failure of the test and removal from the test center. Unless you have an approved reasonable accommodation, we also ask that you do not have anyone accompany you to the test facility, as there is not adequate waiting room space for visitors.

Food and drink may be consumed in designated break areas only. Examinees will not be allowed to have open containers in the testing rooms unless it is part of an approved Reasonable Modification.

SAMPLE TEST:

You may view a sample online test here: [TestAdministrationHyperlink/CBLE](#)

Scores will not be provided, but it will allow you to experience how the test is delivered online.

Reschedule Policy

You may change your testing location only during self-scheduling from September 28 – October 1, 2021.

Cancellation Policy

You are encouraged to appear for the test on your assigned test date. If you wish to withdraw from the exam, you must sign in to the [eCBP portal](#), select Broker License, then select the "Withdraw from Exam" option and follow the prompts to completion no later than **Monday, October 19, 2021 at 8:30 AM EST**. **You will not be able to change your appointment location.**

Very Important: Please note that while the system may allow you to cancel your appointment, you will NOT receive a refund UNLESS you submit your withdrawal request through the eCBP portal no later than **Monday, October 19, 2021 at 8:30 AM EST**. Refunds are NOT handled through the Test Administrator system, only CBP can and will process your refund. CBP will notify Test Administrator of your withdrawal, and your registration will be removed from the scheduling system. There will be no exception to this rule.

Figure 6. Sample Admission Notice to Customs Broker License Exam, page 4

Be sure to notify both the Exam Administrator at Example@Email.com AND CBP at brokermanagement@cbp.dhs.gov if there is a change or correction to your mailing address or name (first and/or last).

NOTICE: All testing sites and sessions are subject to changes/cancellations. CBP uses e-mail to communicate with you, should there be any changes or updates to your scheduled test session. This communication will be sent to the e-mail address you provided during this registration. Use of e-mail spam blockers may prevent you from receiving information regarding your test scheduling. In order to ensure receipt of your test scheduling information, please be sure to add TestAdministrator.com to your trusted sender's list. For instructions on how to add trusted senders, please refer to your e-mail provider. It is your responsibility to review and adhere to any test session schedule changes as indicated through email communication. You will be required to provide a copy of this Admission Notice for entrance into the test session along with identification and proper verification of citizenship.

The Test Administrator will not be held responsible for expenses incurred beyond the cost of the exam, including but not limited to travel expense and lost wages on the day of the exam.



Important: Please go to the [Test Administrator COVID-19 Update](#) web page the day before your exam to review the latest face mask policy and other health and safety measures required at your test center.

It is extremely important to us that you receive the best quality experience while taking your exam. After your exam, please visit [SurveyURL](#) which will appear on your Thank You e-mail and answer a few short questions concerning your experience.

Our goal is to make your exam experience a pleasant one. We want to thank you for selecting us as your exam service provider, and we look forward to serving you again. Please feel free to contact us with your comments or questions. Our contact information can be found on our website: testadministrator/cble/contact.

If you have any issues on the day of testing, please contact cbpcustomsbrokerexam@example.com or by phone at XXX-XXX-XXXX.

Sincerely,

Test Administrator

Directions to Test Center

Specific Test center information appears here

Figure 7. Sample Letter of Customs Broker License Examination results (Fail), page 1

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

SEND DATE

NAME
ADDRESS

Dear NAME:

This letter is to advise you of the results of your EXAMINATION DATE Customs Broker License Examination. Your score is SCORE percent. The minimum passing score is 75.00 percent.

You may submit a written appeal of your score to U.S. Customs and Border Protection. In your appeal, you must submit a compelling argument in your own words why your answer is better than the official answer, or why the appealed question has no possible correct answer.

Your appeal package must be structured as follows:

- A cover letter stating your exam payment receipt number (e.g.: 3001-401312345), name and address, date and location of the exam (e.g.: Dallas, Los Angeles), and a list of the specific question(s) you are appealing.
- A copy of this letter.
- A copy of your answer sheet.
- The questions that you are appealing.

Requirements for appealed questions:

- Each appealed question must be presented in its entirety. Follow each question with the argument that supports your appeal for that particular question.
- Each question appealed must be presented separately, i.e., you must begin each appealed question on its own piece of paper. Your argument may begin on the same page as the question appealed.
- Each page must contain your name, exam date and the question number appealed (e.g.: Q 24).

Your appeal package will be denied if it is incomplete or untimely. You will not receive credit for a question if it:

- Does not provide a compelling argument.
- Argues for an answer you did not select on the answer sheet.

Figure 8. Sample Letter of Customs Broker License Examination Results (Fail), page 2

Please submit your appeal electronically to brokermanagement@cbp.dhs.gov with the subject line "Exam Appeal." If submitted electronically, your appeal package must be contained in one PDF document. Electronic appeal submissions must be received no later than 11:59 PM Eastern Time the 60th day from the date of this letter.

Alternatively, appeals may be submitted via mail to the address below and must be postmarked no later than 60 days from the date of this letter.

U.S. Customs and Border Protection
Office of Trade
Trade Policy and Programs
1331 Pennsylvania Ave NW
Washington, DC 20229-1142

If you have any further questions, please contact the Broker Management Branch at CBP Headquarters at brokermanagement@cbp.dhs.gov.

Sincerely,

Director, Commercial Operations, Revenue and Entry Division
Trade Policy and Programs
Office of Trade
U.S. Customs and Border Protection

Figure 9. Letter of Customs Broker License Examination Results (Pass)

SEND DATE

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

FIRST LAST
ADDRESS

Dear FIRST LAST:

It is my pleasure to inform you that you have passed the EXAM ADMINISTRATION DATE Customs Broker License Examination with a score of SCORE percent.

Within the next 60 days you should receive a Customs Broker License application package from your service port. You will be asked to submit a completed original of the CBP Form 3124 "Application for Customs Broker License or Permit," a current credit report, and processing fees for the application and fingerprinting. You have three years from the date of this letter in which to submit an application for a license.

Your application must be a complete and accurate representation of the facts, since any misstatement of pertinent facts in the application constitutes sufficient grounds for denial of your application. If you have personal circumstances that merit further explanation (i.e., arrests, credit problems, etc.), please provide documentation, a detailed written explanation and, when appropriate, describe the steps you have taken to resolve the matter.

After your background investigation has been completed, your application will be forwarded to U.S. Customs and Border Protection Headquarters for final disposition.

It is important to note that once you have submitted your application, questions regarding the status of your application should be directed to the service port where you applied.

If you have any questions about the licensing procedures, please contact the Broker Management Branch at CBP Headquarters at brokermanagement@cbp.dhs.gov.

Sincerely,

Director, Commercial Operations, Revenue and Entry Division
Trade Policy and Programs
Office of Trade
U.S. Customs and Border Protection

Figure 10. Sample Instruction/Congratulatory Letter, page 1

SAMPLE INSTRUCTION/CONGRATULATORY LETTER

Date

Mary Ann XXXXXX
1234 XXX XXXXXX Apt XX
City, State 11111

Dear Mary Ann XXXXXX:

We have been informed that you have attained a passing score on the written examination for a Customs broker license, which was held in October XXXX. Congratulations to you on this achievement.

Pursuant to 19 CFR 111.12, an application for a license must be submitted within three years from the date of the letter sent by the Director, Commercial Operations, Revenue and Entry Division, Office of Trade, wherein you were notified of your passing score. A copy of the U.S. Customs and Border Protection (CBP) Form 3124 (Application for Customs Broker License) can be located on the CBP Forms page <https://www.cbp.gov/newsroom/publications/forms>. The completed application may be submitted to any CBP broker management processing Center within the aforementioned three-year period along with the supporting documentation listed below. Broker Management processing Center locations and contact information may be found on the CBP Broker page <https://www.cbp.gov/trade/programs-administration/customs-brokers> under Broker Management Officer Contact Information.

Documents to accompany the license application:

- 1) A check or money order in the amount of (*insert App + fingerprint fee total*) made payable to "U.S. Customs and Border Protection"
- 2) One recent personal credit report (issued within the past three months) from a recognized credit reporting agency
- 3) A copy of the CBP notification letter containing your passing score
- 4) Proof of citizenship (Birth Certificate or Passport Identification Papers)
- 5) Proof that you are at least 21 years of age (Driver's License, State issued Identification Card, Passport Identification Papers or Birth Certificate)

You will be required to appear for an interview where CBP will collect your fingerprints, and photograph, and verify your original proof of citizenship and identification document(s). Once your completed application has been submitted and reviewed CBP will notify you of your interview appointment date and time.

These guidelines should not be considered all-inclusive. Additional information and/or documentation may be required as U.S. Customs and Border Protection deems necessary.

Figure 11. Sample Instruction/Congratulatory Letter, page 2

If you wish to make application for a license, the above noted information may be hand delivered or mailed to:

U.S. Customs and Border Protection
(Insert BMO mailing address)
City, State Zip

If you have any questions regarding this matter, you may contact the Broker Management Officer at ***(insert contact email)*** or ***(insert contact Phone)***.

Sincerely,

(insert Center Director or designee name)
(insert Title)

APPENDIX B: Chapter 5

Figure 12. CBP HQ Ruling 222077, page 1

BROKER



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C.

JUL 6 1990

BRO-3-05-CO:R:C:E
222077 TG

Mr. Roger J. Crain
Customs Science Services, Inc.
3506 Frederick Place
Kensington, MD 20895-3405

Dear Mr. Crain:

This is in response to your letter dated January 17, 1990, regarding the association of your company, Customs Science Services, Inc. (CSS), with a Canadian tariff and trade consulting firm, Foster International, Inc., of Ottawa (Foster-Canada). You seek a ruling as to whether one licensed person is permitted to support two separate (corporate) broker's licenses and their respective permits under the circumstances you have described.

According to your letter, CSS is a licensed corporate broker with a permit for the Washington District. The new firm would be based in Washington, D.C. and would be called Foster International U.S.A., (Foster U.S.A.). The new firm's principal business will be tariff consulting with U.S. clients and you will be an officer and part owner. As you have a Customs broker's license, you intend to have Foster U.S.A. engage in "Customs business" for its clients.

In order to accommodate certain essential business factors concerning compensation, ownership, liability and no-compete agreements, you propose to "freeze" CSS's new marketing activities for a period of time yet to be determined. CSS would continue to market and service, through its corporate broker's license, all of the clients it now has (Group A), but would add no new ones during the freeze. You would continue to be the licensed person supporting CSS's corporate broker's license and permit.

At the same time, Foster U.S.A. would be formed (probably as a corporation) and would seek a broker's license and permit for the Washington District. You would be the licensed person supporting Foster U.S.A.'s license and permit as well. Foster U.S.A. would then begin to market its services to new clients (Group B).

You state that you will be the only licensed person conducting customs business for either firm, and therefore there can arise no problems concerning responsible supervision and control. Furthermore, CSS and Foster U.S.A. would not compete

for clients and would not cross-designate each other for brokerage work because CSS would be under a marketing freeze and its clients (Group A) could not, by legal agreement, overlap Foster U.S.A.'s clients (Group B).

Regarding fees, both CSS and Foster U.S.A. would bill their respective clients for services rendered in keeping with the requirements of Part 111. Both would use the money to pay expenses such as support staff, rent, etc. and both would pay you for your services. Finally, both CSS and Foster U.S.A. would designate profits, if any, as either retained earnings to be kept for investment or dividends to be paid out to shareholders.

You state that you are aware of the regulation against "splitting fees" with unlicensed individuals in section 111.36(a), and the prohibition against one broker designating another to transact customs business in a district where the first broker does not have a valid permit. However, you believe that the above scenario meets all broker obligations and Customs Regulations.

A customs broker's license is granted pursuant to 19 U.S.C. 1641(b). Individual licenses are granted under 19 U.S.C. 1641(b)(2) and corporate licenses are granted under 19 U.S.C. 1641(b)(3). To qualify for a corporate customs broker's license at least one officer of the corporation must hold a valid customs broker's license granted under 19 U.S.C. 1641(a)(2). Section 1641(b)(4) of 19 U.S.C. provides that a customs broker, as defined in 19 U.S.C. 1641(a)(1), shall exercise responsible supervision and control over the customs business that it conducts. The Secretary of the Treasury, and by Treasury Department Order No. 165, Revised (T.D. 53654), the Commissioner of Customs, is authorized to prescribe rules and regulations relating to the Customs business of Customs brokers by 19 U.S.C. 1641(f). These regulations are found in Part 111, Customs Regulations.

An officer, as well as a director of a corporation, stands in a fiduciary relation to the corporation and as part of this fiduciary responsibility, an officer must remain loyal to the corporation, acting at all times in the best interest of the corporation and not for his own personal gain.

In Headquarters Ruling BRO-3-CO:R:C:E 220382 FPBO, we held that an individual cannot be an employee and/or a qualifying officer of two Customhouse Brokers. Each corporate license must be supported by an individual license. Each permit also must be supported by an individual license held by an individual who may not be considered an employee of any broker unless he acts solely for that broker. This applies to a licensed officer who is held to a higher standard than an unlicensed employee.

Furthermore, in Headquarters Ruling BRO-2-01-CO:R:C:E 222136 L, this office found that a natural person may not operate a customs brokerage as a sole proprietor while simultaneously serving as the licensed broker partner of a partnership operating a customs brokerage.

In C.S.D. 90-24, the issue was whether a single natural person can operate both as an individual customhouse broker and simultaneously as the officer of a corporation or association who is a licensed broker. The answer was no because the broker, as the officer of the corporation holding a valid customs broker's license, had a fiduciary duty to act solely in the interest of the corporation. In the customs brokerage, the corporation is the employer of the broker, whose presence is essential to the business activities of the corporation, and it is noted that the Model Business Corporation Act defines "employees" as including officers.

In Headquarters Ruling BRO-3-05-CO:R:C:E 221974 JR, this office found that a broker's ownership of stock in a competing business does not, without more, violate the conflict of interest prohibition under section 111.31(c). "The broker's personal pecuniary interest in the financial success of the competitor's business via stock ownership would not by itself place the broker in a situation antagonistic to his direct clients' interests...On the other hand, if the broker had more of an active interest in the importing companies, such as being on the board of directors or an officer of either competing corporation whereby he could control or substantially influence policies and management of the corporation, the broker would be in a position inherently conducive to divided loyalties." This would be the situation here, since you will be an officer and part-owner of Foster U.S.A. and you will remain the licensed individual for CSS.

We think that Customs' position is very clear on this issue. You may not act as broker for both CSS and Foster U.S.A. regardless of your proposed safeguards such as a "no-complete" clause and a "freeze" of marketing activities by CSS. The safeguards which you have devised still do not prevent a conflict of interest. If you hold a license for the corporation and an individual license in the same district, it is Customs position that whether or not a conflict exists, there is an appearance of impropriety and the potential for a conflict of interest. It is Customs role to regulate the business of brokers. In this situation, as the broker for CSS and Foster U.S.A., you would be acting in a matter in which your duty and your interest conflict. Moreover, given the conflict of interest, there is a concern as to whether you could adequately exercise supervision and control.

As Customs stated in CSD 90-24: "In view of the lack of responsible supervision and control that must occur when an

individual customs broker conducts customs business both on his own behalf and as the qualifying broker of corporate customs broker, the potential conflict of interest arising out of the licensed broker's duties to his corporate employer, and the appearance of impropriety surrounding such activities, it is our opinion that a licensed customs broker may not simultaneously conduct customs business as an individual and as the licensed customs broker of a corporate broker."

In conclusion, we do not find that your described scenario meets all broker obligations and Customs Regulations. This is an information letter within the meaning of 19 CFR 177.1(d)(2).

Sincerely,

A handwritten signature in cursive script that reads "William G. Rosoff".

William G. Rosoff
Chief
Entry Rulings Branch

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE



DATE: 27 MAR 1990

FILE: BRO-2-01-CO:R:C:E
22136 L

TO : Director, Field Operations Division
FROM : Director, Commercial Rulings Division
SUBJECT: Your Memorandum BRO-3-CO:T:F:B RRJ of February 13, 1990

You raise two questions with respect to our case number 221203 dated December 27, 1989. That case held that a licensed customs broker may not operate a customs brokerage as a sole proprietor while simultaneously serving as the qualifying licensed customs broker for a corporate customs broker.

You ask if the same natural person could operate a customs brokerage as a sole proprietor while simultaneously serving as the licensed broker partner of a partnership operating a customs brokerage.

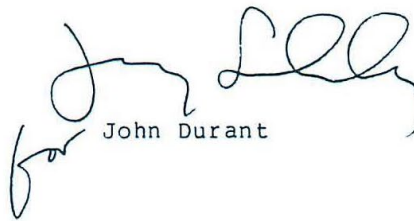
For essentially the same reasons mentioned in the above case number 221203, that is, the lack of responsible supervision by a licensed customs broker and the potential for conflict of interest, it is our opinion that a natural person may not operate a customs brokerage as a sole proprietor while simultaneously serving as the licensed broker partner of a partnership operating a customs brokerage.

Your second question, with regard to our "Holding" in case number 221203, is whether our answer would be the same even if the individual owned a controlling interest in the corporation. Our answer would be the same. The ownership of the corporation is not the issue. The issue is whether one person can serve two masters. In the case of a corporate (or partnership) brokerage, 19 U.S.C. 1641(b)(3) requires that at least one officer of the corporation (or one member of the partnership) hold a valid customs broker's license. That person must be a natural person even though the corporate license is issued to the corporation, and the corporate license will remain in effect, all other things

Figure 17. CBP HQ Ruling 22136, page 2

- 2 -

being equal, so long as any natural person holding a valid license is an officer. However, it is our opinion that the qualifying officer of the corporation (or partner of a partnership) may not simultaneously engage in the operation of a customs brokerage for the reasons expressed in case number 221203.



John Durant

Figure 18. CBP HQ Ruling 224459

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE



DATE: JUN 9 1993

FILE: BRO-3-CO:R:C:E
224459 SLR

TO : Director, Entry Division
Office of Trade Operations

FROM : Chief, Entry Rulings Branch
Office of Regulations and Rulings

SUBJECT: Ruling Request

This is in response to your memorandum dated February 8, 1993, wherein you indicate that your office has received a ruling request from Mr. Kurt M. Moss of Japan Freight Consolidators (Calf.) Inc. Mr. Moss is the corporate license holder for Company "A" and would like to act as the "District" license holder for Company "B". Mr. Moss inquires as to the possibility of a licensed broker being employed by two companies as long as certain conditions are met, i.e., responsible supervision and control, etc. You write for our opinion on the matter.

In a memorandum dated February 9, 1988, to the District Director, Chicago, IL (copy attached), our office offered advice regarding a factual scenario quite similar to the one currently presented. In that memorandum, we indicated that one person cannot serve as the corporate licensed broker of two companies. Also attached is a copy of HQ 222077 dated July 6, 1990. That letter addresses the issue of supervision and control. ✓

If you have any questions, please contact Ms. Susan Renton of the Entry Rulings Branch at (202) 482-7040.

Carri Berdick
for William G. Rosoff

Attachments

Figure 19. CBP HQ Ruling 225011, page 1

HQ RULING 225011

February 22, 1994
BRO-3-05 CO:R:C:E 225011 TLS
CATEGORY: Entry

Ms. Mary A. Rasmussen Assistant District Director
U.S. Customs Service
300 South Ferry Street, Terminal Island
San Pedro, California 90731

RE: Request for Internal Advice concerning a licensed broker qualifying a license and permit for one broker and being employed by a second broker; 19 U.S.C. 1641; 19 CFR 111.11; 19 CFR 111.19(d); C.S.D. 91-12 (March 8, 1991); Customs ruling 221724(June 4, 1991).

Dear Ms. Rasmussen:

This office has received the above-referenced request for internal advice as provided for under Customs regulations. We have considered the request and have made the following decision.

FACTS:

A licensed broker qualifying a license and permit for her sole proprietorship (Broker 1) is also employed by another broker (Broker 2). At the end of her workday for Broker 2, Broker 1 travels to her own business office and reviews her employee's work. The employee may or may not be present.

Broker 1 contends that she is performing her duties for Broker 2 during non-concurrent hours. She is seeking advice on whether this scenario is consistent with current Customs laws.

ISSUES:

Whether Broker 1 may continue to operate her own brokerage business and simultaneously be employed by Broker 2 under the circumstances outlined above.

Whether Broker 1 is exercising responsible supervision over her employee under the circumstances noted above.

Whether both brokers are involved in a conflict of interest in the circumstances presented if they do not inform their clients of the arrangement and obtain consent from those clients.

LAW AND ANALYSIS:

The first issue presented here has been addressed in a previous Customs ruling. Concerning the first issue, we have held that "a licensed individual who serves as the qualifying employee for the permit of one broker may be employed by another broker as a non-qualifying employee (i.e., a supervised employee), provided that the work is performed at each broker's office during prescribed, non-concurrent hours." Customs ruling HQ 222573 (March 8, 1991). The individual qualifying the permit for one broker cannot qualify the permit for another, unless authorized by a

Figure 20. CBP HQ Ruling 225011, page 2

waiver. 19 U.S.C. 1641(c)(2); 19 CFR 111.19(d). The qualifying broker must be under responsible supervision and control while working for the second broker. 19 U.S.C. 1641(b)(4); 19 CFR 111.11(b) and (c); 19 CFR 111.19(d).

In this case, Broker 1 works for Broker 2 during the day and then works at her own office afterwards to review her employee's work. To the extent that these work hours are part of a regular schedule, we find that they are prescribed and non-concurrent. The facts presented indicate that Broker 1 qualifies the permit only for her own brokerage firm. The fact that she also qualifies the license for her own firm is of no consequence in this case. From the facts presented, we cannot determine if responsible supervision and control is being exercised over Broker 1 while she is working for Broker 2. If such is the case, we find that Broker 1 may work for Broker 2 as a non-qualifying employee while qualifying the permit and license for her own business. We do stress that the requisite supervision and control over Broker 1 must be present while she is working for Broker 2. We also emphasize here, as we did in HQ 222573, that this finding on the first issue does not in any way absolve Broker 1 of the responsibility of exercising responsible supervision and control over her employee in the office where she qualifies the permit.

On the second issue, we must look at what constitutes "responsible supervision and control." The term is defined under 19 CFR 111.19(d) as such:

[T]hat degree of supervision and control necessary to ensure that the employee provides substantially the same quality of service in handling customs transactions that the licensed broker is required to provide

The facts presented here do not give a clear picture of how Broker 1 is supervising her employee, except to state that she reviews her employee's work, presumably after the work has been completed. We have found in at least one case that responsible supervision and control was present where the broker was in a position to direct and control her employees and specify the method and manner in which the work was done. Customs ruling HQ 221724 (June 4, 1991). Thus, if such is present in this case, the requirements of 19 CFR 111.19(d) are considered to be met. The fact that the broker is not present while the employee is performing her duties does not preclude the broker from exercising responsible control and supervision over the employee.

Concerning whether a conflict of interest exists under the current arrangement if the brokers do not inform their respective clients of the arrangement, we find no reason for having the brokers inform their clients of the arrangement. We have previously required that a parent broker must obtain a power of attorney from its client if a subsidiary broker is to conduct business on behalf of the parent for the client. HQ 221724, *supra*. The subsidiary must also obtain a power of attorney from the client, as well as exchange powers of attorney with the parent. *Id.*

In the present case, the facts given do not indicate that Broker 1 will be conducting business for Broker 2's clients on behalf of Broker 2 as a broker. Broker 1, for all intent and purposes, is an agent of Broker 2 while working as an employee for Broker 2. As such, Broker 1 is only representing Broker 2 in transactions involving Broker 2's clients; she is not representing her own brokerage firm. Conversely, Broker 1 is only representing her own firm when she is not in

Figure 21. CBP HQ Ruling 225011, page 3

the employ of Broker 2. Assuming that the client lists of Broker 1 and Broker 2 do not overlap, we find no apparent conflict of interest in the circumstances presented.

HOLDING:

Under the circumstances presented, Broker 1 may qualify the license and permit for her own brokerage firm while working prescribed, non-concurrent hours in the employ of Broker 2.

Broker 1 is exercising responsible supervision and control over her employee only if she is in a position to direct and control her employee and specify the method and manner in which the employee's work is done. The fact that she might not be present when the employee is performing her duties does not preclude the broker from exercising such control over the employee.

There is no conflict of interest in this case between Broker 1 and Broker 2. Neither is required to inform their respective clients of their arrangement, provided that Broker 1 and Broker 2 do not represent the same clients. This ruling is based only on the facts presented as stated above.

Sincerely,

John Durant, Director
Commercial Rulings Division

Figure 22. CBP HQ Ruling 222573, page 1

HQ RULING 222573

March 8, 1991
BRO-2-01-CO:R:C:E 222573 PH
CATEGORY: Brokers

Harvey A. Isaacs, Esq., Tompkins & Davidson
One Whitehall Street, New York, New York 10004

RE: Employees of customhouse brokers; Employment by more than one broker; 19 U.S.C. 1641; 19 CFR 111.11(d); 19 CFR 111.19(d).

Dear Mr. Isaacs:

In your letter of July 19, 1990, on behalf of the National Customs Brokers and Forwarders Association of America, Inc., you request a ruling on certain understandings you have regarding the circumstances under which an employee may work for more than one licensed broker. Our ruling follows.

FACTS:

The inquirer seeks clarification regarding the circumstances in which an employee may work for more than one licensed broker. The inquirer requests a ruling on a number of understandings on this issue. These understandings are set forth below in the form of issues.

ISSUES:

- (1) May an unlicensed employee work for more than one broker if the work is performed at each broker's office during prescribed hours (e.g., from 9:00 AM to 5:00 PM for broker "A" and from 6:00 PM to 11:00 PM for broker "B")?
- (2) May an employee qualifying the permit for one broker be employed by another broker under the circumstances outlined in ISSUE 1 if the employee is not also the qualifying licensee of the second broker?
- (3) Is an employee employed under the circumstances outlined in ISSUES 1 and 2 authorized to sign customs documents for one or both of the licensees under 19 CFR 111.3(b)(1) and conduct other business on behalf of either or both brokers under 19 CFR 111.3(b)(2) if it is done during the course of the employee's employment?

LAW AND ANALYSIS:

The statutory provision governing customs brokers is found in section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641). Licenses for customs brokers are provided for in paragraph (b) of this provision (19 U.S.C. 1641(b)). Licenses for individuals are granted under 19 U.S.C.

Figure 23. CBP HQ Ruling 222573, page 2

APPENDIX 5.4b

1641(b)(2) and licenses for corporations, associations, or partnerships are granted under 19 U.S.C. 1641(b)(3). Pursuant to the latter provision, "at least one officer of the corporation or association, or one member of the partnership" must hold a valid individual customs brokers license. Under 19 U.S.C. 1641(b)(4), a customs broker, defined in 19 U.S.C. 1641(a)(1) as "any person granted a customs broker's license ... under [19 U.S.C. 1641(b)]", "shall exercise responsible supervision and control over the customs business that it conducts."

The Customs Regulations pertaining to customs brokers are found in Part 111 of the Customs Regulations (19 CFR Part 111). Under 19 CFR 111.2, a person is required to obtain a customs brokers license to transact the business of a broker and a separate permit is required for each Customs district in which a licensee conducts customs business. Under paragraphs (b) and (c) of section 111.11, a partnership, association, or corporation must have at least one member (in the case of a partnership) or officer (in the case of an association or corporation) who is a licensed broker. Also under these provisions, the partnership, association, or corporation must establish that it will have an office in the Customs district where it has applied for a permit in which its customs transactions will be performed by a licensed member of the partnership (if the broker is a partnership), or a licensed officer (if the broker is an association or a corporation), or by an employee under the responsible supervision and control of the licensed member or officer. Each person granted a customs broker's license is required, under 19 CFR 111.19, to have a permit for the district in which the broker operates. Under 19 CFR 111.19(d), a customs broker must employ within each district for which a permit is granted at least one individual having an individual broker's license, except as authorized by a waiver under 19 U.S.C. 1641(c)(2) and 19 CFR 111.19(d).

The term "responsible supervision and control" is defined very broadly in 19 CFR 111.11(d). The term is defined as meaning, in part, "that degree of supervision and control necessary to ensure that the employee provides substantially the same quality of service in handling customs transactions that the licensed broker is required to provide" Failure to exercise such responsible supervision and control over the customs business conducted by the customs broker and over its employees requiring such supervision may result in the cancellation of the customs brokers license or permit (see 19 CFR 111.53(c)).

Under 19 CFR 111.3(b), an employee of a customs broker acting solely for his or her employer is not required to be licensed if:

(1)... The broker has authorized the employee to sign Customs documents on his [or her] behalf, and has executed a power of attorney for that purpose. ...; or (2) ... The broker has filed with the district director a statement identifying the employee as authorized to transact business on his [or her] behalf. ...

Where the employee is given authority under either paragraph (b)(1) or (2) of this section, the broker must promptly give notice of the withdrawal of authority of any such employee and must exercise such supervision of his [or her] employees as will insure proper conduct on the part of the employees in the transaction of Customs business. Each broker will be held strictly responsible for the acts or omissions of his [or her] employees within the scope of their

Figure 24. CBP HQ Ruling 222573, page 3

APPENDIX 5.4b

employment, and for acts or omissions of such employees which, in the exercise of reasonable care and diligence, the broker should have foreseen.

In the first issue under consideration, an unlicensed employee would work for more than one customs broker at the office of each broker during prescribed, non-concurrent hours. We see no objection to such an arrangement, provided that the requisite responsible supervision and control over the employee is exercised, as required by 19 U.S.C. 1641(b)(4) and 19 CFR 111.11(b) and (c) and 111.19(d). As stated above, such responsible supervision and control must ensure that the employee provides substantially the same quality of service in handling customs transactions that a licensed broker is required to provide.

In the second issue under consideration, a licensed employee would work for more than one customs broker at the office of each broker during prescribed, non-concurrent hours, and the employee would be the qualifying employee for the permit of one of the brokers. In interpreting the statutory and regulatory provisions described above, it is the position of the Customs Service that an individually licensed customs broker may be the qualifying employee for the permit of only one broker (except as authorized by a waiver under 19 U.S.C. 1641(c)(2) and 19 CFR 111.19(d)). An employee, whether or not licensed with an individual broker's license, while employed by the broker for which he or she is not the qualifying employee, must be subject to the responsible supervision and control required by 19 U.S.C. 1641(b)(4) and 19 CFR 111.11(b) and (c) and 111.19(d). In view of this requirement for responsible supervision and control, we conclude that a licensed individual who serves as the qualifying employee for the permit of one broker may be employed by another broker as a non-qualifying employee (i.e., a supervised employee), provided that the work is performed at each broker's office during prescribed, non-concurrent hours. However, we emphasize that this ruling provides no defense to a charge of failure to exercise responsible supervision and control over the broker's office for which the licensed individual qualifies the permit if the licensed individual also works for a second broker in a supervised capacity.

The third issue raises the question of whether an employee employed under the arrangements discussed above may sign customs documents for, and conduct other business on behalf of, one or both of the customs brokers under 19 CFR 111.3(b) during the course of the employee's employment. Provided that the requirements in 19 CFR 111.3(b) are met and that the requisite responsible supervision and control is exercised over the unlicensed employee, and the licensed employee while he or she is employed by the broker for which he or she is not the qualifying employee, such an employee may sign customs documents for, and conduct other business on behalf of, one or both of the customs brokers. These actions (i.e., signing customs documents and conducting other business) may only be performed during the course of the employee's employment by the customs broker on behalf of which they are performed and at the office of the broker on behalf of which they are performed during the prescribed, non-concurrent hours during which the employee is employed by that broker.

HOLDINGS:

(1) An individual who is not licensed with an individual broker's license may be employed by more than one customs broker if the work for each broker is performed at that broker's office

Figure 25. CBP HQ Ruling 222573, page 4

APPENDIX 5.4b

during prescribed, non-concurrent hours, provided that the responsible supervision and control required by 19 U.S.C. 1641(b) (4) and 19 CFR 111.11(b) and (c) and 111.19(d) is exercised over the employee.

(2) An individual who is licensed with an individual broker's license may be employed by more than one customs broker at each broker's office when the individual serves as the qualifying employee for the permit (but not the license) of one of the brokers, provided that:

(a) the responsible supervision and control required by 19 U.S.C. 1641(b)(4) and 19 CFR 111.11(b) and (c) and 111.19(d) is exercised over the employee in his or her employment by the customs broker for which he or she does not serve as the qualifying employee; and

(b) the hours of employment of the individual for each broker are prescribed and non-concurrent.

(3) An employee employed under the circumstances approved in HOLDINGS 1 and 2 may sign customs documents for, and conduct other business on behalf of, one or both of the customs brokers by which he or she is employed, provided that the requirements in 19 CFR 111.3(b) are met and that, as required by 19 U.S.C. 1641(b)(4) and the Customs Regulations issued thereunder, the requisite responsible supervision and control is exercised over the unlicensed employee, and the licensed employee while he or she is employed by the broker for which he or she is not the qualifying employee. The employee may only perform these actions during the course of the employee's employment by the customs broker on behalf of which they are performed and at the office of the broker on behalf of which they are performed during the prescribed, non-concurrent hours during which the employee is employed by that broker.

Sincerely,

John Durant
Director, Commercial
Rulings Division

APPENDIX C: Chapter 6

Figure 26. CBP HQ Ruling 225071

HQ 225071

March 31, 1994

BRO-3-03:CO:R:C:E 225071 AJS

CATEGORY: Broker

Mr. Anthony B. Borowiecki
Mohawk Customs and Shipping
P.O. Box 3065
Syracuse, NY 13220-3065

RE: Use of customs brokers' name without trade or fictitious name;
19 CFR 111.30(c); 19 U.S.C. 1641(g)(1); 19 CFR 111.30(d); 19 U.S.C.
1641(g)(1)(B).

Dear Mr. Borowiecki:

This is in reply to your letter of November 12, 1993,
concerning brokerage names.

FACTS:

You are currently operating as a Customs broker under the name, "Anthony B. Borowiecki - dba Mohawk Customs and Shipping." Your letter states that written authorization is attached along with other supporting documentation regarding your permit to conduct Customs business. This information is not contained in our file. However, we will assume the accuracy of this information for the purposes of this request.

In proposal one, your letter requests whether regular Customs business may continue to be conducted as "Anthony B. Borowiecki-dba Mohawk Customs and Shipping", but also whether you may prepare, file, and invoice for Customs entries and other related functions under the name of only "Anthony B. Borowiecki" for one client. You assert that employees already authorized to sign documents under the dba would also be considered authorized to carry out similar functions under your name without the dba. Entries would be carried out under the same filer code, DE6, and records kept, Customs related as well as financial, commingled, as indeed the businesses would in fact be the same business.

In proposal two, your letter alternatively requests whether you may operate similar to the first proposal, but use another additional dba, for example "Anthony B. Borowiecki dba MCS Brokers". Again you assert that the same conditions as to employees, authorizations, and record keeping would be consistent with operating one business. In this case, an additional dba would be properly executed and filed with the county prior to seeking the necessary approval from the Customs Service.

ISSUE:

Whether the use of the above described proposals is proper under 19 CFR 111.30(c).

Figure 27. CBP HQ Ruling 225071, page 2

LAW AND ANALYSIS:

19 CFR 111.30(c) states that a broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more states within the district in which he has been granted a permit and is authorized by state law to do so, shall submit evidence of his authority to use such name. The name shall not be used until approval of the Commissioner has been received. In the case of a trade or fictitious name, the broker shall affix his own name in conjunction with each signature of the trade or fictitious name when signing Customs documents.

In proposal one, you request basically whether only the name "Anthony B. Borowiecki" may be used to prepare, file and invoice entries and for other related functions, and not the trade or fictitious name of "Mohawk Customs and Shipping" for one client. Your request states that you are operating as a Customs broker under the name "Anthony B. Borowiecki - dba Mohawk Customs and Shipping" and would continue to do so in all other cases. Failure to use the full name under which your license was granted would be an attempt to change your name as a broker. In order to change your name, approval of the Commissioner of Customs must be sought. Therefore, if you wish to operate only under the name "Anthony B. Borowiecki" you must file for a broker name change under section 111.30(c). We note that if a new name is approved by the Commissioner, you may no longer operate under your previous name.

The use of only the name "Anthony B. Borowiecki" would also create needless confusion as to under which broker name you were conducting business. 19 U.S.C. 1641(g)(1) requires brokers to file certain reports. See also 19 CFR 111.30(d). Section 1641(g)(1)(B) requires each individual broker to state the name under which its business is conducted in these reports. Under proposal one, you would be conducting business under two different versions of your broker name and thus unable to properly file these reports. In addition, the use of two different names would create confusion in the field as to under which name you were conducting Customs business. Therefore, we view it as essential that Customs business be conducted under only the full broker name specified on your broker license (i.e., Anthony B. Borowiecki - dba Mohawk Customs and Shipping).

In proposal two, you request basically whether another additional dba such as "MCS Brokers" may be used rather than "Mohawk Customs and Shipping" for one client. As with proposal one, this change would also be a name change requiring the approval of the Commissioner of Customs. Therefore, if you wish to operate under the name described in proposal two, you must also file for a broker name change under section 111.30(c). Inasmuch as this change would regard a new trade or fictitious name, evidence of your authority to use this new name must also be submitted. We note that if a new trade or fictitious name is approved, you may no longer operate under your previous name.

Figure 28. CBP HQ Ruling 225071, page 3

HOLDING:

The use of either proposal one or two is not permissible under 19 CFR 111.30(c). A broker may operate only under one broker name, and a broker who is operating under an approved trade or fictitious name must use that full name (i.e., trade and legal) in signing Customs documents. If you desire to conduct business under either of the proposed new names, approval of the Commissioner of Customs must be sought.

Sincerely,

John Durant, Director
Commercial Rulings Division

Figure 29. CBP HQ Ruling 115576, page 1

HQ 115576

January 30, 2002

BRO-1-RR:IT:EC 115576 GG

CATEGORY: Brokers

Mr. Mark C. Joye &
Ms. Jamie A. Joiner
Baker & Hostetler LLP
1000 Louisiana, Suite 2000
Houston, TX 77002-5009

RE: Customs Brokers; Change of Ownership of Parent Company of Licensed Corporate
Customs Broker; 19 U.S.C. 1641; 19 CFR Part 111

Dear Mr. Joye and Ms. Joiner:

This is in response to your letter of January 17, 2002, in which you request a ruling on behalf of your clients, Company B, Company C, and Company D. In deference to your request to keep as many details of the contemplated transaction confidential, we agree to conceal the true identities of the parties involved. We have also complied with your request that this matter be granted expedited treatment.

FACTS:

Company A, a corporate customs broker, currently wholly owns Company B. Company B, which is unlicensed, in turn wholly owns Company C. Company C wholly owns Company D. Both Company C and Company D are corporations and licensed customs brokers.

Company A is planning to offer units of a limited purpose trust known as "the Fund". Units of the Fund will be publicly offered on a stock exchange. The Fund is being created to acquire the securities and certain notes of Company A via the proceeds raised through the public offering of the Fund. Upon closing of the offering, the shares of the parent of Company A will be acquired by the Fund. Following the acquisition of Company A's parent by the Fund, the shares of the parent will be transferred to a newly incorporated wholly owned subsidiary of the Fund. Company A will subsequently be amalgamated with its parent company and certain other

wholly owned affiliates. The result will be a single corporation which is a subsidiary of the Fund. This new corporation will also be known as "Company A", and will carry out the same business activities as the original Company A. Company A also intends to create a new wholly owned subsidiary, Company E, which will own 100% of the shares of Company B.

No changes are contemplated to the corporate structure of either Company C or Company D, and the existing boards of directors, officers, and license qualifiers will remain in place.

ISSUE:

Upon implementation of the proposed restructuring, will either Company C or Company D, or both, be required to notify Customs of the described organizational changes, to obtain new licenses or permits, or to take any other action under the Customs Regulations?

LAW AND ANALYSIS:

Section 641(f) of the Tariff Act of 1930, as amended (19 U.S.C. §1641(f)) authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of customs brokers. The resultant regulations are found in 19 CFR Part 111. Several of these regulations address organizational and ownership changes.

Section 111.30(b)(2) of the Customs Regulations provides, in pertinent part, that a corporate broker must immediately provide written notice to the director of each port through which it has been granted a permit of –

Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (for example, conversion of a general partnership to a limited partnership, merger with another organization, divestiture of a part of the organization, or entry into bankruptcy protection).

This particular notice requirement is not triggered by the proposed restructuring, because the regulation applies only in situations in which the change is to the licensed entity itself. Here, neither Company C nor Company D will experience any change. Consequently, they are not required to notify Customs of the planned restructuring.

Another regulation focuses on ownership changes. Section 111.28(d) of the Customs Regulations provides that if the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker must immediately provide written notice of that fact to the Assistant Commissioner, Office of Field Operations, and to the director of each port through which a permit has been granted. It is unclear whether Company C or Company D is publicly traded. However, the answer to that question is immaterial for purposes of this ruling, because the notification requirement in question only applies to changes in the ownership of the broker, and not of the broker's parent firm. This interpretation of § 111.28(d) was elucidated in Treasury Decision (T.D.) 00-17, in Customs response to a comment received on proposed changes to the broker regulations. In the situation under review, neither Company C nor Company D is getting new owners. After the reorganization, Company D will remain a wholly owned subsidiary of Company C, and Company C will still be wholly owned by Company B. The most proximate "change" will occur to Company B, when its ownership is transferred from Company A to the newly formed Company E. This change, however, is not to Company C or Company D, and therefore is not of the type contemplated by §111.28(d).

Figure 31. CBP HQ Ruling 115576, page 3

3

With respect to whether Company C or Company D will require new licenses or permits, no new issuance of either type of instrument will be necessary, because both brokers will emerge from the restructuring unchanged.

A review of the remaining broker regulations reveals that no other obligations on the part of Company C or Company D will be triggered upon the implementation of the proposed restructuring.

HOLDING:

The implementation of the proposed restructuring will not impose any requirements or obligations under the Customs Regulations on Company C or Company D.

Sincerely,

Larry L. Burton
Chief
Entry Procedures and Carriers Branch

Figure 32. CBP HQ Ruling H031295, page 1

HQ H031295

July 31, 2008

BRO-03-03
OT:RR:CTF:ER H031295 DCC

Mr. Jonathan M. Fee
Alston & Bird, LLP
950 F Street, NW
Washington, D.C. 20004-1404

Dear Mr. Fee:

This letter is in response to your request for an advance ruling, dated June 16, 2008, pursuant to 19 C.F.R. § 177.1. Your request, filed on behalf of Unique Logistics International (ATL), Inc. ("Unique, Inc."), concerns the customs broker licensing requirements.

FACTS:

Unique, Inc. was originally incorporated under the state law of Georgia as ATE Logistics Company, Inc. ("ATE Logistics") on February 19, 1999. On June 1, 2001, ATE Logistics filed Articles of Amendment to change the name of the corporation to ATE Logistics Company (Georgia) ("ATE Georgia"). The Articles of Amendment also authorized the corporation to operate as a licensed customs broker.

On April 21, 2006, the corporation filed Articles of Amendment to change its name a second time, from ATE Georgia to Unique, Inc., which is the subject of this ruling.

Unique, Inc. now plans to reorganize under the Georgia Limited Liability Company Act to form a limited liability company ("LLC"). You submitted draft Articles of Organization that state the new company will be "authorized to engage in any lawful business or activity. . . , including without limitation, to transact customs business as a broker." The name of the new entity will be Unique Logistics International (ATL), LLC ("Unique, LLC").

Unique, Inc. has an importer's customs bond, which the corporation uses for an annual importation of printed matter for its own use. According to its surety, Unique, Inc. will be required to obtain a new bond pursuant to instructions from CBP's National Finance Center. It is the policy of CBP's National Finance Center to require a new customs bond in any circumstance when a bond principal changes its IRS Employer Identification Number ("EIN").

You state that Unique, Inc. may be required by the U.S. Internal Revenue Service to obtain a new EIN following its conversion to Unique, LLC. This requirement is based on the fact that limited liability companies and corporations may be treated differently for federal tax purposes.

A U.S. shareholder of Unique, Inc. plans to transfer his share in the company to Unique Logistics Holding Limited ("Unique, Ltd."), a nonresident alien based in Hong Kong. You state that because the new entity is not a publicly traded company, Unique, Ltd. will report the change

Figure 33. CBP HQ Ruling H031295, page 2

in ownership to CBP as required by 19 C.F.R. § 111.28(c).

ISSUES:

Whether Unique, LLC should be treated as a corporation for purposes of Part 111 of the Customs Regulations.

Whether Unique, LLC is required to obtain a new license to conduct customs business.

LAW AND ANALYSIS:

Corporate Form

The first issue is whether Unique, LLC may be treated as a corporation for purposes of CBP regulations. Limited liability companies (“LLCs”) are not specifically provided for in the CBP Regulations. The broker licensing statute and corresponding regulations authorize CBP to grant licenses to individuals, corporations, partnerships, and associations. Different licensing requirements attach depending on which of these categories a license applicant falls.

LLCs are difficult to categorize because they are a hybrid entity with characteristics of both corporations and partnerships. See *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (noting “LLCs resemble both partnerships and corporations.”). LLCs are essentially a limited partnership without the General Partner. The LLC form allows a choice between entity and aggregate (pass-through) taxation for federal tax purposes, while allowing the business entity to maintain the benefit of limited liability.

Because LLCs are not classified clearly as either corporations or partnerships, we determine that such organizations should be treated as associations for purposes of the customs licensing regulations. Consequently, LLCs are subject to the licensing requirements in 19 C.F.R. § 111.11(c) that pertain to the licensing of associations. Section 111.11(c) states:

§ 111.11 Basic requirements for a license.

* * *

(c) *Association or corporation.* In order to qualify for broker’s license, an association or corporation must:

- (1) Be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and
- (2) Have at least one officer who is a broker.

In this case, instead of articles of association Unique, Inc. intends to file articles of organization to form a limited liability company under Georgia state law. The draft articles of organization submitted for review include a provision that empowers the new company to transact customs business as a broker. Although section 111.11(c) does not specifically mention articles of organization as a required organizing document to be filed with the license application, the proposed articles of organization meet the regulatory requirement for empowering the company to engage in customs business as a broker.

Customs License

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. § 1641), provides that a “person” must hold a valid customs broker’s license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker’s licenses and permits. Section 641 also provides for the issuance of rules and regulations relating to the

Figure 34. CBP HQ Ruling H031295, page 3

customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641. The regulations issued under the authority of section 641 are set forth in 19 C.F.R. Part 111. This part includes the rules regarding the issuance of licenses to persons who seek to transact customs business as customs brokers.

The basic rules regarding when a person must obtain a customs broker license are set forth in 19 C.F.R. § 111.2. According to this provision, a customs license is required by any person conducting customs business unless otherwise excepted by section 111.2(a)(2). The regulations further provide that any person who intentionally transacts customs business, other than as provided in section 111.2(a)(2), without a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of section 641. See 19 C.F.R. § 111.4.

The regulations define the term "person" for purposes of Part 111 to include "individuals, partnerships, associations, and corporations." 19 C.F.R. § 111.1. The term "customs business" is defined as the following:

those activities involving transactions with CBP concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by CBP on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. "Customs business" also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with CBP in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, "customs business" does not include the mere electronic transmission of data received for transmission to CBP.

You acknowledge that the reorganization of a corporation into an LLC would be a change in the legal nature of the corporation that would require the new entity to notify CBP of the change pursuant to 19 C.F.R. § 111.30(b)(2). You claim, however, that the proposed reorganization would not preclude the new LLC from conducting customs business under the license granted to Unique, Inc.

In support of your position, you cite three CBP ruling letters that you claim support your position that Unique, Inc. is not required to obtain a new broker license following its reorganization into a limited liability company.

The first ruling, HRL 115576 (January 30, 2002), addressed whether new licenses were required when a parent corporation restructured its business to move two subsidiary corporations, which both held broker licenses, under a newly-formed subsidiary. In that ruling, we did not require the two subsidiary corporations to obtain new broker licenses because the corporate structure of the two entities was unchanged.

In the next rule, HRL 115013 (September 6, 2000), we reviewed whether a broker was required to obtain new powers of attorney when it was acquired through a stock purchase. That ruling determined that the original broker was not required to obtain new powers of attorney for its clients, provided the acquired company continued to exist as the same legal entity and to operate under its pre-merger corporate broker's license.

Finally, in HRL 223119 (August 26, 1991), we considered the merger of a company and its wholly-owned subsidiary. In that ruling, we found that the customs broker's license held by

Figure 35. CBP HQ Ruling H031295, page 4

the subsidiary was not transferable to the parent upon merger of the two entities. We noted that the surviving corporation was a separate legal entity, and as such, had to obtain a new customs license in its own name.

You correctly state that in the cited rulings CBP required business entities to obtain a new license when a corporate reorganization results in a new and different legal entity. You claim, however, that under that the proposed conversion of the corporation (Unique, Inc.) into a limited liability company (Unique, LLC) does not result in the formation of a new legal being. Rather, you maintain, the conversion represents a continuation of the existence of Unique, Inc. as the same entity. In support, you state that pursuant to § 14-11-212(d) of the Official Code of Georgia Annotated (O.C.G.A.), a conversion:

pursuant to this Code section shall not be deemed to constitute a dissolution of the entity making the election and shall constitute a continuation of the existence of the entity making the election in the form of a limited liability company. A limited liability company formed by an election pursuant to this Code section shall for all purposes be deemed to be the same entity as the entity making such election.

You further note that under Georgia state law, the successor entity, Unique, LLC, will be treated as the same entity following its conversion. See O.C.G.A. § 14-11-212. Because Georgia state law treats the conversion as a continuation of the original entity, you argue, CBP should not require Unique, LLC to obtain a new broker's license following the conversion from a corporation to a limited liability company.

We determine that Unique, LLC, once formed, represents a new entity that is separate and distinct from its predecessor, Unique, Inc. The new LLC will be formed by the filing of Articles of Organization, which are different from the Articles of Incorporation that were used to establish Unique, Inc. as a corporation under Georgia state law. Although the state law may treat the new LLC as a continuation of the precursor corporation, we determine that the new entity constitutes an "association," as discussed above, for purposes of Part 111 of the CBP Regulations.

Furthermore, we note that Unique, Inc. will be required to obtain a new customs bond from its surety upon conversion to form a limited liability company. This requirement is based on the CBP's policy of requiring principals to obtain a

new bond whenever the bond principal obtains a new Employer Identification Number from the IRS or undergo a changes its legal status. Although the CBP regulations governing the issuance of customs bonds authorize port directors to accept a bond rider when a principal merely changes its name, such riders may only be used,

when the change in name does not change the legal identity or status of the principal. If a new corporation is created as a result of a merger, reorganization or similar action, a bond rider for a name change of the principal can not be used. A new bond would be required.

19 C.F.R. § 113.24

As a new legal being, Unique, LLC must obtain a new broker's license in its own name. The fact that under Georgia state law a corporation converted into an LLC retains all rights and obligations of the predecessor does not preclude CBP from requiring a new broker's license upon formation of the new entity.

Figure 36. CBP HQ Ruling H031295, page 5

HOLDING:

For the reasons discussed above, upon conversion from a corporation to a limited liability company, the new entity should be treated as an association for purposes of the broker licensing regulations codified at 19 C.F.R. Part 111. In addition, as a legal entity separate and distinct from its predecessor corporation, the new limited liability company is required to obtain a new customs broker license.

Sincerely,

William G. Rosoff, Chief
Entry Process and Duty Refund Branch

APPENDIX D: Chapter 7

Figure 37. Sample Triennial Status Report

Customs Broker Triennial Status Report 2021	
License Name:	Jack Brownn
Issuing Port:	0101 Fort Pierce, FL
License Number:	12345
Are you actively engaged in transacting business as a broker?	Yes
Are you currently a Federal employee?	No
Have you engaged in any conduct that could constitute grounds for suspension or revocation of your license as described in 19 C.F.R.111.53?*	No
Conduct description: This is a test conduct description	
Mailing Address/Contact	
Mailing Address:	1234 Main Street Nowhere, BM 28460
Email Address:	tstSubmitterEmail@test.email.com
Broker Employer	
Are you the qualifying member or officer?	Yes
Name of brokerage where employed:	Employer Inc
Brokerage Address:	4567 First Street Somewhere, BM 28460
Sole Proprietor	
Name of Brokerage:	Broker Inc
CBP Approved Trade Name:	Trade Inc
Brokerage Address:	7890 Elm Street Anywhere, BM 28460
Website:	some.website.com
Broker Employees	
Do you have employees?	Yes
Attachment received:	No
Payer Selection	
Fee Amount:	\$100.00
Designated Payer:	Sue Green
<small>WARNING Any misstatement or willful omission of pertinent facts in this status report constitutes sufficient grounds for action against a broker including suspension or revocation of the license. Authorizing payment by another party will not relieve you of the liability for the status report fee if not paid by the designated party. You are solely responsible for the payment of the status report fee and the status report is not considered submitted until the payment has been received.</small>	
<p>I, <u>John X. Doe</u> certify that the information provided in this status report and supporting attachments (e.g., employee lists, if applicable) is true and correct to the best of my knowledge and belief.</p> <p style="text-align: right;">e-Signed by: <u>John Doe</u> Date: <u>November 16, 2018</u></p>	