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## **DEPARTMENT OF HOMELAND SECURITY**

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

#### **19 CFR Parts 24 and 111 [Docket No. USCBP-2020-0009]**

#### **RIN 1651-AB16**

### **Modernization of the Customs Brokers Regulations**

**AGENCIES:** U.S. Customs and Border Protection, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the U.S. Customs and Border Protection (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 proposes to transition all brokers to national permits and to eliminate broker districts and district permits. CBP is also proposing, 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 proposes 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., corporations, partnerships, and associations). The Department of the Treasury retains authority over CBP regulations relating to customs revenue in accordance with the Homeland Security Act of 2002. Accordingly, CBP is publishing a concurrent notice of proposed rulemaking to eliminate all references to customs broker district permit fees (*See* “Removal of References to Customs Broker District Permit Fee” RIN 1515-AE43).

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** You may submit comments, identified by *docket number*, by *one* of the following methods:

- Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2020-0009.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325-0439.

**FOR FURTHER INFORMATION CONTACT:** Melba Hubbard, Chief, Broker Management Branch, (202)863-6986, [melba.hubbard@cbp.dhs.gov](mailto:melba.hubbard@cbp.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

### **Background**

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker's license and permit to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker 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 authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect the public 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 title 19 of the Code of Federal Regulations (CFR) (19 CFR part 111) and provide for, among other things, the rules for license and permit requirements; recordkeeping and other duties and responsibilities of brokers; the grounds and procedures for the revocation or suspension of broker

licenses and permits; the grounds for the assessment of monetary penalties; and fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

Customs brokers are private individuals and/or business entities (partnerships, associations or corporations) that are licensed and regulated by CBP to assist importers in conducting customs business. Customs brokers have an enormous responsibility to their clients and to CBP that requires them to properly prepare importation documentation, file these documents timely and accurately, classify and value goods properly, pay duties, taxes, and fees, safeguard their clients' information, and protect their licenses from misuse.

The current broker regulations are based on the district system in which entry, entry summary, and post-summary activity are all handled by the ports within a district, for which a broker district permit is required. As a general rule, all merchandise imported into the United States is required to be entered, unless specifically excepted. The act of entering merchandise consists of the filing of paper or electronic documents with CBP containing sufficient information to enable CBP to determine whether imported merchandise may be released from CBP custody. *See* 19 CFR 141.0a(a). Additionally, entry summary refers to documentation that enables CBP to assess duties, and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met. *See* 19 CFR 141.0a(b). Pursuant to the regulations, customs business also refers to post-summary activity, including the refund, rebate, or drawback of duties, taxes, or other charges. A district is the geographic area covered by a customs broker permit other than a national permit. Brokers are required to maintain a physical presence within the district so that the broker is physically close to the port of entry to file any paperwork associated with an entry, entry summary, or post-summary activity.

*The Impact of the Centers of Excellence and Expertise and the Automated Commercial Environment on Brokers*

Two major developments, the establishment of the Centers of Excellence and Expertise (Centers) and the creation of the Automated Commercial Environment (ACE), have fundamentally changed the traditional ways that customs brokers and CBP interact. Beginning in 2012, CBP developed a test to incrementally transition the operational trade functions that traditionally reside with ports of entry and port directors to the Centers and Center directors. The Centers were established in strategic locations around the country to focus CBP's trade expertise on industry-specific issues and provide tailored support for importers. CBP established these Centers to facilitate trade, reduce transaction costs, increase compliance with applicable import laws, and achieve uniformity of treatment at the ports of entry for the identified industries. On December 20, 2016, CBP published an interim final rule in the *Federal Register* (81 FR 92978) which codified the role of the Centers. This interim final rule transferred to the Centers and Center directors a variety of post-release trade functions that were handled by port directors, including decisions and processing related to entry summaries; decisions and processing related to all types of protests; suspension and extension of liquidations; decisions and processing concerning free trade agreements and duty preference programs; decisions concerning warehouse withdrawals wherein the goods are entered into the commerce of the United States; all functions and decisions concerning country of origin marking issues; functions concerning informal entries; and classification and appraisalment of merchandise.

With the transfer of trade functions to the Centers, a significant portion of these activities, including entry summary and post-summary, are now handled directly by the Centers. The Center structure is based on subject matter expertise, as opposed to geographic location,

placing them outside of the district system as it currently exists. The current broker regulations based on the district system do not fully reflect how trade functions are being processed by CBP.

The other relevant major development was the creation of ACE. In an effort to modernize the business processes essential to securing U.S. borders, facilitating the flow of legitimate shipments, and targeting illicit goods pursuant to the Customs Modernization Act (Mod Act) (passed as part of the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. 103-182 § 623 (1993)), and the Security and Accountability for Every (SAFE) Port Act of 2006 (Pub. L. 109-347, 120 Stat. 1884), CBP developed ACE to eventually replace the Automated Commercial System (ACS) as the CBP-authorized electronic data interchange (EDI) system.

On October 13, 2015, CBP published an interim final rule in the *Federal Register* (80 FR 61278) that designated ACE as a CBP-authorized EDI system. The designation of ACE as a CBP-authorized EDI system was effective November 1, 2015. In the interim final rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for electronic entry and entry summary filing. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

ACE now offers the operational capabilities necessary to enable users to transmit a harmonized set of import data elements, via a “single window,” to obtain the release and clearance of goods. As a result, the International Trade Data System (ITDS) eliminates redundant reporting requirements and facilitates the transition from paper-based reporting and other procedures to faster and more cost-effective electronic submissions to, and communication among, government agencies. These electronic capabilities that allow brokers to file entry

information in ACE reduce the need for brokers to be physically close to the ports of entry, as currently required under the district permit regulations.

## **Discussion of Proposed Amendments**

### *Proposed Major Changes to How Brokers May Operate*

Over the past several years CBP has conducted outreach to the broker community through webinars, port meetings, and broker association meetings, to solicit feedback on the role of the broker in this updated business environment. In addition, in light of the changes to CBP's operational structure and electronic capabilities, the Commercial Customs Operations Advisory Committee (COAC) recommended that CBP enable brokers to operate through a single, national permit. The amendments proposed in this NPRM incorporate the feedback received from the broker community, as well as recommendations made by the COAC, and aim to reflect the modern CBP operating environment, the importance of electronic mail (email) as a means of communication, and the electronic processes available for the acceptance of broker information which should alleviate some burden on the ports, brokers, and importers.

CBP proposes to modernize the customs broker regulations contained in 19 CFR part 111 to align with the development of CBP trade initiatives, including ACE and the Centers. Specifically, this document proposes to transition all brokers to national permits and expand the scope of the national permit authority to allow national permit holders to conduct all customs business throughout the customs territory of the United States. To accomplish this, CBP proposes to eliminate broker districts, district permits, district permit waivers, and the requirement for brokers to maintain district offices. Upon adoption of a final rule, CBP will provide guidance to those brokers with only a district permit(s) explaining the process to transition their district permit(s) to a national permit. CBP is also proposing, 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. The proposed 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.

Currently, the broker license application fee is \$200. 19 CFR 111.12(a); 111.96(a). In conducting a study on the costs associated with the broker license application, CBP determined that fees of \$463 for individuals and \$815 for business entities (*i.e.*, corporations, partnerships, and associations) would be necessary to recover the costs associated with reviewing the customs broker license application and conducting the necessary vetting for individuals and business entities. However, in an effort to minimize the financial burden to prospective customs brokers while also recovering some of the increasing costs associated with reviewing the customs broker license application and conducting the necessary vetting, CBP is proposing to increase the customs broker license application fee to only \$300 for individuals and \$500 for business entities. While CBP is proposing to raise the application fees, there will be several cost savings as a result of eliminating the district permit requirement and other proposed changes to the broker regulations. The current application fee for a district or national permit is \$100 per permit. 19 CFR 111.19(a); 111.96(b). In addition, a customs broker must pay an annual customs broker permit user fee of \$147.89 for each district and national permit that they hold. 19 CFR 24.22(h). The annual customs broker permit user fee is subject to adjustment each fiscal year in accordance with the Fixing America's Surface Transportation Act (FAST Act). 19 CFR 24.22(k). 84 FR 37902 (August 2, 2019). For a complete discussion of the cost/benefit analysis for adjusting the fees, see the "Executive Orders 13563, 12866, and 13771" section below.



A summary of the specific proposed changes to 19 CFR part 111 is set forth below.

## **Part 111**

As discussed in the Background section above, CBP published an interim final rule that transferred certain trade functions from the port director to the Center director. Similarly, certain broker management functions previously performed by the port director will be transferred to the Centers as part of this proposed rule. As a result, CBP proposes replacing references in part 111 to the “ports” and “port directors” with references to “the Centers” and “directors of the designated Centers” (discussed further below). Specifically, CBP proposes amendments to sections 111.1, 111.2, 111.12, 111.14, 111.15, 111.16, 111.19, 111.21, 111.28, 111.30, 111.45, 111.56, 111.57, 111.59, 111.60, 111.61, 111.62, 111.63, 111.64, 111.67, 111.72, 111.78, and 111.96. (19 CFR 111.1, 111.2, 111.12, 111.14, 111.15, 111.16, 111.19, 111.21, 111.28, 111.30, 111.45, 111.56, 111.57, 111.59, 111.60, 111.61, 111.62, 111.63, 111.64, 111.67, 111.72, 111.78, 111.96). In addition, CBP proposes to add a definition of a new term, “designated Center,” discussed under Subpart A below.

### **Subpart A, General Provisions**

Definitions for terms used throughout part 111 are found in § 111.1. CBP proposes to add three new terms: “appropriate Executive Director, Office of Trade”, “broker’s office of record” and “designated Center.”

The term “appropriate Executive Director, Office of Trade” defines the Executive Director within the Office of Trade who has been delegated first level decision making authority on broker management related issues. The appropriate Executive Director, Office of Trade is the Executive Director responsible for broker management.

The term “broker’s office of record” defines the office designated by a customs broker as the broker’s primary location that oversees the administration of all activities conducted under a national permit. Currently, a broker is required to maintain a physical office in each district where he or she is permitted. *See* 19 CFR 111.19. Under the proposed national permit system, the broker will have the freedom to determine where to establish his or her office(s) within the customs territory of the United States. In order to ensure reliable channels of communication between CBP and the broker, CBP proposes that the broker’s office of record must be provided in the application for a national permit and kept up to date. The term “designated Center” defines the Center of Excellence and Expertise through which an individual, partnership, association, or corporation submits an application for a broker’s license, or as otherwise designated by CBP for currently licensed brokers. Upon adoption of a final rule, CBP will provide guidance informing licensed brokers of the designated Center for license and permit administration purposes. Currently, an applicant submits his or her broker license application to the director of the port where the applicant intends to do business. *See* 19 CFR 111.12. The port where an applicant submits his or her license application serves as the primary point of contact between CBP and the broker for administrative purposes. Under the proposed changes, the designated Center would become the primary point of contact.

This document also proposes to remove the definitions for “district” and “region” found in § 111.1. Given that these two terms relate specifically to district permits and this document proposes to eliminate district permits, these terms will no longer be necessary.

In addition, CBP proposes to amend three terms found in § 111.1: “Assistant Commissioner,” “permit,” and “responsible supervision and control.” (19 CFR 111.1). The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114-125), signed into

law on February 24, 2016, changed the title “Assistant Commissioner” for the Office of Trade to “Executive Assistant Commissioner.” TFTEA also changed the name of the “Office of International Trade” to the “Office of Trade.” As a result, CBP proposes to update these terms in the definition of Assistant Commissioner. Corresponding changes to reflect the name Executive Assistant Commissioner throughout part 111 are proposed in §§ 111.1, 111.14, 111.15, 111.16, 111.17, 111.19, 111.28, 111.42, 111.45, 111.51, 111.52, 111.53, 111.55, 111.56, 111.57, 111.61, 111.67, 111.74, 111.76, 111.77, 111.79, and 111.81 (19 CFR 111.1, 111.14, 111.15, 111.16, 111.17, 111.19, 111.28, 111.42, 111.45, 111.51, 111.52, 111.53, 111.55, 111.56, 111.57, 111.61, 111.67, 111.74, 111.76, 111.77, 111.79, 111.81). Corresponding changes to reflect the name Office of Trade throughout part 111 are proposed in §§ 111.1, 111.19 and 111.30. (19 CFR 111.1, 111.19, 111.30).

The current definition of “permit” means any permit issued to a broker under § 111.19. CBP proposes to change the word “any” to “a” to account for the proposed elimination of district permits. Without district permits, the only permit available under § 111.19 will be a national permit.

The current definition of “responsible supervision and control” in § 111.1 provides a list of factors that CBP will consider in determining whether a broker is exercising responsible supervision and control. CBP has determined that the factors which CBP will consider in determining whether a broker is exercising responsible supervision and control should be set forth in revised § 111.28, entitled, “Responsible supervision.” As a result, this document proposes to amend the definition of “responsible supervision and control” by moving the list of factors from §§ 111.1 through 111.28.

This document proposes to re-order the definition of “Department of Homeland Security” so that it appears in proper alphabetical order between the existing definition of “Customs business” and the new definition of “Designated Center.”

#### *Elimination of District Rule*

The current regulations in § 111.2 require a customs broker to maintain a license and a district permit. To account for the increased electronic capability that the ACE Single Window now allows, this document proposes amendments to the customs brokers permitting framework. Currently, a district permit is the official document that allows a licensed customs broker to conduct customs business on behalf of others in a particular geographic area known as a broker district. A district permit is required when a broker has been issued a broker license and intends to conduct customs business in a particular broker district. If a broker intends to conduct customs business at ports within multiple broker districts, a broker must apply for a district permit for each broker district where the broker plans to conduct customs business. Alternatively, a customs broker may apply for a district permit waiver limited to the geographical region in which the broker operates.

In addition to district permits, CBP regulations provide for a national permit which allows a broker to conduct only four activities in all districts: place an employee in the facility of a client for whom the broker is conducting customs business; file electronic drawback claims; participate in remote location filing; and make representations before Customs on issues arising out of an entry or concerning merchandise covered by an entry after the entry summary has been accepted. *See* current 19 CFR 111.2(b)(2)(i)(A-D).

This document proposes to eliminate district permits and allow a national permit holder to conduct any type of customs business within the customs territory of the United States. This

represents a full expansion of the activities allowed under a national permit. CBP has determined that brokers may need to make contact with CBP personnel across the customs territory due to the existence of the Centers and the increasingly automated environment, so there is no longer a reason to restrict national permit holders to the four activities currently allowed.

To achieve these changes, CBP proposes to amend the title of § 111.2 by removing the word “district.” CBP also proposes to replace references to “Customs” with “CBP” and references to “the port director” with “the director of the designated Center” which will allow the agency greater flexibility to conduct broker management at the ports, the Centers, or at Headquarters. The most significant changes proposed would amend paragraph 111.2(b) by renaming paragraph (b) as, “National Permit.” In addition, CBP proposes to remove the existing text in paragraphs (b)(1) and (b)(2) and replace them with a sentence reading, “A national permit issued to a broker under § 111.19 of this part will constitute sufficient permit authority for the broker to conduct customs business within the customs territory of the United States as defined in § 101.1 of title 19.”

### *Customs Business*

Section 111.3 is currently reserved. CBP proposes a new § 111.3 entitled, “Customs business.” The proposed new section contains two paragraphs. Proposed paragraph (a) requires that customs business must be conducted within the customs territory of the United States. This is CBP’s current practice, and the broker community and CBP have agreed that this requirement should be set forth in the regulations. Proposed paragraph (b) requires each broker to maintain a current point of contact for issues related to the transaction of customs business.

### **Subpart B, Procedure to Obtain License or Permit**

Once a prospective broker passes the customs broker examination, he or she must obtain a license before he or she is allowed to conduct customs business on behalf of others. Section 111.12 sets forth the application requirements to obtain a license. Paragraph (a) describes the license application procedures and fee requirements. Paragraph (b) explains that notice will be posted at the ports where applications are received and that written comments on the applicants are invited. Paragraph (c) describes the procedures for the withdrawal of an application for a broker license.

In paragraph 111.12(a), CBP proposes to update the place of submission for an application from the port where the broker intends to do business to the Center designated by CBP after the applicant has passed the brokers exam. References to port director will become Center director throughout this paragraph. CBP also proposes to eliminate the requirement in paragraph 111.12(a) that an application be submitted under oath to ease the burden on applicants. CBP also proposes to remove the language prescribing the method by which applicants are required to submit fingerprints since they are no longer collected via fingerprint cards, but rather through CBP systems. Eliminating restrictions on the methods for collecting fingerprints would provide CBP as well as the applicant with greater flexibility. Currently, a Center director may reject an application as improperly filed if it fails to meet one of the basic requirements set forth in § 111.11. CBP proposes to add wording to this section to allow a Center director to reject an incomplete application as well.

Currently, an applicant must submit two copies of the application under oath with a \$200 application fee and supporting documentation to the port where he or she intends to do business. The application fee is currently the same for both individual and business license applicants. As part of the review of part 111, CBP conducted a fee study and determined that CBP would need

to collect fees of \$463 for individuals and \$815 for business entities (i.e., corporations, partnerships, and associations) to recover the costs associated with reviewing the customs broker license application and conducting the necessary vetting for individuals and business entities. The fee study documenting the proposed fee changes, entitled “Customs Broker License Application Fee Study,” has been included in the docket of this rulemaking (Docket No. USCBP-2020-0009). If implemented, however, this fee rate could become an economic disincentive to those pursuing a career as a customs broker. In an effort to minimize the financial burden to prospective customs brokers while also recovering some of the increasing costs associated with reviewing the customs broker license application and conducting the necessary vetting, CBP has decided not to increase the fees to that level but to limit the increase of the customs broker license application fee from \$200 to only \$300 for an individual license application, and from \$200 to \$500 for a partnership, association, or corporation license application.

CBP proposes to not set forth the specific application fee in § 111.12 but to cross-reference the relevant fees provision in part 111 at § 111.96(a). CBP proposes similarly to streamline the regulations by removing specific fee amounts throughout part 111 and replacing them with references to the relevant paragraph of the fees provision found in § 111.96.

CBP proposes to remove paragraph (b) of § 111.12 on posting notice of applications because CBP has not found that this provision provides the agency with any useable information. Very little information was received from the public in response to the posted notice of applications and the information obtained through a background investigation is sufficient for CBP to make a determination on the broker license application. In § 111.12(c), CBP proposes to

replace “port director” with “director of the designated Center” and to remove the specific application fee amount for the reason discussed above.

Section 111.13 provides details and procedures for the customs broker examination for an individual broker’s license. CBP proposes to remove the references to the \$390 examination fee amount throughout this section while retaining the cross-reference to § 111.96 which lists all of the relevant fees in one section. Paragraph (c) describes the circumstances under which a special examination can be requested, including when a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district. Due to the proposed elimination of district permits and the corresponding requirement to employ at least one individual broker to exercise responsible supervision and control over the customs business conducted in each district, CBP proposes to revise the third sentence in paragraph (c) to reflect the elimination of district permits.

Paragraph (e) describes exam results given to the examinee by written notice and paragraph (f) explains how an examinee can file a written appeal of a failing grade. CBP proposes to amend both paragraphs to allow the use of written or electronic notice of the exam results as well as written or electronic appeal requests and decisions. Examinees who wish to appeal the examination results or request review of the appeal decision should submit those requests in accordance with the instructions provided in the results letter.

Section 111.14 describes the investigation of a license applicant. CBP proposes to update the title of § 111.14 to specify that the investigation being conducted is on the background of the license applicant. In the past, a background investigation had been conducted by an Immigration and Customs Enforcement (ICE) special agent in charge. However, because CBP now uses its own automated systems to conduct broker background investigations and no longer refers



applications to an ICE special agent in charge, CBP proposes to remove paragraph (a) on referral of applications for investigation. CBP proposes redesignating paragraph (b) as paragraph (a). Currently, § 111.14 states explicitly that an investigation of the applicant is based on the application. CBP is clarifying that the scope of the background investigation specifically includes information obtained as part of the interview. CBP proposes to include information from the interview in redesignated paragraph (a)(1) to reflect that any willful misstatements or omission of pertinent facts made either on the application or during the interview can provide grounds for denying a broker license. *See* 19 CFR 111.16. As CBP examines an applicant's business integrity, which includes financial reports as part of the background investigation, CBP proposes to add financial responsibility to the scope of that background investigation to make clear that it is part of the background investigation. CBP also proposes to expand the scope of background investigation to include any association with any individuals or groups that may present a risk to national security or a risk to the revenue collection of the United States. This addition would allow CBP the flexibility to deny a broker license to an individual associated with terrorist groups, organized crime, or groups advocating the overthrow of the government.

Current paragraphs (c) and (d) are redesignated as (b) and (c), respectively, in § 111.14. In redesignated paragraph (b), CBP proposes to replace port director with director of the designated Center. In addition, CBP proposes to update the phrase "report of investigation" to "supporting documentation" because background investigations are no longer conducted by ICE. Redesignated paragraph (c) currently requires the applicant to appear in person before one or more representatives of the Assistant Commissioner for the purpose of undergoing further written or oral inquiry into the applicant's qualification for a license. To allow greater flexibility for both CBP and the applicant, CBP proposes amendments to redesignated paragraph (c) to

include other approved methods of communication in addition to the requirement that the applicant make an in-person appearance before the appropriate Executive Director, Office of Trade. In addition, CBP proposes to remove the word investigation in paragraph (c), while retaining the reference to additional inquiry, so as not to cause confusion with the primary background investigation.

Section 111.16 provides the notice procedures and grounds for denial of a license. Paragraph (b) of § 111.16 sets forth the grounds for denial of a license. Currently, the grounds for denial of a license include: (1) any cause which would justify suspension or revocation of the license of a broker; (2) failure to meet any of the basic requirements for a license; (3) failure to establish business integrity and good character; (4) any willful misstatement of pertinent facts in the license application; (5) any conduct which would be deemed unfair in commercial transactions; or (6) a reputation or record of criminal, dishonest, or unethical conduct. CBP proposes to expand the grounds sufficient to justify denial of a license to also include: the failure to establish financial responsibility; the omission of pertinent facts in the application or interview; detrimental commercial transactions; and any other relevant information uncovered over the course of the background investigation.

Section 111.17 sets forth the review procedures in the event that a license application is denied.

In paragraph (a), CBP proposes tightening the language regarding an applicant's request to provide additional information or arguments in support of a denied application. In addition, CBP proposes adding telephone and other acceptable means to the methods of communication available by which an applicant may request to provide further information to CBP when an

application is denied. This addition would provide greater flexibility for both CBP and the applicant.

Section 111.18 governs reapplication for a license. CBP proposes to add a requirement that previously denied applicants address how the deficiencies in their prior applications have been remedied. This change ensures that those applicants filing a reapplication do not simply file the same application again.

#### *Elimination of District Permits*

Section 111.19 provides the procedures for obtaining broker permits, responsible supervision and control requirements for permits, and review procedures for the denial of a permit. Currently, an initial district permit is issued, with the \$100 permit fee waived, when a broker's license is granted. A broker may subsequently apply for additional district permits and a national permit. An application fee of \$100 is required for each additional district permit or for a national permit. 19 CFR 111.19(b) and (f); 111.96(b). In addition, all permits, district and national, are subject to an annual customs broker permit user fee which has been set at \$147.89 for fiscal year 2020. 19 CFR 24.22(h); 111.96(c). 84 FR 37902 (August 2, 2019). Currently, national permits are issued by the Broker Management Branch at CBP Headquarters.

The COAC issued a recommendation that CBP enable brokers to operate through a single, national permit. The full text of the COAC recommendations, "Commercial Customs Operations Advisory Committee Term to Date Recommendations (4/27/16, 7/27/16, 11/17/16, 3/1/17)" can be found in Docket No. USCBP-2020-0009. The COAC further explained that CBP must modernize its permitting framework to align broker permitting with the challenges and opportunities of 21<sup>st</sup> century electronic entry and entry summary processing. Upon due consideration of COAC's recommendation, and other input received by CBP from the brokerage

community, this document proposes to amend CBP's permit issuing procedures in § 111.19. CBP proposes to eliminate district permits to move to a national-only permit system and to revise the heading text to reflect this change. Specifically, CBP proposes to revise paragraph (a) to reflect the general purpose of a national permit.

Current paragraph (a) provides that each person granted a broker's license will also receive a district permit for the district of the port where the license was delivered without paying the permit application fee. 19 CFR 111.19(a); 111.96(b). Under this proposal, with the elimination of the district permit, there will no longer be a need for a customs broker to have more than one permit. As a result, CBP will no longer issue the first permit free of charge. Instead, any applicant who obtains a passing grade on the examination for an individual broker's license may apply for a national permit. The national permit application may be submitted concurrently with or after the submission of an application for a broker's license.

Current paragraph (b) provides the procedures for submission of an application for an initial or additional district permit. (19 CFR 111.19(b)). CBP proposes to revise this paragraph to describe the procedures for application and issuance of a national permit, taking much of the content of current paragraph (f) describing the current application for a national permit. The revisions include general procedures and specific application requirements. An application for a national permit must be in the form of a letter or CBP-approved electronic submission to the director of the designated Center and must include the following: broker license number and date of issuance if available; the name and title of the national permit qualifier for partnership, association, or corporation applicants; legal status and business name information for partnership, association, or corporation applicants; contact information of the office designated as the office of record as defined in § 111.1; contact information for the licensed broker or

knowledgeable employee responsible for issues related to the transaction of customs business; contact information for each individual broker employed by partnership, association, or corporation applicants; a list of all employees, with required employee information; a plan for responsible supervision, control and compliance; location where records will be maintained; contact information for the knowledgeable employee responsible for customs and financial recordkeeping; and a receipt or other evidence that all required fees have been paid. The fees must be paid at the designated Center or online with submission of the permit application. In addition, the proposed amendments set forth that the national permit applicant will exercise responsible supervision and control over the activities conducted under the national permit. If the application is on behalf of a partnership, association, or corporation, the applicant is not required to be an officer of the partnership, association, or corporation, but must be a licensed broker employed by the partnership, association, or corporation.

Current paragraph (c) of § 111.19 describes permit fees. (19 CFR 111.19(c)). As CBP is proposing to eliminate district permits, CBP proposes in a concurrent notice of proposed rulemaking, published elsewhere in this issue of the *Federal Register*, conforming amendments to this section by removing all references to fees for district permits. (*See* “Removal of References to Customs Broker District Permit Fee” RIN 1515-AE43).

Current paragraph (d) discusses responsible supervision and control requirements in the district permit context as well as procedures for obtaining a district permit waiver in situations that qualify for exception. (19 CFR 111.19(d)). Under this proposal, the responsible supervision and control requirements are provided in § 111.28. Since CBP proposes to eliminate district permits, the need to maintain a place of business at each port where an application for a district permit has been filed and to employ at least one licensed broker in each district where a permit is

held, where those requirements have not been waived, is no longer necessary; accordingly, CBP proposes to remove paragraph (d). The elimination of these requirements resulting from the proposal to move to an expanded national permit system, would greatly lessen the burden on affected customs brokers of conducting customs business throughout the U.S. customs territory.

Current paragraph (e), describing CBP action on a permit application and the maintenance of a list of permitted brokers, is redesignated as paragraph (d). In redesignated paragraph (d), CBP proposes to remove reference to district permits, to replace port director with director of the designated Center, and update cross references within the paragraph. In addition, the list of permitted brokers will now be maintained centrally by CBP as opposed to by individual port directors. As discussed above, current paragraph (f) is revised and the current content has been revised and included in new paragraph (b).

Current paragraph (g) is redesignated as paragraph (e) and CBP proposes amending the paragraph heading to insert the word “national” before “permit.” Current regulations allow for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This allows for, but does not require, the presentation of additional information to address any deficiencies in the original application. Currently in practice, many applicants appeal without providing additional information or arguments resulting in a denial of the appeal. In redesignated paragraph (e)(1), CBP proposes tightening the language regarding the request to clarify that the applicant must provide additional information or arguments in support of a denied application. CBP proposes greater flexibility for both CBP and the applicant by allowing the information to be presented in person, by telephone or by other acceptable means.

Under the current regulations, paragraph (d) requires district permit holders to exercise responsible supervision and control over activities conducted under the district permit. As district permits will be eliminated in this proposed rule, CBP is proposing to revise paragraph (f) to make clear that the individual broker who qualifies the national permit will exercise responsible supervision and control over the activities conducted under that national permit.

### **Subpart C, Duties and Responsibilities of Customs Brokers**

Section 111.21 currently provides requirements for broker records. CBP proposes adding a new paragraph (b) and redesignating current paragraphs (b) and (c) as (c) and (d), respectively. Proposed paragraph (b) provides that each broker must provide notification to his designated Center of any known breach of electronic or physical records relating to the broker's customs business. Notification to CBP must be provided within 72 hours of the discovery of the breach with a list of all compromised importer identification numbers. This information will allow for better targeting analysis which contributes to CBP's overall risk management approach.

In addition, CBP proposes to amend redesignated paragraph (d) to require identification of a designated recordkeeping contact who must be a knowledgeable employee who will serve as the party responsible for broker-wide financial and recordkeeping requirements. Each broker must maintain accurate and current contact information for the designated recordkeeping contact within a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, the proposed amendments allow for written submission to the designated Center as an alternative. Under a national permit framework, the maintenance of current broker points of contact will be essential to facilitate efficient processing of entries and entry summaries.

Section 111.23 sets forth the location in which a broker may retain its records relating to customs transactions. Currently, paragraph (a) provides that a customs broker may retain customs records at any location within the U.S. customs territory. (19 CFR 111.23(a)). CBP proposes to amend paragraph (a) to require that a customs broker must maintain customs records, including any electronic records, within the U.S. customs territory. In addition, CBP proposes removing the last sentence of paragraph (a) dealing with the examination of records by CBP. CBP proposes to revise this sentence and place it in a new paragraph (b) to § 111.25 discussed below.

Section 111.24 addresses the confidentiality of broker records, stating in part that the broker must not disclose their contents or any information connected with the records to any persons other than the clients to whom they pertain, the client's surety on a particular entry, and to CBP or other U.S. government officials, except on subpoena by a court of competent jurisdiction. CBP interprets the current provision to provide that, with limited exceptions, including certain accredited officers or agents of the United States and the surety involved in a particular transaction, brokers may not disclose client information to third persons except when ordered to by a court. To overcome this confidentiality requirement, a broker needs to merely request, and receive, a written release from the client authorizing disclosure of that client's information. CBP's longstanding position on this matter is that absent written client consent, a broker may not share client information. CBP continues to believe that protection of the client's business information remains a paramount concern. At the same time, however, CBP recognizes that the blanket prohibition of the current regulation is no longer a good fit for the more modern and efficient business practices brought about by the changing structure and environment of the business community. As a result, CBP proposes to amend § 111.24 by providing an exception



for information that properly is available from a source open to the public. The intent of the additional language is to permit disclosure of information that properly is available from government sources or privately controlled sources, whether via a subscription service or not. CBP does not condone the disclosure of information that was not obtained properly and has been released without proper authority.

To account for changes in organizational structure, CBP also proposes replacing the list of specific covered government employees to whom the broker records can be disclosed with a general reference to representatives of the Department of Homeland Security. Finally, CBP proposes to include court orders and written authorization by the client in the exemptions to the confidentiality requirement.

Section 111.25 provides that a broker must maintain records in a way that they are readily available for inspection, copying, reproduction or other official use by authorized CBP personnel. This document proposes to reorganize § 111.25 into three paragraphs: paragraph (a) - general; paragraph (b) - examination request; and paragraph (c) - recordkeeping requirements. Proposed paragraph (a) contains all but the last sentence of the current language found in § 111.25. In addition, CBP proposes replacing the list of specific government representatives that may inspect, copy, reproduce and use broker records with a general reference to representatives of the Department of Homeland Security. Proposed paragraph (b) contains language found in current § 111.23(a) which requires that requested records be made available at the broker district that covers the CBP port to which the records relate. To account for the proposed elimination of broker districts, CBP proposes to amend this language to require that the recordkeeping contact designated in § 111.21(d) make requested records available at a location specified by Department

of Homeland Security (DHS) employees within thirty (30) calendar days. This change would allow CBP greater flexibility in where it could examine the records.

Section 111.27 provides for the audit or inspection of broker records. Due to the creation of DHS and the subsequent transfer of the U.S. Customs Service from the Department of the Treasury to DHS, CBP proposes to remove the reference to officials of the Treasury Department and update it with a reference to DHS officials to reflect current practice.

*Responsible supervision and control.*

Section 111.28 provides specific requirements relating to the exercise of responsible supervision and control. CBP is modifying the heading text to read “Responsible supervision and control.” As part of its recommendations to move to only a national permit framework, the COAC recommended that the section on “responsible supervision and control” include “requirements that customs brokerage firms employ an adequate number of licensed brokers to ensure responsible supervision and control over their customs business.” To address this concern, CBP proposes to add a sentence to paragraph (a) to read as follows: “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.”

As noted above, this document proposes to move the list of factors CBP considers when determining whether a customs broker is exercising responsible supervision and control from the definition of “responsible supervision and control” in § 111.1 to paragraph (a) of § 111.28 with some modifications and additions to reflect the changes of moving to only a national permit framework. The current list of factors found in § 111.1 states that CBP will consider all factors

listed. CBP proposes to amend the introductory sentence of the list of factors to state that CBP may consider the relevant factors from among those listed on a case-by-case basis.

CBP proposes to retain the ten factors currently found in § 111.1 with the following amendments:

(1) CBP proposes to amend the first factor which currently reads, “The training required of employees of the brokers,” to, “The training provided to broker employees.” These proposed changes are intended to place the obligation to provide training of employees on the broker.

(2) In the second factor which currently provides for the issuance of written instructions and guidelines to employees of the broker, CBP proposes to remove the word “written” to include electronic resources.

(3) CBP proposes to amend the fourth factor covering reject rates by considering the reject rate relative to the overall volume of transactions conducted by the broker. Comparing the number of rejections with the broker’s overall volume of entries gives better context to evaluate the quality of responsible supervision and control.

(4) CBP proposes to change the word “maintenance” to “accessibility” in the fifth factor which addresses CBP resources available to broker employees. Simply maintaining current editions of the relevant laws and regulations does not indicate responsible supervision and control, ensuring access to these documents, whether hard copy or electronic, is more important in determining responsible supervision and control.

(5) CBP proposes to amend the sixth factor requiring the availability of “an individually licensed broker” to “a sufficient number of individually licensed brokers” for necessary consultation with broker employees to better account for the proposed national permit operating environment. This change reflects the COAC recommendation to establish a national permit

framework with the requirement that brokers employ an adequate number of licensed brokers to ensure responsible supervision and control. Under the current permit framework, a licensed broker (usually the district permit qualifier) must be present at the physical office location in the district to offer guidance to employees. Under the proposed national permit framework it will be crucial that licensed brokers are readily available to employees, both in person or virtually.

(6) CBP proposes to remove the reference to “district” in factor nine addressing permit qualifier involvement in brokerage operations to correspond with the proposed elimination of broker districts.

Current factors three, seven, eight and ten remain unchanged.

In addition, CBP proposes to add five new factors that may be considered:

(1) 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;

(2) communications between CBP and the broker;

(3) the broker’s responsiveness and action to communications, direction, and notices from CBP;

(4) communications between the broker and its officer(s); and,

(5) the broker’s responsiveness and action to communications and direction from its officer(s).

The new factors are being proposed due to their importance in the modern brokerage environment and their importance in evidencing the proper transaction of customs business. A broker filing entries late, paying the government late, or not returning client communications are all evidence of failure to exercise responsible supervision and control. A broker not

communicating well with CBP or the broker's officer(s) (not returning calls or emails, etc.) also evidences failure of responsible supervision and control.

Paragraph (b) of § 111.28 describes a broker's requirement to report information regarding its employees to CBP. CBP proposes to restructure paragraph (b) with (b)(1) covering current employees, (b)(2) covering new employees, and (b)(3) covering terminated employees. With each of these paragraphs CBP is proposing that employee lists be submitted and updated through a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, the proposed amendments allow for written submission to the designated Center as an alternative. This document also proposes to provide uniformity for reporting deadlines across the various categories of employees. The proposed changes would allow a broker thirty (30) calendar days to notify CBP of changes to any of the information required under this section regardless of whether the employee is current, new or terminated. CBP proposes also to simplify the employee information that must be provided to account for the proposed elimination of districts and moving to a national permit-only system. The proposed elements include: name, social security number, date and place of birth, date of hire, and current home address. This proposed change represents a reduction in the information reporting requirements. Finally, CBP proposes removing the requirement that the employee lists be provided in writing to allow for electronic submission.

Due to the reorganization of paragraph (b), CBP proposes to redesignate current paragraph (b)(3) as paragraph (c) and to update the cross-references in new paragraph (c) to account for proposed changes to paragraph (b). In addition, CBP proposes to redesignate current paragraphs (c) and (d) as paragraphs (d) and (e). Redesignated paragraph (d) covers termination of a broker who is a qualifying member of a partnership or a qualifying officer of an association

or corporation. Redesignated paragraph (e) addresses changes in ownership of a broker. To account for the proposed elimination of district permits, CBP proposes to update the submission requirement from each port through which a permit has been granted to the director of the designated Center in both redesignated paragraphs.

Section 111.30 provides the notification requirements for when a broker changes his or her business address, organization, name, or location of business records, as well as information concerning the triennial status report and procedures for the termination of a brokerage business. This document proposes changes to the timing and method by which a broker must notify CBP of changes in his or her business address, organization name, and other updates required by § 111.30. Paragraph (a) covers change of address. CBP proposes to revise paragraph (a) to change the timing requirement from immediate notification in writing to notification within ten (10) calendar days through a CBP-authorized electronic data interchange (EDI) system. EDI is the method in which the trade transmits data electronically to CBP systems. If a CBP-authorized EDI system is not available, the proposed amendments allow for written submission to the designated Center as an alternative. These changes are intended to provide greater flexibility for both the broker and CBP.

Paragraph (b) of § 111.30 covers changes in an organization. CBP proposes to revise the introduction to paragraph (b) to change the timing requirement from immediate notification in writing to the port director to notification within ten (10) calendar days in writing to the director of the designated Center. CBP then proposes to redesignate current paragraph (b)(2) as (b)(3) and adding a new paragraph (b)(2) to require that a brokerage notify CBP of 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 permit qualifier. Currently, CBP

requires updated information when there is a change in a brokerage's license qualifier. Under the proposed national permit system, the licensed member or officer who qualifies the brokerage for the license may be different from the licensed employee who qualifies the brokerage for the national permit.

Paragraph (c) of § 111.30 covers name changes. CBP proposes to amend paragraph (c) to account for the proposed elimination of district permits.

Paragraph (d) of § 111.30 describes the requirements of the status report. CBP proposes to update the paragraph header to triennial status report to better reflect industry terminology. In addition, CBP proposes changes to allow for electronic filing by allowing submission of payment or valid proof of payment with the triennial status report. CBP also proposes to allow for filing through a CBP-authorized EDI system when available. If a CBP-authorized EDI system is not available, the proposed amendments allow for written submission to the designated Center as an alternative.

CBP proposes to reorganize paragraph (d)(2) in order to add a new paragraph (d)(2)(ii). Specifically, current paragraphs (d)(2)(i), (ii), and (iii) become (d)(2)(i)(A), (B) and (C) and a new paragraph (d)(2)(ii) is added to read: an individual broker not actively engaged in transacting business as a broker must provide CBP his or her current mailing address, and state whether or not he or she still meets the applicable requirements of §§ 111.11 and 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53. This new paragraph is added to ensure that CBP maintains current contact information on inactive brokers. Next, CBP proposes to reorganize paragraph (d)(3) into paragraph (d)(3)(i) which requires information on the broker's office of record as well as the license and permit qualifier for the partnership, association or corporation. The proposed changes create consistent

use of terminology and reflect the importance of maintaining current contacts under the proposed national permit framework. In addition, CBP proposes a new paragraph (d)(3)(ii) to require that a partnership, association or corporation broker also affirm in their triennial report that they continue to meet all applicable requirements. The proposed new paragraph is consistent with the triennial reporting requirements for individual brokers.

In paragraph (d)(4) of § 111.30 regarding failure to file a triennial report timely, CBP proposes to remove references to port director as the CBP officer who transmits a notice of suspension and update them with references to CBP to provide the agency with flexibility as to where CBP broker management is conducted – at the port, at a Center of Excellence and Expertise, or at Headquarters. In addition, when a broker wishes to have his or license reinstated CBP proposes to allow a broker to submit proof of payment of the required fee within 60 days of the notice of suspension at the time of the filing of the required triennial report to allow for online payment separate from submission of the report. Finally, CBP proposes to replace references to *Customs Bulletin* with *Federal Register* as the means of publishing notice of broker license revocations to reflect current practice. Documents published in the *Federal Register* are reproduced in the *Customs Bulletin*.

Section 111.32 governs false information. CBP proposes to modify the section to make clear that a broker must not give, or solicit or procure the giving of, any information or testimony showing that the broker should have known that the information is false or misleading.

In addition, CBP proposes to add a new sentence requiring a broker to document and report to CBP when the broker separates or terminates the broker's representation of a client as a result of the broker determining that the client is intentionally attempting to defraud or otherwise commit any criminal act against the U.S. Government. Under the current CBP regulations, when



brokers discover that a client has not complied with the law or made errors or omissions in documents, affidavits, or other paper required by law, the broker must advise the client promptly of the noncompliance, error, or omission. *See* 19 CFR 111.39(b). The proposed new requirement puts an affirmative duty on the broker to document and report to CBP when the broker terminates representation of a client as a result of determining that the client is attempting to defraud or otherwise commit any criminal act against the U.S. Government. This requirement covers situations where a broker advises the client of a noncompliance, error, or omission, the client directs the broker to continue such noncompliance, error, or omission, and in response the broker terminates its relationship with the client. The proposed changes will allow brokers to act as “force multipliers” in combating fraud and other schemes against the government.

Section 111.36 addresses broker relations with unlicensed persons, including freight forwarders. The regulation sets forth conditions under which a broker may compensate a freight forwarder for referring brokerage business. One of the conditions is that the freight forwarder cannot, in a compensation agreement, forbid or prevent direct communication between the importer or other parties in interest and the broker. CBP proposes adding drawback claimants to the persons that a freight forwarder cannot forbid or prevent direct communication with by a broker in a compensation agreement. In addition, CBP proposes a new requirement that a broker must not rely on a customs power of attorney granted by a freight forwarder, but rather that the broker must obtain a customs power of attorney directly from the importer of record or drawback claimant. This proposed amendment is intended to clarify that the freight forwarder cannot serve as a barrier to communications between the broker and the importer of record or drawback claimant and to address issues of identity theft, supply chain security, fee transparency, and to help ensure that unlicensed persons are not benefitting from the customs business conducted.

This proposed change is also consistent with a COAC recommendation that CBP require that brokers obtain a power of attorney directly from the importer of record. The COAC recommended further that nothing should prevent the broker from communicating directly with the importer of record.

Section 111.39 describes the requirements for brokers giving advice to clients. Currently, paragraph (a) requires a broker not to withhold from or provide false information to a client. CBP proposes moving part of the second sentence from paragraph (a) to a new paragraph (b) titled “Due diligence” and, in that paragraph, adding language to specify that a broker must practice due diligence in providing advice on the proper payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

CBP next proposes redesignating current paragraphs (b) and (c) as a new paragraphs (c) and (d). Current paragraph (b) concerns what a broker should do when the broker is aware that a client has not complied with the law or has made an error in or omission from any document, affidavit, or other paper which the law requires the client to execute. That paragraph is proposed to be updated by removing the word “paper” and replacing it with “record” so as to include any electronic records. Finally, CBP proposes adding a new sentence to the end of new paragraph (c) to require that the broker must advise the client on the proper corrective actions required and retain a record of the broker’s communication with the client in accordance with 19 CFR 111.23. The proposed new language adds an affirmative duty to document the broker’s communication with the client. This clarifies the brokers’ role as “force multipliers” by contributing to the informed compliance of their clients. There are no proposed changes to redesignated paragraph (d).

Section 111.45 provides for revocation of a broker's license and/or permit by operation of law, the corresponding notification requirements for CBP, and the continuing obligations of the broker at issue. Paragraph (a) describes revocation of a license. CBP proposes to revise paragraph (a) to add that the national permit for a partnership, association, or corporation will also be revoked if the partnership, association, or corporation fails to employ a licensed customs broker who qualifies the national permit for any continuous period of 180 days. In addition, CBP proposes to add a new sentence to the end of paragraph (a) to provide that if the license of a partnership, association, or corporation is revoked by operation of law, CBP will notify the organization of the revocation.

Paragraph (b) of § 111.45 describes revocation of a permit. To account for the proposed elimination of district permits, CBP proposes to amend the heading to read "Annual broker permit fee," to remove the current language referring to requirements specific to district permits, and to replace it with language providing that: if a broker fails to pay the annual permit user fee pursuant to § 111.96(c), the permit is revoked by operation of law. In addition, the director of the designated Center will notify the broker in writing of the failure to pay and revocation of the permit.

Current paragraph (c) of § 111.45 describes the notification of revocation procedures. Since CBP proposes to address notice in paragraphs (a) and (b), it is proposed to rename paragraph (c) "Publication" and revise the provision to provide that notice of any revocation under this section will be published in the *Federal Register* to reflect current practice.

Paragraph (d) of § 111.45 provides that even if a broker's license or permit is revoked by law, other sanctions may still be applicable. CBP proposes to update the second cross-reference to reflect other proposed changes to this section.

## **Subpart D, Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation**

Section 111.53 provides the grounds for suspension or revocation of a license or permit. CBP proposes to redesignate current paragraph (g) as paragraph (h) in order to add a new paragraph (g). Proposed paragraph (g) will cover convictions of committing or conspiring to commit an act of terrorism as described in section 2332b of title 18, United States Code. (*See* 19 U.S.C. 1641(d)(1)(G)).

Section 111.55 covers the investigation of complaints. This section currently provides that every disciplinary complaint or charge against a broker will be forwarded for investigation to the special agent in charge. CBP does not refer all complaints or charges to a special agent in charge. To better reflect the current practice, CBP proposes to replace references to the special agent in charge with references to the appropriate investigative authority within DHS. In addition, CBP proposes to change the word “will” to “may” to allow for agency discretion in pursuing civil or administrative investigation of disciplinary complaints against a broker.

Section 111.56 provides for the review of the investigation report. This provision currently references the report of investigation which is a term specific to the process involving investigation by the special agent in charge. Because CBP no longer refers all complaints or charges to the special agent in charge, this document proposes to replace “report of investigation” with “report on the investigation of complaints, or if there is no report on the investigation of complaints, other documentary evidence,” to better reflect current practice.

Section 111.62 describes the content requirements for a notice of charges. CBP proposes to amend paragraph (d) to remove the 10-day notice of the time and place of a hearing. CBP will continue to provide notice of the time and place of a hearing as provided for in paragraph 111.64(a). In addition, paragraph (e) states that the broker may file verified answers to any

charges prior to the hearing. Currently, the broker is required to file his or her verified answers in duplicate. CBP proposes to remove the requirement to file in duplicate to better reflect the current electronic business environment.

Section 111.63 covers service of notice and statement of charges. Paragraph (a) covers individual brokers. CBP proposes to amend paragraph (a)(2) by removing the requirement that the return card be signed solely by the addressee. In practice, this is unlikely to happen and amending the paragraph to allow for certified mail, return receipt requested, addressed to the broker's office of record brings the requirement in to line with paragraph (c) on certified mail and evidence of service. In addition, CBP proposes to amend paragraph (c) by removing the word "duly" and by adding reference to the broker's office of record. This change will permit CBP to rely upon mailing to the addresses provided to CBP by the broker.

Section 111.67 provides for information relating to the hearing. Current paragraph (e) provides that the Assistant Commissioner will designate the government representative. CBP proposes to remove paragraph (e) to better reflect current practice as attorneys from the Office of Chief Counsel represent the government at all broker hearings and work with the client offices to determine the necessary witnesses and representatives.

Section 111.74 describes the decision and notice of suspension, revocation or a monetary penalty. CBP proposes to remove the reference to publication in the *Customs Bulletin* because documents published in the *Federal Register* are reproduced in the *Customs Bulletin*.

Section 111.76 provides for procedures by which a broker may apply to CBP to reopen a case if an appeal is not filed. Paragraph (a) describes the grounds for reopening the case. Currently paragraph (a) provides that a broker may make written application in duplicate to reopen the case to have the order set aside or modified. CBP proposes to remove the

requirement to file in writing and to file in duplicate, and to allow for electronic communication and to better reflect the current electronic business environment.

Section 111.77 describes how CBP will provide notice of a vacated or modified order. CBP proposes to remove the reference to publication in the *Customs Bulletin* because documents published in the *Federal Register* are reproduced in the *Customs Bulletin*.

Section 111.81 covers settlement and compromise. CBP proposes to remove the language regarding approval of the Secretary of Homeland Security, or his designee, as the authority to settle and compromise has been delegated from the Secretary of Homeland Security to the Commissioner of U.S. Customs and Border Protection and subsequently to the Executive Assistant Commissioner, as discussed in detail below, making such approval no longer necessary.

#### **Subpart E, Monetary Penalty and Payment of Fees**

Section 111.91 provides the grounds for imposition of a monetary penalty and sets forth the maximum penalty. CBP proposes to update the cross reference to § 111.53 to reflect the additional grounds for suspension or revocation of a license or permit proposed in this document.

Section 111.96 describes fees required throughout part 111. As discussed above, CBP has conducted a fee study to review the license application fee. The fee study documenting the proposed fee changes, entitled “Customs Broker License Application Fee Study,” has been included in the docket of this rulemaking (Docket No. USCBP-2020-0009). Paragraph (a) describes the license application fee, the examination fee and the fingerprint fee. The current license application fee is \$200. Based on the findings of the fee study, CBP proposes to increase the license application fee and charge different fees for individual license applications and partnership, association or corporation license applications. Specifically, CBP proposes an

increase in the license application fee from \$200 to \$300 for an individual license application and from \$200 to \$500 for a partnership, association, or corporation license application.

Paragraph (b) of § 111.96 describes the permit application fee. CBP proposes to revise the paragraph to reflect the proposed elimination of district permits. Paragraph (c) of § 111.96 describes the permit user fee. To reflect the proposed elimination of district permits, CBP is proposing in a concurrent notice of proposed rulemaking, published elsewhere in this issue of the *Federal Register*, conforming amendments to eliminate all references to customs broker district permit fees, including proposed amendments to paragraph (c) of § 111.96 (See “Removal of References to Customs Broker District Permit Fee” RIN 1515-AE43).

Paragraph (d) of § 111.96 describes the status report fee. CBP proposes to amend the paragraph header to read triennial status report fee which matches industry terminology. In addition, CBP proposes to explain that the triennial status report must be filed through the CBP-authorized EDI system, if available. If a CBP-authorized EDI system is not available, the triennial status report must be filed with the director of the designated Center.

### **Delegation of Authority**

The Secretary of Homeland Security and CBP officials are empowered to delegate authority. Changes made in the proposed regulations reflect areas where the Secretary of Homeland Security and CBP officials have, or might, delegate certain decision-making authority. DHS Delegation Number 7108 (May 5, 2015) delegates the authority regarding the denial, revocation, suspension, or cancellation of customs brokers’ licenses and permits as well as settlements and penalties from the Secretary of Homeland Security to the Commissioner of Customs and Border Protection. Additional delegations of authority that have been made within CBP are reflected in the proposed regulatory text. CBP proposes changes to reflect these

delegations in §§ 111.13, 111.14, 111.15, 111.16, 111.17, 111.19, 111.28, 111.30, 111.51, 111.52, 111.53, 111.55, 111.56, 111.57, 111.61, 111.66, 111.69, 111.70, 111.71, 111.72, 111.74, 111.75, 111.76, 111.77, 111.79, and 111.81. (19 CFR 111.13, 111.14, 111.15, 111.16, 111.17, 111.19, 111.28, 111.30, 111.51, 111.52, 111.53, 111.55, 111.56, 111.57, 111.61, 111.66, 111.69, 111.70, 111.71, 111.72, 111.74, 111.75, 111.76, 111.77, 111.79, and 111.81.) The proposed changes reflect the delegation orders in place to allow for greater flexibility in administering broker-related decisions within CBP and DHS.

### **Nomenclature Updates**

This document also proposes to update the nomenclature throughout part 111. As noted above, to reflect the establishment of the Centers, CBP proposes replacing references in part 111 to the ports and port directors with references to the Centers and directors of the designated Centers. Also previously discussed, CBP proposes to update all instances of Assistant Commissioner to Executive Assistant Commissioner and all instances of Office of International Trade to Office of Trade. In addition, CBP proposes a grammatical change to paragraph (a)(1) of § 111.42, by amending the word “Customs” to be in the lower case. (19 CFR 111.42). Finally, due to the renaming of U.S. Customs to Customs and Border Protection (CBP) this document proposes to replace references to Customs with CBP in §§ 111.2, 111.12, 111.21, 111.25, 111.28, 111.30, 111.53, 111.91, 111.92, 111.94, and 111.96. (19 CFR 111.2, 111.12, 111.21, 111.25, 111.28, 111.30, 111.53, 111.91, 111.92, 111.94, 111.96).

### **Other Conforming Amendments**

#### **Part 24**



Part 24 of title 19 of the CFR (19 CFR Part 24) sets forth the regulations regarding customs financial and accounting procedures. Section 24.1 provides for the collection of Customs duties, taxes, fees, interest, and other charges. To reflect the proposed elimination of the district permit, this document proposes conforming amendments to § 24.1(a)(3)(i). Section 24.22 describes the customs Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees and limitations for certain services. Specifically, paragraph (h) of § 24.22 describes the customs broker permit user fee. In a concurrent notice of proposed rulemaking, published elsewhere in this issue of the *Federal Register*, CBP proposes conforming amendments to § 24.22(h) and (i)(9) to eliminate all references to broker district permit fees (*See* “Removal of References to Customs Broker District Permit Fee” RIN 1515-AE43).

#### **Part 111**

The authority for part 111 currently provides a specific authority citation for § 111.3. When the text of § 111.3 was transferred to § 111.2 in a final rule published in the *Federal Register* (65 FR 13880) on March 15, 2000, CBP inadvertently did not revise the specific authority citation for either section. CBP proposes to correct this by revising the specific authority citation for § 111.2 by adding that this section is also issued under 19 U.S.C. 1484 and 4798, and by removing the specific authority citation for § 111.3.

#### **Executive Orders 13563, 12866, and 13771**

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and

of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. This proposed rule is expected to be an EO 13771 deregulatory action. CBP has prepared the following analysis to help inform stakeholders of the impacts of this proposed rule.

Table 1: Summary Of Changes As a Result of the Rule

<b>Provision</b>	<b>Section</b>	<b>Change</b>	<b>Cost/Benefit</b>
111.1	Subpart A	Update/eliminate definitions; change primary point of contact to designated Center	Neutral - changes reflect current practice and statutory changes
111.2	Subpart A	Eliminate district permits and require national permits	\$40,000 annualized net benefit. See section 3.14
111.3	Subpart A	Requires customs business to be conducted within the customs territory of the US; brokers must maintain a point of contact	Neutral - clarifies current regulations and reflects current practice
111.11	Subpart A	Adds that Center director may reject an incomplete application	Benefit - increases efficiency
111.12(a)	Subpart B	Updates the place of submission for applications; removes requirement that applications are submitted under oath	Benefit - increases efficiency and reduces the burden on applicants
111.12(b)	Subpart B	Remove requirement to post notice of applications	Benefit - reduces the burden on CBP
111.13	Subpart B	Revisions to reflect new national permit system; written and electronic notification of examination results	Neutral - the costs of the new fee system are addressed in section 3.14.
111.14	Subpart B	Clarifies that CBP may use information from the interview in background investigation	Neutral - reflects current practice
111.16	Subpart B	Expansion of the grounds to justify the denial of a license	Benefit - increases professionalism
111.17	Subpart	Adds new method to communicate	Benefit - greater flexibility

	B	further information to CBP for appeal of an application denial	
111.18	Subpart B	Requires applicants to provide new or corrected information when re-applying	Benefit - fewer application appeals will be rejected for lack of new information Cost – applicants will need to expend time in collecting and submitting information
111.19	Subpart B	Replacing district permits with national permits	\$40,000 annualized net benefit. See section 3.14
111.19(b)	Subpart B	Revision of the procedures to apply for a permit to account for the switch from district to national permits	Neutral – the process is very similar, but with a national permit
111.19(c)	Subpart B	Revision of permit fees	See “Removal of References to Customs Broker District Permit Fee” RIN 1515-AE43
111.19(d)	Subpart B	Elimination of the requirement to maintain a place of business in each port where a district permit is held	Benefit - allows for greater flexibility and efficiency for brokers and CBP
111.19(e)	Subpart B	Language updates to reflect the change to national permits and designated Centers	See above
111.19(g)	Subpart B	Clarifies applicants must provide additional information or arguments in support of a denied application; allows information to be provided through various communication methods	Benefit - increases professionalism and decreases time spent by CBP acquiring information Cost – requires applicants to expend time in providing additional information
111.21	Subpart C	Requires brokers to notify CBP of any electronic records breach and to provide CBP a designated point of contact for recordkeeping in addition to the current contact provided for financial queries	Benefit – enhances CBP’s risk management approach. See section 3.3/section 3.8
111.23	Subpart C	Requires that electronic records be stored within the customs territory of the US	Benefit - increases security. See section 3.3
111.24	Subpart C	Clarifies disclosure rules	Benefit reduces confusion. See section 3.9
111.25	Subpart C	Revises guidelines for CBP inspection of broker records with the elimination of broker districts	Neutral - see section 3.4

111.27	Subpart C	Update of language to reflect the transition of responsibilities from Treasury to DHS following the creation of DHS	Neutral – reflects the current environment
111.28	Subpart C	Clarifying requirements in relation to responsible supervision and control and allows for electronic submission of employee lists	Benefit - increases flexibility. See section 3.10
111.30	Subpart C	Modification to the timing requirement for when a broker notifies CBP of information changes, including a new requirement for inactive brokers to provide CBP with up-to-date contact information	Benefit - increases professionalism, keeps CBP better informed, and allows greater efficiency for broker's changing status Cost – inactive brokers will expend time to submit their information
111.32	Subpart C	Places an affirmative burden on the broker to report to CBP when a broker terminates a client relationship as a result of determining that the client is attempting to defraud the US government	Cost - \$2,907 annually Benefit - improves CBP's awareness of potential illegal activity. See section 3.5
111.36	Subpart C	Modifies the requirements for brokers when dealing with freight forwarders	Neutral – time spent does not change. See section 3.6
111.39	Subpart C	Guidelines for how brokers may behave with clients; requires brokers to advise clients of corrective actions and maintain communication records	Neutral – reflects current practice See section 3.11
111.45	Subpart C	Updates to reflect the change to national permits	Neutral – specifies national permit
111.53	Subpart D	Adds conviction of committing or conspiring to commit an act of terrorism to the grounds for suspension or revocation of a license or permit	Benefit - increases professionalism
111.55	Subpart D	Updates to reflect the current practice of not referring all complaints to a special agent	Neutral – reflects current practice
111.56	Subpart D	Updates to reflect current practice in the investigation of a complaint	Neutral – reflects current practice
111.62	Subpart D	Updates to requirements for notification of charges to reflect new electronic options	Neutral – reflects improved technology
111.63	Subpart D	Removes the requirement that a return card be signed solely by the addressee; permits CBP to rely upon the mailing	Benefit - increases efficiency

		address provided by the broker	
111.67	Subpart D	Updates to reflect the current practice of Office of Chief Counsel representing the government	Neutral – reflects current practice
111.74	Subpart D	Eliminates the requirement to publish suspension, revocation, or penalty notices in the Customs Bulletin	Benefit - reduces the burden on CBP
111.76	Subpart D	Allows for electronic communication when filing an appeal	Benefit - increases efficiency
111.77	Subpart D	Eliminates the requirement that CBP provide notice of a vacated or modified order in the Customs Bulletin	Benefit - reduces the burden on CBP
111.81	Subpart D	Updates to the signing requirement for a settlement to reflect delegation of authorities	Neutral – reflects delegation of existing authority
111.96	Subpart E	Updates to the user application fee	See above

## 1. Need and Purpose of Rule

The primary purpose of this rule is to formalize recent changes in the permitting of licensed customs brokers. To take advantage of new technologies and reflect a changing trade environment, CBP is switching from a district permit system to a national permit system. Licensed brokers who have traditionally been required to apply for and operate under a permit for each district in which they do business may now work under a single, national permit.

The rule also proposes changes in the license application fees charged by CBP, which CBP proposes to increase to cover a greater portion of the costs CBP has always faced. Because these costs are being moved from CBP to brokers, they are considered a transfer. Finally, the rule contains several provisions meant to professionalize the broker industry, formalize current practices into regulations, and adapt regulations to reflect technological advancements. The majority of brokers already follow many of these practices, like storing records electronically within the customs territory of the United States and reporting clients they know have attempted

to commit fraud. This rule provides better and more concrete guidance in these matters, at little or no cost to CBP or customs brokers.

Monetized costs for customs brokers would result from no longer receiving a first district permit concurrent with a broker's license, and the requirement for brokers to notify CBP when separating from a client relationship due to attempted fraud or criminal acts. The five-year total monetized cost of the rule ranges from \$44,000 discounted at 3 percent to \$39,200 discounted at 7 percent. The annualized cost is approximately \$9,600 using both 3 and 7 percent. Customs brokers who do not concurrently receive their first district permit with their brokers license would save the cost of district permit fees. Additionally, CBP and customs brokers would save time for applying for and reviewing district permit applications and waivers. The five-year total monetized cost savings from this rule ranges from \$227,100 discounted at 3 percent to \$202,100 discounted at 7 percent. The annualized cost savings ranges from \$49,600 using a 3 percent discount rate to \$39,700 using a 7 percent discount rate. The switch to a national permit and the other changes to this rule lead to an overall net monetized total five-year cost savings ranging from \$183,100 discounted at 3 percent to \$163,000 discounted at 7 percent. The net annualized cost savings ranges from approximately \$40,000 to \$39,700 using a 3 and 7 percent discount rate, respectively.

Customs brokers are private individuals and/or business entities (partnerships, associations or corporations) that are licensed and regulated by CBP to assist importers in conducting customs business. Customs brokers have an enormous responsibility to their clients and to CBP that requires them to properly prepare importation documentation, file these documents timely and accurately, classify and value goods properly, pay duties, taxes, and fees, safeguard their clients' information, and protect their licenses from misuse.

In an effort to perform these duties and responsibilities efficiently, customs brokers have embraced recent technological advances such as making the programming and business process changes necessary to use the Automated Commercial Environment (ACE). ACE provides a single, centralized access point to connect CBP and the trade community. Through ACE, manual processes are streamlined and automated, and the international trade community is able to more easily and efficiently comply with U.S. laws and regulations. CBP itself has also endeavored to embrace these technological advances, to not only more efficiently perform its duties of facilitating legitimate trade while making sure that proper revenue is collected, but also to provide more efficient tools for customs brokers to file and monitor the information submissions necessary for a timely and accurate entry filing. One of the central developments that will allow CBP to perform its operational trade functions more effectively is the transition to the Centers of Excellence and Expertise (Centers). Beginning in 2012, CBP developed a test to incrementally transition the operational trade functions that traditionally reside with port directors to the Centers. The Centers were established in strategic locations around the country to focus CBP's trade expertise on industry-specific issues and provide tailored support for importers. CBP established these Centers to facilitate trade, reduce transaction costs, increase compliance with applicable import laws, and achieve uniformity of treatment at the ports of entry for the identified industries. On December 20, 2016, CBP published an interim final rule in the *Federal Register* (81 FR 92978) ending the Centers test and establishing the Centers as a permanent organizational component of CBP. The current broker regulations are based on the district system in which entry, entry summary, and post-summary activity are all handled by the ports within a permit district. With the transfer of trade functions to the Centers, a significant portion of these activities, including entry summary and post-summary, are now handled directly

by the Centers. The Center structure is based on subject matter expertise, as opposed to geographic location, placing them outside of the district system as it currently exists. With this proposed rule, CBP proposes to modernize the regulations governing customs brokers to better reflect the current work environment and streamline the customs broker permitting process.

## **2. Background**

It is the responsibility of CBP to ensure that only qualified individuals and business entities can perform customs business on behalf of others. CBP accomplishes this task by only issuing licenses to individuals and business entities that meet the below criteria:<sup>1</sup>

Individual customs broker license requirements:

- Must pass the customs broker license examination within 3 years of submitting the license application;
- Must be a U.S. citizen and attain the age of 21 prior to submitting the license application;
- Must possess good moral character; and
- Must pay the requisite fee.

Business entity customs broker license eligibility:

Partnerships

- Must have at least one member of the partnership who is a licensed customs broker;
- and

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<sup>1</sup> See 19 CFR Part 111.



- Must pay the requisite fee.

#### Associations and Corporations

- Must have at least one officer who is a licensed customs broker;
- Must be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and
- Must pay the requisite fee.

Currently, CBP requires all prospective brokers, both individuals and business entities, to submit CBP Form 3124: *Application for Customs Broker License* to the port of entry at which they intend to conduct customs business. CBP Form 3124 is used to verify that prospective customs brokers satisfy the requirements for receiving a customs broker's license. The customs territory of the United States is divided into seven customs regions. Within each region, the customs territory of the United States is further divided into districts; there are currently approximately 40<sup>2</sup> customs districts.<sup>3,4</sup> Currently, a district permit is required for each district in which a customs broker intends to conduct customs business. Each district permit requires a one-time permit fee of \$100 and an annual user fee of \$147.89.<sup>5</sup> A customs broker has the option of receiving his/her first district permit concurrently with the receipt of the customs broker license, in which case the \$100 permit fee is waived. Even if this option is used, the

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<sup>2</sup> Source: Discussions with the CBP Broker Management Branch on 3/15/2017.

<sup>3</sup> Customs districts are not evenly divided amongst the seven customs regions (one region may have more or fewer customs districts than another).

<sup>4</sup> In addition to the 40 geographically defined customs districts, there are three special districts that are responsible for specific types of imported merchandise. According to the Broker Management Branch, these special districts include districts 60, 70 and 80. District 60 refers to entries made by vessels under their own power. District 70 refers to shipments with a value under \$800. District 80 refers to mail shipments. These three special districts do not require the use of a licensed broker with a specific district permit and as a result are not affected by this provision.

<sup>5</sup> 19 CFR 24.22(h). The user fee is subject to adjustment based on inflation. Proposed amendments to the regulatory provisions regarding the district permit user fee are found in the companion Department of the Treasury NPRM entitled. *See* "Removal of References to Customs Broker District Permit Fee" RIN 1515-AE43.

customs broker is still responsible for the annual user fee of \$147.89.<sup>6</sup> However, this option is not exercised often for individual customs broker license holders. Currently, according to a CBP Broker Management Branch estimate, approximately two (2) percent of individual customs broker license holders get their first district permit concurrently issued with the receipt of their broker's license. The majority of individuals do not take advantage of this benefit. Most licensed brokers file exclusively under a corporate permit and do not need to get an individual permit, saving them the annual user fee. On the other hand, according to CBP's Broker Management Branch, 100 percent of current corporate license holders get their first district permit concurrently issued with their customs broker license.

A broker who intends to conduct customs business at a port within a district for which the broker does not have a permit must submit an application for a district permit in a letter to the director of the port at which the broker intends to conduct customs business. Each application for a district permit must set forth or attach the following:

- The applicant's broker license number and date of issuance;
- The address where the applicant's office will be located within the district and the email address and telephone number of that office;
- A copy of a document which reserves the applicant's business name with the State or local government;
- The name, broker license number, office address(es), telephone number, and email address of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;
- A list of all other districts for which the applicant has a permit to transact customs business;

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<sup>6</sup> User fees are addressed in "Removal of References to Customs Broker District Permit Fee" RIN 1515-AE43.

- The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact; and
- A list of all persons who the applicant knows will be employed in the district with all the required employee information.

The applicant for the district permit must have a place of business at the port where the application is filed, or must have made firm arrangements satisfactory to the port director to establish a place of business, and must exercise responsible supervision and control of that place of business once the permit is granted. Instead of a customs broker getting multiple district permits, he or she could also apply for a national permit for the purpose of transacting customs business in all districts within the customs territory of the United States as defined in 19 CFR part 101. The national permit application may be submitted concurrently with or after the submission of an application for a broker's license.

CBP first introduced national permits in 2000 to allow a broker to conduct a limited set of activities in districts for which the broker does not have a district permit. When it was first introduced, a national permit allowed licensed brokers to place an employee in the facility of a client for whom the broker is conducting customs business; file electronic drawback claims; participate in remote location filing; and make representations after the entry summary has been accepted. In the years since the national permit was introduced, and with the full implementation of ACE, almost every activity performed under a district permit was added to the national permit. Only those activities, such as the filing of paper entries and certain payment submissions, that require physical presence at a port currently require a district permit instead of a national permit. With the national permit system, these restrictions will no longer apply. This proposed rule will allow a national permit holder to conduct any type of customs business in all

districts within the customs territory of the United States. This represents a full expansion of the activities allowed under a national permit. CBP has determined that in the increasingly automated environment brokers may need to make contact with CBP personnel across the customs territory and there is no longer a reason to restrict national permit holders.

Currently, an application for a national permit must be in the form of a letter submitted to the director of the designated Center, and include the following:

- The applicant's broker license number and date of issuance;
- If the applicant is a partnership, association, or corporation, the name and title of the national permit qualifier;
- The address, telephone number, and email address of the office designated by the applicant as the broker's office of record; that office will be noted in the national permit when issued;
- A copy of a document which reserves the applicant's business name with the State or local government;
- The name, telephone number, and email address of the licensed broker or knowledgeable employee to be available to CBP to respond to issues related to the transaction of customs business;
- The name, broker license number (if designated), office address, telephone number, and email address of each individual broker who will exercise responsible supervision and control over the customs business of the applicant under the national permit;
- A supervision plan describing how the broker will exercise responsible supervision and control, including compliance with § 111.28 (*see* 19 CFR 111.28);

- The place where the applicant's brokerage records relating to customs business conducted under the national permit will be retained and the name of the applicant's designated recordkeeping contact (*see* 19 CFR 111.22 and 111.23);
- The name, telephone number, and email address of the knowledgeable employee responsible for broker-wide records maintenance and financial recordkeeping requirements;
- A list of all employees of the broker, together with the specific employee information prescribed in § 111.28(b) for each of those employees (19 CFR 111.28(b)); and
- A receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid (19 CFR 111.96(b) and (c)).

In an effort to modernize the permitting process for customs brokers, this proposed rule would eliminate the district permitting process and automatically grant each current district permit holder a national permit. Upon adoption of a final rule, CBP will provide guidance to those brokers with only a district permit(s) explaining the process to transition their district permit(s) to a national permit. Currently, customs brokers who do not have a national permit must maintain an office and have a separate district permit for each district in which the broker wants to conduct customs business. For some brokers, this means having many small offices across the country. This rule removes the requirement to have a separate local office in each district in which customs brokers do business. Since, under a national permitting structure, customs brokers are no longer required to have a representative in each district in which they conduct customs business, brokers could organize themselves to better suit their specific business needs.

Furthermore, brokers that currently only hold active district permits will be granted a national permit at no cost. Upon adoption of a final rule, CBP will provide guidance to those

brokers with only a district permit(s) explaining the process to transition their district permit(s) to a national permit. According to CBP’s Broker Management Branch, the customs brokers that will be transitioned to national permits represent 6 percent of active brokers. The remainder either have no permit at all or already have a national permit.

*Projection of customs broker licenses and permits*

CBP’s Broker Management Branch provided historical data from 2011-2016, the full range of quality data available, The 2,093 permitted brokers hold a combined total of 3,067 active district permits.<sup>7</sup> This is an average of approximately 1.5 district permits per district permit holder. Using this figure, we can project how many district permits would have been held by licensed brokers over the period of the analysis, from 2017 through 2021 under the baseline condition (i.e., if this rule is not promulgated). This is shown in Exhibit 2 below.

Exhibit 2: Projection of New Individual and Corporate Permits

<b>Year</b>	<b>New Individual Licenses Issued</b> (10% annual growth rate)	<b>New Individual Permits</b> (13% of New Individual Licenses x 1.5)	<b>New Corporate Licenses Issued</b> (9% annual growth rate)	<b>New Corporate Permits</b> (100% of New Corporate Licenses x 1.5)
2017	762	149	97	146
2018	839	164	106	159
2019	922	180	115	173
2020	1,015	198	126	188
2021	1,116	218	137	205
<b>Total</b>	<b>4,654</b>	<b>908</b>	<b>581</b>	<b>871</b>

Note: Values may not sum to total due to rounding.

### 3. Proposed Rule Amendments: Costs, Benefits, and Transfer Payments

In this proposed rule, CBP is proposing regulatory changes that include: increasing fees for the customs broker license application; eliminating district permits so each customs broker only needs one national permit to conduct customs business; mandating that each broker must

<sup>7</sup> 1,258 brokers who hold at least 1 district permit concurrently hold a national permit. Additionally, 13 licensed brokers hold a national permit without holding any district permits and are unaffected by this rule.

provide notification to CBP of any known breach of records within 72 hours of discovery; requiring that upon request by CBP to examine records, brokers make all records available to CBP within thirty (30) calendar days at the location specified by CBP; requiring that customs brokers obtain a customs power of attorney directly from the importer of record or drawback claimant, not a freight forwarder, to transact customs business for that importer or drawback claimant; and requiring that a broker document and report to CBP when the broker separates from or cancels a client as a result of the broker's determining that the client is intentionally attempting to use the services of the broker to defraud or otherwise commit any criminal act against the U.S. Government. Finally, this rule would allow CBP to make numerous non-substantive changes and conforming edits in an effort to modernize the regulations governing customs brokers and to clarify existing language in the regulations to better reflect what is already occurring. We will now explore the costs, benefits, and payment transfers of each provision separately.

### **3.1 Broker License Fee**

Currently CBP charges \$200 fees per individual or business entity for the broker license application. These fees are used to offset the costs associated with servicing the brokers. Based on a fee study, entitled "Customs Broker License Application Fee Study," CBP has determined that these fees are no longer sufficient to cover its costs.<sup>8</sup>

The study found that fees of \$463 and \$815 are necessary to recover the costs associated with reviewing the customs broker license application for individuals and business entities, respectively. These fees, however, are significantly higher than the current fees and, if implemented, these fee rates could become an economic disincentive to those pursuing a career

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<sup>8</sup> The fee study is included in the docket of this rulemaking (docket number USCBP-2020-0009).

as a customs broker. Therefore, in an effort to minimize the financial burden to prospective customs brokers while also recovering a larger portion of the costs associated with reviewing and vetting the license application, CBP has decided to limit the increase of the license application fee to \$300 for individuals and \$500 for business entities; the remainder of the costs would continue to be covered by appropriated funds. Although these fee increases represent an increased expense for prospective customs brokers, these fee increases do not increase overall costs to society as these costs are already being paid by CBP's appropriated funds.

When assessing costs of proposed rules, agencies must take care to not include transfer payments in their cost analysis. As described in OMB Circular A-4, transfer payments occur when "... monetary payments from one group [are made] to another [group] that do not affect total resources available to society." Examples of transfer payments include payments for insurance and fees paid to a government agency for services that an agency already provides. CBP's processing of the customs broker license application is an established service that already requires a fee payment. As such, the fee associated with each service is considered a transfer payment. Currently, the shortfall in funding not covered by fees is covered by funds appropriated by CBP. The proposed increased fees paid by brokers would replace appropriated funds. CBP recognizes that the proposed fee changes may have a distributional impact on prospective customs brokers. In order to inform stakeholders of all potential effects of the proposed rule, CBP has analyzed the distributional effects of the proposed rule in section "3.15 Distributional Impacts."

### **3.2 Permit Application Fee**

Currently brokers are required to pay a \$100 permit application fee in connection with each permit application by either an individual or corporation. The applicant has the option of



concurrently receiving its first district permit with its customs broker's license and therefore forgoing the \$100 permit application fee for its first district permit. However, some brokers do not request an initial district permit at the time they get their license. When this is the case and the broker later applies for a district permit, or if brokers make a request to obtain a permit for additional districts, then they must submit the following information to CBP as set forth in 19 CFR 111.19(b):

- (1) The applicant's broker license number and date of issuance;
- (2) The address where the applicant's office will be located within the district and the telephone number of that office;
- (3) A copy of a document which reserves the applicant's business name with the state or local government;
- (4) The name of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;
- (5) A list of all other districts for which the applicant has a permit to transact customs business;
- (6) The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact; and
- (7) A list of all persons who the applicant knows will be employed in the district, together with the specific employee information for each of those prospective employees.

As a result of this rule, the options above pertaining to district permits will no longer exist and all brokers will have to get a single national permit to conduct customs business.

As shown in Exhibit 2 above, absent this proposed rule there would be 5,235 total (4,654 individual + 581 corporate) new broker licenses issued over the period of analysis from 2017

through 2021. Of these 5,235 licenses, 581 would be issued to corporations which would result in 871 corporate district permits (as mentioned above, each customs broker permit holder currently has 1.5 district permits on average). Additionally, as mentioned above, 100 percent of corporations exercise the option of concurrently receiving their first district permit with their customs broker's license, therefore saving the \$100 permit application fee for their first district permit. This means that, absent this rule, corporations would get 581 permits for free and would then have to pay for the remaining 290 permits for a cost of \$29,000 (\$100 permit application fee \* 290 corporate permits). As a result of this rule, these 581 corporate brokers will each have to get a single national permit and pay the \$100 permit application fee for each national permit for a total cost of \$58,100 (581 national permits \* \$100 permit application fee). This results in an additional cost to these corporate brokers of \$29,100 (\$58,100 - \$29,000) over the period of the analysis from 2017 through 2021. Please see Exhibit 3 below for a breakdown of these costs.

Exhibit 3: Costs for corporate permit holders over the period of analysis (\$2018)

Year	Number of new corporate broker licenses issued	Number of permits issued	Costs for corporate brokers without rule (\$)	Costs for corporate brokers with rule (\$)	Rule's cost for corporate brokers (\$)
2017	97	146	4,900	9,700	4,900
2018	106	159	5,300	10,600	5,300
2019	115	173	5,800	11,500	5,800
2020	126	188	6,300	12,600	6,300
2021	137	205	6,800	13,700	6,800
<b>Total</b>	<b>581</b>	<b>871</b>	<b>29,000</b>	<b>58,100</b>	<b>29,100</b>

Note: Values may not sum to total due to rounding.

As shown above in Exhibit 2, if this rule were not in effect there would be 4,654 new individual broker licenses resulting in 908 new individual permits over the period of analysis. According to CBP's Broker Management Branch, individual brokers do not get their first district permit issued concurrently with their customs broker's licenses nearly as often as corporations.

Approximately two (2) percent of individual customs broker license holders, or 93 of the estimated 4,654 new brokers, get their first district permit issued concurrently with their broker's license, saving the \$100 permit application fee charged for the first district permit. Using the average of 1.5 district permits per customs broker permit holder, we estimate that these 93 individual customs brokers would get 140 district permits over the period of the analysis if this rule did not go into effect. Since, absent this rule, the brokers would get 93 out of the 140 permits for free, brokers would have to pay for the remaining 47 permits for a cost of \$4,700 (\$100 permit application fee \* 47 permits). Under this proposed rule, these 93 individual brokers would each need a single national permit for a total of 93 permits resulting in a total cost of \$9,300 (\$100 national permit application fee \* 93 national permits). As a result of this rule, this two (2) percent of individual brokers will bear an additional total cost of \$4,600 (\$9,300 - \$4,700) over the period of analysis. Please see Exhibit 4 below for a breakdown of these costs.

Exhibit 4: Costs for the two (2) percent of individual permit holders over the period of analysis (\$2018)

<b>Year</b>	<b>Number of individual licenses issued for the 2% of permit holders</b>	<b>Number of permits issued</b>	<b>Costs for 2% of individual brokers without rule (\$)</b>	<b>Costs for 2% individual brokers with rule (\$)</b>	<b>Rule's costs for 2% of individual brokers (\$)</b>
2017	15	23	800	1,500	800
2018	17	25	800	1,700	800
2019	18	28	1,000	1,800	900
2020	20	30	1,000	2,000	1,000
2021	23	33	1,100	2,200	1,100
<b>Total</b>	<b>93</b>	<b>140</b>	<b>4,700</b>	<b>9,300</b>	<b>4,600</b>

Note: Values may not sum to total due to rounding.

The remaining 98 percent of individual customs broker permit holders do not get their first district permit concurrently with their broker's license, if they get any permits at all. Of the 13,624 active licensed brokers, approximately 15 percent hold at least one permit. Because 2 percent of those are corporate license holders and only 2 percent of individuals get a permit

concurrently with their license, about 11 percent of licensed brokers apply for and receive a permit after their license is issued. Under the current permit system, using an average of 1.5 permits per broker, 512 individual customs broker permit holders pay \$76,800 for 768 permits, because they pay the \$100 fee for every permit. With the national permit system, these brokers would pay \$51,200 for 512 national permits, resulting in a savings of \$25,600. Please see Exhibit 5 below for an itemization of these costs.

Exhibit 5: Costs savings for the 98 percent of individual permit holders over the period of analysis (\$2018)

Year	Number of individual licenses issued for the 11% of permit holders	Number of permits issued	Costs for 11% of individual brokers without rule (\$)	Costs for 11% of individual brokers with rule (\$)	Rule's cost savings for 11% of individual brokers (\$)	
2017	84	126	12,600	8,400	10,900	4,200
2018	92	138	13,800	9,200		4,600
2019	101	152	15,200	10,100		5,100
2020	112	167	16,800	11,200		5,600
2021	123	184	18,400	12,300		6,100
<b>Total</b>	<b>512</b>	<b>768</b>	<b>76,800</b>	<b>51,200</b>		<b>25,600</b>

Note: Values may not sum to total due to rounding.

Any brokers who apply for more than one permit will experience a time savings as a result of this rule because they will only need to apply for a single permit. Currently brokers spend approximately three hours to collect and submit the appropriate documentation to CBP.<sup>9</sup> The rule's elimination of these applications will result in time savings for the brokers as well as CBP. The estimated number of permits requested separately from individual licenses for the entire period of the analysis is taken from Exhibit 4 and Exhibit 5. Exhibit 4 implies there are 47

<sup>9</sup> Source: Email correspondence with the CBP Broker Management Branch on May 16, 2019.

permits for which 2% of individual customs brokers currently pay \$100 (\$4,700 permit costs without rule/\$100 per permit). Exhibit 5 explicitly shows that 11% of individual customs brokers currently pay \$100 for 768 permits. Summing these two figures, we find that all individual customs brokers will pay \$100 for 814 permits. Exhibit 6 shows the removal of the application for these permits will result in a monetized time savings worth \$75,200. This cost savings is based on CBP’s estimated fully-loaded hourly time value for customs brokers of \$30.79.<sup>10</sup>

Exhibit 6: Time savings monetized for broker district permit applications separate from license applications over the period of analysis (\$2018)

Year	Number of permits issued separate from license	Hourly time-burden for permit application	Rule’s cost savings for individual brokers
2017	133	3	\$12,300
2018	147	3	\$13,600
2019	161	3	\$14,900
2020	178	3	\$16,400
2021	195	3	\$18,000
<b>Total</b>	<b>814</b>	<b>3</b>	<b>\$75,200</b>

Note: Values may not sum to total due to rounding.

Relatedly, CBP would see cost savings due to the elimination of the district permit application review process. CBP estimates that it takes two hours of CBP processing, including

<sup>10</sup> CBP bases the \$30.79 hourly time value for customs brokers on the Bureau of Labor Statistics’ (BLS) 2018 median hourly wage rate for Cargo and Freight Agents (\$20.77), which CBP assumes best represents the wage for brokers, by the ratio of BLS’ average 2018 total compensation to wages and salaries for Office and Administrative Support occupations (1.4801), the assumed occupational group for brokers, to account for non-salary employee benefits, and rounded. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, “May 2018 National Occupational Employment and Wage Estimates, United States- Median Hourly Wage by Occupation Code: 43-5011.” Updated April 2, 2019. Available at [https://www.bls.gov/oes/2018/may/oes\\_nat.htm](https://www.bls.gov/oes/2018/may/oes_nat.htm). Accessed November 20, 2019. The total compensation to wages and salaries ratio is equal to the calculated average of the 2018 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations divided by the calculated average of the 2018 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category. Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004 - December 2018, “Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004-2018 by Respondent Type: Office and administrative support occupations.” Available at <https://www.bls.gov/web/ecec/ececqrtn.pdf>. Accessed June 4, 2019.

time to review and approve an application and create and deliver the permit to the applicant.<sup>11</sup>

Exhibit 7 shows CBP's total estimated cost savings of \$143,200 over the period of analysis. This is based on a CBP fully loaded wage rate of \$87.94<sup>12</sup> for CBP staff reviewing applications.

Exhibit 7: Time savings monetized for CBPOs reviewing district permit applications over the period of analysis (\$2018)

Year	Number of permits issued separate from license	Hourly time-burden for permit application review	Rule's cost savings for CBP
2017	133	2	\$23,500
2018	147	2	\$25,800
2019	161	2	\$28,400
2020	178	2	\$31,200
2021	195	2	\$34,400
<b>Total</b>	<b>814</b>	<b>2</b>	<b>\$143,200</b>

Lastly, the district permit waiver described in current § 111.19(d)(2) would be eliminated with the rule. Currently requests for a district permit waiver must be submitted to the port director and include a description of responsible supervision and control procedures and information on the volume and type of customs business conducted. The port director reviews the request and makes a recommendation to headquarters. Headquarters reviews and issues the decision.<sup>13</sup> According to the CBP Broker Management Branch this process takes two hours for brokers, including application processing and mailing paper documents to CBP. It takes an hour

<sup>11</sup> Source: Email correspondence with the CBP Broker Management Branch on May 16, 2019.

<sup>12</sup> CBP bases the \$87.94 hourly time value for CBP staff on a median annual loaded wage rate, including salary and benefits, of \$139,034. Dividing by 2080 work hours per year gives a median hourly wage of \$66.84. CBP then adds premium pay and non-salary costs for a median, fully-loaded hourly wage rate of \$87.94. Source of salary and benefit information: email correspondence with the U.S. Customs and Border Protection, Office of Finance on June 12, 2019.

<sup>13</sup> See 19 CFR 111.19(d)(2).

and a half for CBP to do the waiver analysis, prepare the recommendation memorandum, and for headquarters to make the final decision.<sup>14</sup> As shown in Exhibits 8 and 9 there is a total cost savings of \$5,031 (\$1,601 + \$3,430), as this entire process is eliminated under the national permit framework. Waiver estimates for calendar years 2019 to 2021 are based on compound annual growth rate from calendar years 2017 and 2018.

Exhibit 8: Time savings monetized for applicants requesting district permit waivers over the period of analysis (\$2018)

<b>Year</b>	<b>Number of broker district permit waivers</b>	<b>Hourly time-burden for waiver application</b>	<b>Rule's cost-savings for brokers requesting waivers</b>
2017	17	2	\$1,047
2018	6	2	\$369
2019	2	2	\$123
2020	1	2	\$62
2021	0	2	\$0
<b>Total</b>	<b>26</b>	<b>2</b>	<b>\$1,601</b>

Exhibit 9: Time savings monetized for CBPOs reviewing district permit waiver applications over the period of analysis (\$2018)

<b>Year</b>	<b>Number of broker district permit waivers</b>	<b>Hourly time-burden for waiver application review</b>	<b>Rule's cost-savings for CBP</b>
2017	17	1.5	\$2,243
2018	6	1.5	\$791
2019	2	1.5	\$264
2020	1	1.5	\$132
2021	0	1.5	\$0
<b>Total</b>	<b>26</b>	<b>1.5</b>	<b>\$3,430</b>

<sup>14</sup> Source: Email correspondence with the CBP Broker Management Branch on May 16, 2019

Exhibit 10 provides a summary of the costs and cost-savings pertaining to the removal of the district permit application and \$100 fee over the period of analysis. Note that a negative number indicates a savings and a positive number indicates a cost.

Exhibit 10: Costs and Cost-savings with Removal of District Permits for CY2017 -2021 (\$2018)

	Costs/Savings for Individuals			Costs/Savings for Corporations		Savings for CBP	
	Savings for 11%	Costs for the 2%	Time Savings	Costs for Corporation	Time Savings	Review of Permits	Review Waivers
2017	-\$4,200	\$800	-\$12,300	\$4,900	-\$1,000	-\$23,500	-\$2,200
2018	-\$4,600	\$800	-\$13,600	\$5,300	-\$400	-\$25,800	-\$800
2019	-\$5,100	\$900	-\$14,900	\$5,800	-\$100	-\$28,400	-\$300
2020	-\$5,600	\$1,000	-\$16,400	\$6,300	-\$100	-\$31,200	-\$100
2021	-\$6,100	\$1,100	-\$18,000	\$6,800	\$0	-\$34,400	\$0
Total	-\$25,600	\$4,600	-\$75,200	\$29,000	-\$1600	-\$143,200	-\$3,400
<b>Net Cost</b>		<b>-\$96,200</b>		<b>\$27,500</b>		<b>-\$146,700</b>	

### 3.3 Record of Transactions

Each broker must keep current, in a correct and itemized manner, records of accounts reflecting all his or her financial transactions as a broker. The broker must keep and maintain on file copies of all correspondence and other records relating to customs business. With this proposed rule, each broker must provide notification to the designated Center of any known breach of electronic or physical records relating to customs business. Notification to CBP must be provided within 72 hours of the discovery of the breach with a list of all known compromised importer identification numbers. Brokers already compile this information through their normal course of business and they can report the information to CBP in any format they choose. CBP assumes data breaches are rare, but includes this requirement as a preventive measure. CBP assumes this provision has virtually no cost to the brokers due to the infrequency of data breaches. CBP will use this information in its targeting of imports for inspection, which will help make imports safer.



### **3.4 Records Availability**

Currently, during the period of retention (5 years after the date of entry), the broker must maintain its records in such a manner that they can be readily examined by CBP when necessary. Records required to be maintained under this provision must be made available upon reasonable notice for inspection, copying, reproduction or other official use by representatives of the Department of Homeland Security. Additionally, customs brokers currently have the option to store records offsite. Under the proposed rule, upon request by CBP to examine records, the designated recordkeeping contact must make all records available to CBP within thirty (30) calendar days, or any longer timeframe as specified by CBP, at the location specified by CBP. We are making this change in the regulations to make sure brokers continue to give CBP the requested information and to specifically state for clarity that brokers need to keep records in the United States. As we are only explicitly stating an existing requirement for the sake of clarity, this will result in no additional burden for customs brokers.

### **3.5 Termination of Client Relationship**

In this proposed rule, we will now require that a broker document and report to CBP when it separates from a client relationship as a result of the broker's determining that the client is intentionally attempting to use the broker's services to defraud or otherwise commit any criminal act against the U.S. Government. This is an entirely new provision, so we do not have data on how often clients may use a broker's services to defraud or otherwise commit criminal acts against the U.S. Government. However, we do not expect this to happen often based on stakeholder feedback. CBP's Broker Management Branch estimates this to occur approximately 5 times per year and each resulting report will take brokers approximately four (4) hours to draft. CBP requests comment on these estimates.

To estimate the time cost spent writing and submitting this report to CBP, we must first determine a value of time for the individuals who would be preparing and submitting this report. We expect that, in most cases, this information will be submitted by customs brokers employing attorneys to draft the report. According to the U.S. Bureau of Labor Statistics, the 2018 median hourly earnings of an attorney is \$145.33.<sup>15</sup> These five (5) reports represent an additional burden to the broker and will result in a total annual cost of \$2,907 (4 hours per report \* 5 reports \* \$145.33 annual wage rate for an attorney) or a total cost of \$14,533 over the period of analysis from 2017 - 2021.

### **3.6 Customs Power of Attorney**

A customs broker is required to have a customs power of attorney (POA) prior to transacting any customs business on behalf of the importer of record. (*See* 19 CFR 141.46). Currently, an agent of the importer of record (IOR), which could be a freight forwarder that is properly designated by the IOR, may issue a POA on behalf of the IOR to a customs broker. In such instances, the customs broker may never have any contact with the IOR, only its agent (the forwarder). With this proposed rule, the broker must get a customs POA directly from the importer of record or drawback claimant and not via the freight forwarder or any other third party agent. This gives the broker direct access to the IOR when entering into the POA, which

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<sup>15</sup> CBP bases the \$145.33 hourly time value on the median hourly wage rate for lawyers, SOC 23-1011, (\$58.13) multiplied by 2.5 to account for benefits and other costs of employment. Source: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, “May 2018 National Occupational Employment and Wage Estimates, United States- Median Hourly Wage by Occupation Code.” Updated April 2, 2019. Available at [http://www.bls.gov/oes/2018/may/oes\\_nat.htm](http://www.bls.gov/oes/2018/may/oes_nat.htm). Accessed June 4, 2019.

The DHS ICE “Safe-Harbor Procedures for Employers Who Receive a No-Match Letter” used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, see page G-4 [Aug. 25, 2008] [<http://www.regulations.gov/#!documentDetail;D=ICEB-2006-0004-0922>]. Additionally, this methodology was also utilized in the analysis for the DHS USCIS final rule establishing a registration fee requirement for petitioners seeking to file H-1B petitions on behalf of cap subject aliens. See 84 FR 60307 (November 8, 2019).

increases transparency in the verification process. According to CBP's Broker Management Branch, it takes approximately 1.75 hours for the broker to get a customs POA from the freight forwarder. This time estimate will not change once the intermediary is removed and the broker must get the customs POA directly from the importer of record or drawback claimant, instead of allowing a freight forwarder or other third-party to do so on their behalf. Since brokers are currently required to get a customs POA, and importers already provide a POA, this provision would not result in any additional burden to brokers. The new provision only requires direct contact between the broker and the IOR.

### **3.7 Professionalism**

We are making a number of changes in an effort to increase professionalism and clarify what brokers should already be doing. We recognized this need as we routinely field questions about these topics and we wanted to clarify best practices for the trade. The next several sections describe the current process, and what is changing as a result of this rule, for new requirements related to Customs Business, Records Confidentiality, Responsible Supervision and Control, and Advice to Client.

### **3.8 Customs Business**

Currently, customs business must be conducted within the customs territory of the United States as it is defined in § 101.1 of the CBP regulations. Furthermore, each broker must designate a licensed broker or knowledgeable employee to be available to CBP to respond to issues related to the transacting of customs business and each broker must maintain accurate and current point of contact information in a CBP-authorized electronic data interchange (EDI)

system. Under this proposed rule, these requirements are not changing; we are just now putting the language in the regulations requiring a specific point of contact be maintained in an EDI. CBP gets questions on this provision from the public, so adding this additional language to the regulation would clarify the provision for the public. There are no costs to this provision because it does not change the requirement. The public would benefit as the public now has more clarity regarding the requirement without needing to contact CBP.

### **3.9 Records Confidentiality**

Currently, records pertaining to the clients of the broker are to be considered confidential and the broker must not disclose their contents or any information connected with the records to any other persons except the relevant surety, other than specifically described Government representatives with regard to a particular entry or due to a subpoena. This is not changing under the proposed rule. However, this description is being clarified to now state that these records may not be disclosed to any persons other than the ones mentioned above and to the representatives of the Department of Homeland Security except by court order, subpoena (as mentioned above), or when authorized in writing by the client. This has already been the practice, but has been the subject of confusion so we are providing needed clarification. Finally, the revised language clarifies that the confidentiality provision does not apply to information that is in the public domain, which has been a point of confusion for some brokers.

### **3.10 Responsible Supervision and Control**

Brokers often have employees working for them who are not licensed brokers. These employees help with information collection and submission of entry documentation to CBP. Each broker is responsible for exercising responsible supervision and control over the transaction of the customs business done under its broker license. This requirement is in existence currently

and is not changing as a result of this rule. However, this rule proposes to move the list of factors CBP considers when determining whether a customs broker is exercising responsible supervision and control from the definition of “responsible supervision and control” in §§ 111.1 through 111.28. (19 CFR 111.1, 111.28). This list is of a substantive nature and is more appropriately located in the section on responsible supervision and control as opposed to the definitions section. CBP has always maintained that the current factors are not exhaustive and in the proposed rule, CBP is simply clarifying existing requirements that brokers, for the most part, are already complying with in practice.<sup>16</sup> This is not a change of practice as these factors for responsible supervision already exist and are just being moved and formally stated in the regulations to clarify what already should be occurring.

Additionally, CBP is clarifying some of the requirements on the reporting of employee information by brokers, for consistency. In this rule, CBP is proposing to remove the requirement for the broker to report each employee’s last home address, email address, the name and address of each former employer, and if the employee had been employed by the broker for less than three years, the dates of employment for the three-year period preceding current employment with the broker. The rule retains the requirement that brokers report other information, including employee names, social security numbers, dates and places of birth, dates of hire, and current home addresses. An updated list must be submitted to the director of the designated Center and updated in ACE if any of the information required changes, including notation of new or terminated employees. This update must be submitted within thirty (30)

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<sup>16</sup> Brokers looking for more information beyond what is stated in CBP regulations can consult the CBP website at <https://www.cbp.gov/trade/programs-administration/customs-brokers>. The website is updated more frequently than the regulations themselves. CBP provides guides on how to become a broker, broker exam information, validating the power of attorney, broker compliance, employing convicted felons, fees, national permits, and triennial reports, as well as webinars and informed compliance publications.

calendar days of the change. However, brokers already have an up-to-date list of their employees' contact information. This new requirement amounts to a routine submission each month in ACE with data that the brokers already routinely keep. They are likely to do this at the same time as making their other filings or routine reports so submitting one more existing document is not an additional measurable burden on customs brokers.

### **3.11 Advice to Client**

Currently, if a broker knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other record which the law requires the client to execute, the broker must advise the client promptly of that noncompliance, error, or omission. In the proposed rule we are adding that the broker must also advise the client on the proper corrective actions required and retain a record of the broker's communication with the client in accordance with § 111.23. (19 CFR 111.23). CBP proposes to add the requirement that the broker also explain the proper corrective action to better advise the client and to clarify the level of professionalism that is expected in the broker/importer relationship. Additionally, we are adding that the record of this communication could be reviewed by CBP on a routine visit to the broker. Brokers will not have to report any errors or omissions but in the case that an error or omission is discovered, this would help a broker show that it advised the client on how to correct the situation. Most brokers are already in compliance with this requirement, so this provision will not add a significant burden to customs brokers.

### **3.12 Total Costs**

The total monetized costs for customs brokers include a \$100 fee that two (2) percent of individual customs brokers who receive their first district permit concurrently with their broker's license will need to pay for their permit and the costs resulting from the new requirement that a

broker document and report to CBP when it separates from a client relationship as a result of attempted fraud or criminal acts. Exhibit 11 shows the total annual cost of the rule. Over the 5-year period of analysis, this rule will cost brokers about \$48,200 undiscounted.

Exhibit 11: Total Annual Undiscounted Costs for Brokers (\$2018), 2017-2021

Year	Total Costs
2017	\$8,500
2018	\$9,000
2019	\$9,600
2020	\$10,200
2021	\$10,900
<b>Total</b>	<b>\$48,200</b>

Note: Values may not sum to total due to rounding.

Exhibit 12 shows the present value and annualized costs of the rule over the period of analysis (2017 – 2021) at a three (3) and seven (7) percent discount rate. Total costs range from \$39,200 to \$44,000, depending on the discount rate used. Annualized costs are about \$9,600.

Exhibit 12. Total Present Value and Annualized Costs, from 2017-2021 (\$2018)

Total Present Value Costs		Annualized Costs	
3%	7%	3%	7%
\$44,000	\$39,200	\$9,600	\$9,600

### 3.13 Total Benefits

The total annual monetized cost savings for customs brokers are the result of monetary savings from switching from a district permitting system to a national permitting system. Namely, there is a time savings and fee savings of \$100 per permit application for individual customs brokers who do not concurrently receive their first district permit with their broker license. There is also a time savings to CBP due to the removal of the district permit waiver application reviews. As shown in Exhibit 13, total undiscounted savings over the period of analysis is \$249,100. In addition to these quantified benefits, there are unquantified benefits resulting from this rules' updates. These benefits include increased professionalism of the broker

industry, greater clarity for brokers in understanding the rules and regulations by which they must abide, greater data security, and better reporting of potential fraud to CBP.

Exhibit 13: Total Annual Undiscounted Costs-Savings for Brokers and CBP (\$2018), 2017-2021

<b>Year</b>	<b>Total Costs-Savings</b>
2017	\$43,300
2018	\$45,100
2019	\$48,800
2020	\$53,400
2021	\$58,500
<b>Total</b>	<b>\$249,100</b>

Note: Values may not sum to total due to rounding.

Exhibit 14 shows the present value and annualized costs-savings of the rule over the period of analysis (2017 – 2021) at a three (3) and seven (7) percent discount rate. Total costs-savings range from \$202,100 to \$227,100, depending on the discount rate used. Annualized costs-savings range from \$49,301 to \$49,592, depending on the discount rate used.

Exhibit 14. Total Present Value and Annualized Costs-Savings, from 2017-2021 (\$2018)

<b>Total Present Value Costs-Savings</b>		<b>Annualized Costs-Savings</b>	
3%	7%	3%	7%
\$227,100	\$202,100	\$49,592	\$49,301

### 3.14 Net Benefits

Exhibit 15 summarizes the monetized costs and benefits of this rule to individual and business entity customs brokers. As shown, the total monetized present value net benefits of this rule over a 5 year period of analysis from 2017 – 2021 ranges from \$163,000 to \$183,100 and the annualized net benefit is approximately \$40,000. In 2017, we estimate that 859 brokers will receive their broker licenses (762 individual licenses plus 97 corporate licenses). The adoption of this rule will result in an average annual net benefit per broker in 2017 of \$47 (\$40,000 annualized net benefits/859 total new brokers for 2017).

Exhibit 15. Present Value and Annualized Net Benefit of Rule (\$2018), 2017- 2021



	3% Discount Rate		7% Discount Rate	
	Present Value	Annualized	Present Value	Annualized
<b>Total Cost</b>	\$44,000	\$9,600	\$39,200	\$9,600
<b>Total Benefit</b>	\$227,100	\$49,600	\$202,100	\$49,300
<b>Total Net Benefit</b>	<b>\$183,100</b>	<b>\$40,000</b>	<b>\$163,000</b>	<b>\$39,700</b>

### 3.15 Distributional Impact

Under the proposed rule, the customs broker license application will change from \$200 for both individuals and business entities to \$300 for individuals and \$500 for business entities. Consequently, CBP's proposed fee would increase by \$100 for individuals and \$300 for business entities. As discussed in section 2, CBP estimates that over the next five years, 4,654 individuals and 581 business entities will be issued a new customs broker license. Using these estimates and the proposed fee increases, CBP estimates that the proposal will result in an increased transfer payment from brokers to the government of approximately \$639,700 over the next five years (4,654 individual applications \* \$100 proposed fee increase = \$465,400; 581 business entity applications \* \$300 proposed fee increase = \$174,300; \$465,400 + \$174,300 = \$639,700).

Although the proposed fee changes will increase costs for individuals and business entities, CBP has determined that these proposed increases are necessary in order to recover some of the costs of provide the services necessary to facilitate the customs broker license application process.

### 4. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small

business concern per the Small Business Act); a small organization (defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field; or a small governmental jurisdiction (defined as a locality with fewer than 50,000 people).

In an effort to modernize the regulations governing customs brokers, CBP is proposing regulatory changes that include: eliminating district permits so each customs broker only needs one national permit, which reduces the fees owed; mandating that each broker must provide notification to CBP of any known breach of its records within 72 hours of discovery; requiring brokers to make all records available to CBP, upon request within thirty (30) calendar days at the location specified by CBP; mandating that customs brokers now obtain a customs power of attorney directly from the importer of record or drawback claimant, not a freight forwarder, to transact customs business for that importer or drawback claimant; and requiring that a broker must document and report to CBP when it separates from or terminates representation of a client as a result of the broker's determining the client is intentionally attempting to use the services of a broker to defraud or otherwise commit any criminal act against the U.S. Government.

Furthermore, CBP is also proposing to make various non-substantive changes and conforming edits to clarify the existing language in the regulations to better reflect what is already occurring.

The proposed rule would apply to all customs brokers, regardless of size. Accordingly, the proposed rule would affect a substantial number of small entities. However, as stated above in the Executive Orders 13563, 12866, and 13771 section, the proposed rule would result in an average annualized savings per customs broker of \$47. Additionally, as discussed above, the customs broker license application fee increase for the 5,235 new customs brokers over the period of analysis would result in a distributional impact of \$639,700, with 4,654 individual applicants paying an additional \$100 and 581 corporate applicants paying an additional \$300

over a 5-year period. Including distributional impacts, the rule costs brokers either \$61 or \$261 per year, or less than 1 percent of annual revenue for brokers of any size. Please see Exhibit 16 for a breakdown of brokerages by size. Because the distributional impact and saving are relatively small on a per broker basis, this rule will not have a significant economic impact on customs brokers. Accordingly, CBP certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Exhibit 16. Annual Revenue by Firm Size<sup>17</sup>

Annual Revenue (\$)	Number of Firms	Small	Estimated Number of Permitted Brokers
<100,000	2,195	Yes	323
100,000-499,999	4,935	Yes	727
500,000-999,999	2,330	Yes	343
1,000,000-2,499,999	2,429	Yes	358
2,500,000-4,999,999	1,208	Yes	178
5,000,000-7,499,999	540	Yes	80
7,500,000-9,999,999	284	Yes	42
10,000,000-14,999,999	282	Yes	42
>15,000,000	815	No	0
<b>Total</b>	<b>15,018</b>		<b>2,093</b>

## 5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by

<sup>17</sup> Source: U.S. Census Bureau, “2012 SUSB Annual Data Tables by Establishment Industry,” Data by Enterprise Receipt Size, NAICS 4885 Freight Transportation Arrangement, Last Revised July 30, 2019. <https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html>. Accessed January 14, 2020.

OMB. The collections of information contained in these regulations are provided for by OMB control number 1651-0034 (CBP Regulations Pertaining to Customs Brokers) and by OMB control number 1651-0076 (Recordkeeping Requirements). This rule does not change the burden under these information collections.

### **Signing Authority**

This document is being issued in accordance with 19 CFR 0.1(b)(1), which provides that the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury for when the subject matter is not listed as provided by Treasury Department Order No. 100-16. Accordingly, this proposed rule to amend such regulations may be signed by the Secretary of Homeland Security (or his or her delegate).

### **List of Subjects**

#### *19 CFR Part 24*

Accounting, Claims, Customs duties and inspection, Harbors, Reporting and recordkeeping requirements, Taxes.

#### *19 CFR Part 111*

Administrative practice and procedure, Brokers, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

### **Proposed Amendments to the CBP Regulations**

For the reasons set forth in the preamble, parts 24 and 111 of title 19 of the Code of Federal Regulations (19 CFR parts 24 and 111) are proposed to be amended as set forth below.

#### **PART 24 – CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE**

1. The general authority citation for part 24 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

\* \* \* \* \*

#### **§ 24.1 [Amended]**

2. In § 24.1, paragraph (a)(3)(i) is amended by removing the phrases “who does not have a permit for the district (see the definition of “district” at §111.1 of this chapter) where the entry is filed,” and “which is unconditioned geographically” from the third sentence.

#### **PART 111 – CUSTOMS BROKERS**

3. The authority citation for part 111 is revised to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624; 1641.

Section 111.2 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

4. In § 111.1:

a. Add the definition “*Appropriate Executive Director, Office of Trade*” in alphabetical order;

b. Remove the definition “*Assistant Commissioner*”;

c. Add the definitions “*Broker’s office of record*” and “*Designated Center*” in alphabetical order;

d. Remove the definition “*District*”;

e. Add the definition “*Executive Assistant Commissioner*”;

f. Amend the definition of “*Permit*” by removing the word “any” and adding in its place the word “a”;

g. Remove the definition “*Region*”;

h. Revise the definition “*Responsible supervision and control*”; and

i. Designate the definition “*Department of Homeland Security or any representative of the Department of Homeland Security*” in alphabetical order.

The additions and revisions read as follows:

**§ 111.1 Definitions.**

\* \* \* \* \*

*Appropriate Executive Director, Office of Trade.* “Appropriate Executive Director, Office of Trade” means the Executive Director responsible for broker management.

\* \* \* \* \*

*Broker’s office of record.* “Broker’s office of record” means the office designated by a customs broker as the broker’s primary location that oversees the administration of the provisions of this part regarding all activities conducted under a national permit.

\* \* \* \* \*

*Designated Center.* “Designated Center” means the Center of Excellence and Expertise (Center) through which an individual, partnership, association, or corporation submits an application for a broker’s license under § 111.12(a), or to which an already-licensed broker is otherwise assigned.

\* \* \* \* \*

*Executive Assistant Commissioner.* “Executive Assistant Commissioner” means the Executive Assistant Commissioner of the Office of Trade at the Headquarters of U.S. Customs and Border Protection.

\* \* \* \* \*

*Responsible supervision and control.* “Responsible supervision and control” means that degree of supervision and control necessary to ensure the proper transaction of the customs business of a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. *See* § 111.28 for a list of factors which CBP may consider when evaluating responsible supervision and control.

\* \* \* \* \*

5. In § 111.2:

- a. Amend the section heading by removing the word “district”;
- b. Amend paragraph (a)(2)(ii)(A)(1) by removing “the port director” and “Customs” and adding in their place the term “CBP”;
- c. Amend paragraph (a)(2)(ii)(A)(2) by:
  1. Removing the word “port” and adding the words “of the designated Center” after the word “director”; and
  2. Removing the last sentence.
- d. Amend paragraph (a)(2)(ii)(B) by removing the word “port” wherever it appears and adding “of the designated Center” after the word “director” wherever it appears; and
- e. Revise paragraph (b).

The revision reads as follows:

**§ 111.2 License and permit required.**

\* \* \* \* \*

(b) *National permit.* A national permit issued to a broker under § 111.19 will constitute sufficient permit authority for the broker to conduct customs business within the customs territory of the United States as defined in § 101.1 of this chapter.

6. Add § 111.3 to read as follows:

**§ 111.3 Customs business.**

(a) *Location.* Customs business must be conducted within the customs territory of the United States as defined in § 101.1 of this chapter.

(b) *Point of contact.* A licensed customs broker, or partnership, association, or corporation, conducting customs business under a national permit must designate a knowledgeable point of contact to be available to CBP during and outside of normal operating hours to respond to customs business issues. The licensed customs broker, or partnership, association, or corporation, must maintain accurate and current point of contact information in a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center.

7. In § 111.12:

- a. Paragraph (a) is revised;
- b. Paragraph (b) is removed; and
- c. Redesignate paragraph (c) as paragraph (b);



d. In newly redesignated paragraph (b):

1. Remove the word “port”;

2. Add the words “of the designated Center” after the word “director”

and;

3. Remove the words “\$200 application fee” and add in their place the words “application fee set forth in § 111.96(a)”.

The revisions read as follows:

**§ 111.12 Application for license.**

(a) *Submission of application and fee.* An application for a broker's license must be timely submitted to the director of the Center identified by CBP after the applicant attains a passing grade on the examination. The application must be executed on CBP Form 3124. The application must be accompanied by the application fee prescribed in § 111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each of those States must accompany the application. An application for an individual license must be submitted within the 3-year period after the applicant took and passed the examination referred to in § 111.11(a)(4) and § 111.13. The Center director may require an individual applicant to provide a copy of the notification that the applicant passed the examination (*see* § 111.13(e)) and will require the applicant to submit fingerprints at the time of the interview. The Center director may reject an application as improperly filed if the application is incomplete or, if on its face, the application

demonstrates that one or more of the basic requirements set forth in § 111.11 has not been met at the time of filing; in either case the application and fee will be returned to the filer without further action.

\* \* \* \* \*

**§ 111.13 [Amended]**

8. In § 111.13:

a. Amend paragraph (b) by removing “\$390”;

b. Amend paragraph (c) by

1. Removing the words “an office in another district (*see* § 111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and § 111.45(b)” and adding in their place the words “the transaction of customs business”; and

2. Removing “\$390”;

c. Amend paragraph (d) by removing “\$390”;

d. Amend paragraph (e) by adding the words “or electronic” after the word “written”; and

e. Amend paragraph (f) by:

1. Adding the words “or electronic” between the words “written” and “appeal” and between the words “written” and “notice” in the first sentence;

2. Adding the words “or electronic” between the words “written” and “notice” in the second sentence; and

3. Removing the word “writing” and adding in its place the words “submitting a written or electronic request” in the third sentence.

4. Removing the words “Executive Assistant Commissioner” and adding in their place the words “appropriate Executive Director”;

9. In § 111.14:

a. Revise the section heading;.

b. Remove paragraph (a);

c. Redesignate paragraph (b) as paragraph (a) and revise the newly redesignated paragraph;

d. Redesignate paragraph (c) as paragraph (b) and revise the newly redesignated paragraph; and

e. Redesignate paragraph (d) as paragraph (c) and revise the newly redesignated paragraph.

The revisions read as follows:

**§ 111.14 Background investigation of the license applicant.**

(a) *Scope of background investigation.* A background investigation under this section will ascertain facts relevant to the question of whether the applicant is qualified and will cover, but need not be limited to:

(1) The accuracy of the statements made in the application and interview;

(2) The business integrity and financial responsibility of the applicant; and

(3) 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.

(b) *Referral to Headquarters.* The director of the designated Center will forward the application and supporting documentation to the appropriate Executive Director Office of Trade. The Center director will also submit his or her recommendation for action on the application.

(c) *Additional inquiry.* The appropriate Executive Director, Office of Trade, may require further inquiry if additional facts are deemed necessary to evaluate the application. The appropriate Executive Director, Office of Trade, may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person or by another approved method before the appropriate Executive Director, Office of Trade, or his or her representatives for the purpose of undergoing further written or oral inquiry.

10. Revise § 111.15 to read as follows.

**§ 111.15 Issuance of license.**

If the appropriate Executive Director, Office of Trade, finds that the applicant is qualified and has paid all applicable fees prescribed in § 111.96(a), the Executive Assistant Commissioner 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 director of the designated Center, who will deliver it to the licensee.

11. In § 111.16, revise paragraphs (a) and (b) to read as follows:

**§ 111.16 Denial of a license.**

(a) *Notice of denial.* If the appropriate Executive Director, Office of Trade, determines that the application for a license should be denied for any reason, notice of denial will be given by him or her to the applicant and to the director of the designated Center. The notice of denial will state the reasons why the license was not issued.

(b) *Grounds for denial.* The grounds sufficient to justify denial of an application for a license include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of §111.53;

(2) The failure to meet any requirement set forth in §111.11;

(3) A failure to establish the business integrity and financial responsibility of the applicant;

(4) A failure to establish the good character and reputation of the applicant;

(5) Any willful misstatement or omission of pertinent facts in the application or interview for the license;

(6) Any conduct which would be deemed unfair or detrimental in commercial transactions by accepted standards;

(7) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct; or

(8) Any other relevant information uncovered over the course of the background investigation.

12. Revise § 111.17 to read as follows.

**§ 111.17 Review of the denial of a license.**

(a) *By the appropriate Executive Director, Office of Trade.* Upon the denial of an application for a license, the applicant may file with the appropriate Executive Director, Office of Trade, in writing, additional information or arguments in support of the application and may request to appear in person, by telephone, or by other acceptable means of communication. This filing and request must be received by the appropriate Executive Director, Office of Trade within sixty (60) calendar days of the denial.

(b) *By the Executive Assistant Commissioner.* Upon the decision of the appropriate Executive Director, Office of Trade, affirming the denial of an application for a license, the applicant may file with the Executive Assistant Commissioner, in writing, a request for any additional review that the Executive Assistant Commissioner, deems appropriate. This request must be received by the Executive Assistant Commissioner within sixty (60) calendar days of the affirmation by the appropriate Executive Director, Office of Trade, of the denial of the application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Executive Assistant Commissioner affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within sixty (60) calendar days after the date of entry of the Executive Assistant Commissioner's decision.

**§ 111.18 [Amended]**

13. Amend § 111.18 by adding the phrase “and addressing how deficiencies have been remedied” after the term “§ 111.12”.

14. In § 111.19:

a. Revise the section heading;

b. Revise paragraphs (a) and (b);

d. Remove paragraph (d);

e. Redesignate paragraph (e) as paragraph (d) and revise the newly redesignated paragraph;

f. Revise paragraph (f); and

g. Redesignate paragraph (g) as paragraph (e) and revise the newly redesignated paragraph.

The revisions read as follows:

**§ 111.19 National permit.**

(a) *General.* A national permit is required for the purpose of transacting customs business throughout the customs territory of the United States as defined in § 101.1 of this chapter.

(b) *Application for a national permit.* An applicant who obtains a passing grade on the examination for an individual broker's license may apply for a national permit. The applicant will exercise responsible supervision and control (as described in § 111.28 of this part) over the activities conducted under that national permit. The national permit application may be submitted concurrently with or after the submission of an application for a broker's license. 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 under this paragraph must be in the form of a letter or CBP-approved electronic submission to the director of the designated Center. The application must set forth or attach the following:

(1) The applicant's broker license number and date of issuance if available;

(2) 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;

(3) 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;

(4) The address, telephone number, and email address of the office designated by the applicant as the office of record as defined in § 111.1. The office will be noted in the national permit when issued;

(5) 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;

(6) 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;

(7) A list of all employees together with the specific employee information prescribed in § 111.28 for each employee;

(8) 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;



(9) The location where records will be retained (*see* § 111.23);

(10) 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

(11) A receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid in accordance with paragraph (b) of this section.

\* \* \* \* \*

(d) *Action on application; list of permitted brokers.* The director of the designated Center who receives the application will review to determine whether the applicant meets the requirements of paragraphs (a) and (b) of this section. If the director of the designated Center is of the opinion that the national permit should not be issued, he or she will submit his or her written reasons for that opinion to the appropriate Executive Director, Office of Trade, CBP Headquarters, for appropriate instructions on whether to grant or deny the national permit. The appropriate Executive Director, Office of Trade, CBP Headquarters, will notify the applicant if his or her application is denied. CBP will issue a national permit to an applicant who meets the requirements of paragraphs (a) and (b) of this section. CBP will maintain and make available to the public an alphabetical list of permitted brokers.

(e) *Review of the denial of a national permit—(1) By the Executive Assistant Commissioner.* Upon the denial of an application for a national permit under this section, the applicant may file with the Executive Assistant Commissioner, in writing, additional information or arguments in support of the denied application and may request to appear in person, by

telephone, or by other acceptable means of communication. This filing and request must be received by the Executive Assistant Commissioner within sixty (60) calendar days of the denial.

(2) *By the Court of International Trade.* Upon a decision of the Executive Assistant Commissioner affirming the denial of an application for a national permit under this section, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within sixty (60) calendar days after the date of entry of the decision by the Executive Assistant Commissioner.

(f) *Responsible supervision and control.* The individual broker who qualifies for the national permit will exercise responsible supervision and control (as described in § 111.28 of this part) over the activities conducted under that national permit.

15. In § 111.21:

- a. Redesignate paragraphs (b) and (c) as paragraphs (c) and (d);
- b. Add a new paragraph (b); and
- c. Revise the newly redesignated paragraph (d).

The addition and revision read as follows:

**§ 111.21 Record of transactions.**

\* \* \* \* \*

(b) Each broker must provide notification to the broker's designated Center of any known breach of electronic or physical records relating to the broker's customs business. Notification to CBP must be provided within 72 hours of the discovery of the breach with a list of all compromised importer identification numbers (*see* 19 CFR 24.5).

\* \* \* \* \*

(d) Each broker must designate a knowledgeable employee as the party responsible for brokerage-wide recordkeeping requirements. Each broker must maintain accurate and current point of contact information in a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center.

16. In § 111.23, revise paragraph (a) to read as follows:.

**§ 111.23 Retention of records.**

(a) *Place of retention.* A licensed customs broker must maintain the records referred to in this part, including any records stored in electronic formats, within the customs territory of the United States and in accordance with the provisions of this part and part 163 of this chapter.

\* \* \* \* \*

17. Revise § 111.24 to read as follows:

**§ 111.24 Records confidential.**

The records referred to in this part and pertaining to the business of the clients serviced by the broker 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 those clients, their surety on a particular entry, and representatives of the Department of Homeland Security (DHS), or other duly accredited officers or agents of the United States, except on subpoena or court order by a court of competent jurisdiction, or when authorized in writing by the client. This confidentiality provision does not apply to information that properly is available from a source open to the public.

18. Revise § 111.25 to read as follows:

**§ 111.25 Records must be available.**

(a) *General.* During the period of retention, the broker must maintain the records referred to in this part in such a manner that they may readily be examined. Records required to be maintained under the provisions of this part must be made available upon reasonable notice for inspection, copying, reproduction or other official use by representatives of the Department of Homeland Security (DHS) within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker.

(b) *Examination request.* Upon request by DHS to examine records, the designated recordkeeping contact (*see* § 111.21(d)), must make all records available to DHS within thirty (30) calendar days, or such longer time as specified by DHS, at the location specified by DHS.

(c) *Recordkeeping requirements.* Records subject to the requirements of part 163 of this chapter must be made available to DHS in accordance with the provisions of that part.

#### **§ 111.27 [Amended]**

19. Amend § 111.27 by removing the phrase “the port director and other proper officials of the Treasury Department” and adding in its place the phrase “DHS, or other duly accredited officers or agents of the United States,”.

20. In § 111.28:

- a. Revise the section heading ;
- b. Revise paragraph (a);
- c. Revise paragraph (b);
- d. Redesignate paragraphs (c) and (d) as (d) and (e);
- e. Add a new paragraph (c);
- f. Amend newly redesignated paragraph (d) by:

1. Removing the words “Assistant Commissioner” and adding in their place the words “appropriate Executive Director, Office of Trade,”; and

2. Removing the phrase “each port through which a permit has been granted to the partnership, association, or corporation” and adding in its place the phrase “the designated Center”; and

g. Revising newly redesignated paragraph (e).

The additions and revisions read as follows:

**§ 111.28 Responsible supervision and control.**

(a) *General.* 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 § 111.1) 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. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which CBP may consider in its discretion and to the extent any are relevant include, but are not limited to the following:

- (1) The training provided to broker employees;
- (2) The issuance of instructions and guidelines to broker employees;
- (3) The volume and type of business of the broker;

- (4) The reject rate for the various customs transactions relative to overall volume;
- (5) The broker employees' accessibility to current editions of CBP regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances;
- (6) The availability of a sufficient number of individually licensed brokers for necessary consultation with employees of the broker;
- (7) The frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have an individually licensed broker;
- (8) The frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker;
- (9) The extent to which the individually licensed broker who qualifies the permit is involved in the operation of the brokerage and communications between CBP and the broker;
- (10) Any circumstances which indicate that an individually licensed broker has a real interest in the operations of a broker;
- (11) 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;
- (12) Communications between CBP and the broker;
- (13) The broker's responsiveness and action to communications, direction, and notices from CBP;
- (14) Communications between the broker and its officer(s); and,

(15) The broker's responsiveness and action to communications and direction from its officer(s).

(b) *Employee information*—(1) *Current employees*. Each national permit holder must submit to the director of the designated Center, a list of the names of persons currently employed by the broker. The list of employees must be submitted prior to issuance of a national permit under § 111.19 and before the broker begins to transact customs business. For each employee, the broker must provide the name, social security number, date and place of birth, date of hire, and current home address. After the initial submission, an updated list must be submitted to a CBP-authorized electronic data interchange (EDI) system if any of the information required by this paragraph changes. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center. The update must be submitted within thirty (30) calendar days of the change.

(2) *New employees*. Within thirty (30) calendar days of the start of employment of a new employee(s), the broker must submit a list of new employee(s) with the information required under paragraph (b)(1) of this section to a CBP-authorized EDI system. The broker may submit a list of the new employees or an updated list of all employees, specifically noting the new employee(s). If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center.

(3) *Terminated employees*. Within thirty (30) calendar days after the termination of employment of an employee, the broker must submit a list of terminated employee(s) to a CBP-authorized EDI system. The broker may submit a list of the terminated employees or an updated list of all employees, specifically noting the terminated employee(s). If a CBP-authorized EDI

system is not available, then the information must be provided in writing to the director of the designated Center.

(c) *Broker's responsibility.* Notwithstanding a broker's responsibility for providing the information required in paragraph (b) of this section, in the absence of culpability by the broker, CBP will not hold the broker responsible for the accuracy of any information that is provided to the broker by the employee.

\* \* \* \* \*

(e) *Change in ownership.* 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 appropriate Executive Director, Office of Trade, and must send a copy of the written notice to the director of the designated Center. When a change in ownership results in the addition of a new principal to the organization, and whether or not ownership shares in the broker are publicly traded, CBP reserves the right to conduct a background investigation on the new principal. The director of the designated Center will notify the broker if CBP objects to the new principal, and the broker will be given a reasonable period of time to remedy the situation. If the background investigation uncovers information which would have been the basis for a denial of an application for a broker's license and the principal's interest in the broker is not terminated to the satisfaction of the director of the designated Center, suspension or revocation proceedings may be initiated under subpart D of this part. For purposes of this paragraph, a "principal" means any person having at least a five (5) percent capital, beneficiary or other direct or indirect interest in the business of a broker.

21. In § 111.30:

a. Paragraphs (a) and (b) are revised;



b. In paragraph (c), the first sentence is revised;

c. In paragraph (d):

1. The paragraph heading is amended by removing the word “Status” and adding in its place the words “Triennial status”;

2. Paragraphs (1) through (3) are revised;

3. Paragraph (4) is amended by:

i. Removing the words “the port director” and the word “Customs” before the word “records” and adding in each place the word “CBP”;

ii. Removing the word “pays” and adding in its place the words “submits payment or proof of payment of”; and

iii. Removing the words “Customs Bulletin” and adding in their place the words “*Federal Register*”; and

d. In paragraph (e), remove the words “each port where the broker was transacting business within each district for which a permit has been issued to the broker” and add in their place the words “the designated Center”.

The revisions read as follows:

**§ 111.30 Notification of change in address, organization, name, or location of business records; status report; termination of brokerage business.**

(a) *Change of address.* A broker is responsible for providing CBP with the broker’s current addresses, which include the broker’s office of record address as defined in § 111.1 and, if the broker is not actively engaged in transacting business as a broker, the broker’s non-

business address. If a broker does not receive mail at the broker's office of record or non-business address, the broker must also provide CBP with a valid address at which he or she receives mail. When address information changes, or the broker is no longer actively engaged in transacting business as a broker, he or she must update his or her address information within ten (10) calendar days through a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then address updates must be provided in writing within ten (10) calendar days to the director of the designated Center.

(b) *Change in organization.* A partnership, association, or corporation broker must update within ten (10) calendar days in writing to the director of the designated Center any of the following:

(1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of § 111.11(b) or (c)(2), and the name of the licensed member or officer who will succeed as the license qualifier;

(2) 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

(3) Any change in the Articles of Agreement, Charter, Articles of Association, 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).

(c) *Change in name.* A broker who changes his or her name, 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 appropriate Executive Director, Office of Trade, at the Headquarters of U.S. Customs and Border Protection, evidence of his or her authority to use that name.\*\*\*

\* \* \* \* \*

(d) *Triennial status report*—(1) *General*. Each broker must file a triennial status report with CBP on February 1 of each third year after 1985. The report must be filed through the CBP-authorized EDI system and accompanied by payment or valid proof of payment of the triennial status report fee prescribed in § 111.96(d). If a CBP-authorized EDI system is not available, the triennial status report must be filed with the director of the designated Center. A report received during the month of February will be considered filed timely. No form or particular format is required.

(2) *Individual*—(i) Each individual broker must state in the report required under paragraph (d)(1) of this section whether he or she is actively engaged in transacting business as a broker. If he or she is so actively engaged, the broker must also:

(A) State the name under which, and the address at which, the broker's business is conducted if he or she is a sole proprietor;

(B) State the name and address of his or her employer if he or she is employed by another broker, unless his or her employer is a partnership, association or corporation broker for which he or she is a qualifying member or officer for purposes of § 111.11(b) or (c)(2); and

(C) State whether or not he or she still meets the applicable requirements of § 111.11 and § 111.19 of this part and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53 of this part.

(ii) An individual broker not actively engaged in transacting business as a broker must provide CBP with the broker's current mailing address, and state whether or not he or she still meets the applicable requirements of § 111.11 and § 111.19 of this part and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53 of this part.

(3) *Partnership, association, or corporation*—(i) Each partnership, association, or corporation broker must state in the report required under paragraph (d)(1) of this section the name under which its business as a broker is being transacted, the broker's office of record (*see* § 111.1), the name and address of each licensed member of the partnership or licensed officer of the association or corporation, including the license qualifier under § 111.11(b) or (c)(2) and the name of the licensed employee who is the national permit qualifier under § 111.19(a), and whether the partnership, association, or corporation is actively engaged in transacting business as a broker. The report must be signed by a licensed member or officer.

(ii) A partnership, association, or corporation broker must state whether or not the partnership, association, or corporation broker still meets the applicable requirements of § 111.11 and § 111.19 of this part and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53 of this part.

\* \* \* \* \*

22. Section 111.32 is revised to read as follows:

**§ 111.32 False information.**

A broker must not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false. In addition, a broker must not give, or solicit or procure 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. A broker also 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 otherwise commit any criminal act against the U.S. Government.

23. In § 111.36, revise paragraph (c)(3) to read as follows:.

**§ 111.36 Relations with unlicensed persons.**

\* \* \* \* \*  
(c) \* \* \*

(3) The broker must obtain a customs power of attorney directly from the importer of record or drawback claimant, and not via a freight forwarder, to transact customs business for that importer of record or drawback claimant. No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement, can forbid or prevent direct communication between the importer of record, drawback claimant, or other party in interest and the broker; and

\* \* \* \* \*

24. In § 111.39:

- a. Paragraph (a) is revised;
- b. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d);
- c. A new paragraph (b) is added; and

d. Newly redesignated paragraph (c) is amended by:

1. Removing the word “paper” and adding in its place the word “record”;

and

2. Adding a sentence to the end of the paragraph.

The additions and revisions reads as follows:

**§ 111.39 Advice to client.**

(a) *Withheld or false information.* A broker must not withhold information relative to any customs business from a client who is entitled to the information. The broker must not knowingly impart to a client false information relative to any customs business.

(b) *Due diligence.* A broker must exercise due diligence to ascertain the correctness of any information which the broker imparts to a client, including advice to the client on the proper payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

(c) \* \* \* \* \*The broker must advise the client on the proper corrective actions required and retain a record of the broker’s communication with the client in accordance with § 111.23 of this part.

\* \* \* \* \*

**§ 111.42 [Amended]**

25. In § 111.42:

a. Paragraph (a)(1) is amended by removing the word “Customs” and adding in its place the word “customs”; and

b. Paragraph (a)(3) is amended by:

1. Adding the word “Executive” before the word “Assistant”; and

2. Adding the phrase “, or his or her designee,” after the words “Assistant Commissioner”.

26. In § 111.45:

a. Paragraphs (a), (b), and (c) are revised; and

b. In paragraph (d), remove the cross-reference “or (b)” in the second sentence.

The revisions read as follows:

**§ 111.45 Revocation by operation of law.**

(a) *License and permit.* If a broker that is a partnership, association, or corporation fails to have, during 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’s license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and the national permit issued to the partnership, association, or corporation. If a broker that is a partnership, association, or corporation fails to employ, during any continuous period of 180 days, a licensed customs broker who is the national permit qualifier for the broker, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the national permit issued to the partnership, association, or corporation. CBP will notify the broker in writing of an impending revocation by operation of law under this section thirty (30) calendar days before the revocation is due to occur, if the broker has provided advance notice to CBP of the underlying events that could cause a revocation by operation of law under this section. If the license or permit of a partnership, association, or corporation is revoked by operation of law, CBP will notify the organization of the revocation.

(b) *Annual broker permit fee.* If a broker fails to pay the annual permit user fee pursuant to § 111.96(c), the permit is revoked by operation of law. The director of the designated Center will notify the broker in writing of the failure to pay and the revocation of the permit.

(c) *Publication.* Notice of any revocation under this section will be published in the *Federal Register*.

\* \* \* \* \*

27. In § 111.51:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by:

1. Removing the words “Assistant Commissioner” and adding in their place the words “appropriate Executive Director, Office of Trade,”; and

2. Removing the word “Secretary” and adding in its place the words “Executive Assistant Commissioner”.

The revision reads as follows:

**§ 111.51 Cancellation of license or permit.**

(a) *Without prejudice.* The appropriate Executive Director, Office of Trade, may cancel a broker's license or permit “without prejudice” upon written application by the broker if the appropriate Executive Director, Office of Trade, determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the appropriate Executive Director, Office of Trade, determines that the application for cancellation was made in order to avoid those proceedings, he or she may cancel the license or permit “without prejudice” only with authorization from the Executive Assistant Commissioner.



\* \* \* \* \*

**§ 111.52 [Amended]**

28. Amend § 111.52 by removing the words “Assistant Commissioner” and adding in their place the words “appropriate Executive Director, Office of Trade,”.

29. In § 111.53:

a. Remove the word “Customs” wherever they appear and add in their place the term “CBP”;

b. Amend paragraph (e) by removing the words “Assistant Commissioner” and adding in their place the words “appropriate Executive Director, Office of Trade”;

c. Amend paragraph (f) by removing the word “or” following the semicolon;

d. Redesignate paragraph (g) as paragraph (h); and

e. Add a new paragraph (g).

The addition reads as follows:

**§ 111.53 Grounds for suspension or revocation of license or permit.**

\* \* \* \* \*

(g) The broker has been convicted of committing or conspiring to commit an act of terrorism as described in section 2332b of title 18, United States Code; or”

\* \* \* \* \*

30. Revise § 111.55 to read as follows.

**§ 111.55 Investigation of complaints.**

Every complaint or charge against a broker which may be the basis for disciplinary action may be forwarded for investigation to the appropriate investigative authority within DHS. The investigative authority will submit a final report on the investigation of complaints to the director

of the designated Center and send a copy of the report to the appropriate Executive Director, Office of Trade.

31. Revise § 111.56 to read as follows:

**§ 111.56 Review of report on the investigation of complaints.**

The director of the designated Center will review the report on the investigation of complaints, or if there is no report on the investigation of complaints, other documentary evidence, to determine if there is sufficient basis to recommend that charges be preferred against the broker. The Center director will then submit his or her recommendation with supporting reasons to the appropriate Executive Director, Office of Trade, for final determination together with a proposed statement of charges when recommending that charges be preferred.

32. Revise § 111.57 to read as follows:

**§ 111.57 Determination by appropriate Executive Director, Office of Trade.**

The appropriate Executive Director, Office of Trade, will make a determination on whether or not charges should be preferred, and will notify the director of the designated Center of the decision.

**§ 111.59 [Amended]**

33. In § 111.59, paragraphs (a) and (b) are amended by removing the word “port” before the word “director” and adding the words “of the designated Center” after the word “director”.

**§ 111.60 [Amended]**

34. In § 111.60, remove the word “port” and add the words “of the designated Center” after the word “director”.

35. Revise § 111.61 to read as follows:

**§ 111.61 Decision on preliminary proceedings.**

The director of the designated Center will prepare a summary of any oral presentations made by the broker or the broker’s attorney and forward it to the appropriate Executive Director, Office of Trade, together with a copy of each paper filed by the broker. The director of the designated Center will also give to the appropriate Executive Director, Office of Trade, his or her recommendation on action to be taken as a result of the preliminary proceedings. If the appropriate Executive Director, Office of Trade, determines that the broker has satisfactorily responded to the proposed charges and that further proceedings are not warranted, he or she will so inform the director of the designated Center who will notify the broker. If no response is filed by the broker or if the appropriate Executive Director, Office of Trade, determines that the broker has not satisfactorily responded to all of the proposed charges, he or she will advise the director of the designated Center of that fact and instruct him or her to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker in the preliminary proceedings, the appropriate Executive Director, Office of Trade, will instruct the director of the designated Center to omit those charges from the statement of charges.

36. In § 111.62:

- a. Revise paragraph (d); and
- b. Amend paragraph (e) by removing the phrase “, in duplicate” and the word “port”, and adding the words “of the designated Center” after the word “director”.

The revision reads as follows:

**§ 111.62 Contents of notice of charges.**

\* \* \* \* \*

(d) The broker will be notified of the time and place of a hearing on the charges; and

\* \* \* \* \*

37. In § 111.63:

a. Remove the word “port” wherever it appears and add the words “of the designated Center” after the word “director” wherever it appears; and

b. Paragraphs (a)(2) and (c) are revised.

The revisions read as follows:

**§ 111.63 Service of notice and statement of charges.**

\* \* \* \* \*

(a) \* \* \*

(2) By certified mail, return receipt requested, addressed to the broker’s office of record (or other address as provided pursuant to § 111.30).

\* \* \* \* \*

(c) *Certified mail; evidence of service.* When service under this section is by certified mail to the broker’s office of record (or other address as provided pursuant to § 111.30), the receipt of the return card signed or marked will be satisfactory evidence of service.

**§ 111.64 [Amended]**

38. In § 111.64, paragraph (a) is amended by removing the word “port” and adding the words “of the designated Center” after the word “director”.

**§ 111.66 [Amended]**

39. Section 111.66 is amended by removing the words “Secretary of Homeland Security, or his designee,” and adding in its place the words “Executive Assistant Commissioner”.

**§ 111.67 [Amended]**

40. In § 111.67:

a. Paragraph (d) is amended by removing the word “port” wherever it appears and adding the words “of the designated Center” after the word “director” wherever it appears; and

b. Paragraph (e) is removed.

**§ 111.69 [Amended]**

41. Section 111.69 is amended by removing the words “Secretary of Homeland Security, or his designee” and adding in their place the words “Executive Assistant Commissioner”.

**§ 111.70 [Amended]**

42. Section 111.70 is amended by removing the words “Secretary of Homeland Security, or his designee” and adding in their place the words “Executive Assistant Commissioner”.

**§ 111.71 [Amended]**

43. Section 111.71 is amended by removing the words “Secretary of Homeland Security, or his designee” and adding in their place the words “Executive Assistant Commissioner”.

44. Revise § 111.72 to read as follows:

**§ 111.72 Dismissal subject to new proceedings.**

If the Executive Assistant Commissioner finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he or she may instruct the director of the designated Center to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedures set forth in this subpart.

45. Revise § 111.74 to read as follows:

**§ 111.74 Decision and notice of suspension or revocation or monetary penalty.**

If the Executive Assistant Commissioner finds that one or more of the charges in the statement of charges is not sufficiently proved, the suspension, revocation, or monetary penalty action may be based on any remaining charges if the facts alleged in the charges are established by the evidence. If the Executive Assistant Commissioner in the exercise of discretion and based solely on the record, issues an order suspending a broker's license or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in § 111.53(b)(3), assessing a monetary penalty in lieu of suspension or revocation, the appropriate Executive Director, Office of Trade, will promptly provide written notification of the order to the broker and, unless an appeal from the order of the Executive Assistant Commissioner is filed by the broker (see § 111.75), the appropriate Executive Director, Office of Trade, will publish a notice of the suspension or revocation, or the assessment of a monetary penalty, in the *Federal Register*. If no appeal from the order of the Executive Assistant Commissioner is filed, an order of suspension or revocation or assessment of a monetary penalty will become effective sixty (60) calendar days after issuance of written notification of the order unless the Executive Assistant Commissioner finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal from the order of the Executive Assistant Commissioner is filed, payment of the penalty must be tendered within sixty (60) calendar days after the effective date of the order, and, if payment is not tendered within that sixty (60)-day period, the license or permit of the broker will immediately be suspended until payment is made.

**§ 111.75 [Amended]**

46. In § 111.75:

a. In the section heading, remove the word “Secretary’s” and add in its place the words “Executive Assistant Commissioner’s”;

b. Remove the words “Secretary of Homeland Security, or his designee” and add in their place the words “Executive Assistant Commissioner”; and

c. Remove the word “Secretary’s” and add in its place the words “Executive Assistant Commissioner’s”.

47. In § 111.76:

a. In paragraph (a), remove the word “written” and the words “in duplicate” in the first sentence; and remove the words “Assistant Commissioner” and add in their place the words “appropriate Executive Director, Office of Trade,”; and

b. Paragraph (b) is revised.

The revision reads as follows:

**§ 111.76 Reopening the case.**

\* \* \* \* \*

(b) *Procedure.* The appropriate Executive Director, Office of Trade, will forward the application, together with a recommendation for action thereon, to the Executive Assistant Commissioner. The Executive Assistant Commissioner may grant or deny the application to reopen the case and may order the taking of additional testimony before the appropriate Executive Director, Office of Trade. The appropriate Executive Director, Office of Trade, will notify the applicant of the decision by the Executive Assistant Commissioner. If the Executive Assistant Commissioner grants the application and orders a hearing, the appropriate Executive Director, Office of Trade, will set a time and place for the hearing and give due written notice of the hearing to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer will be the same as those governing the original proceeding. The

original order of the Executive Assistant Commissioner will remain in effect pending conclusion of the new proceedings and issuance of a new order under § 111.77.

48. Revise § 111.77 to read as follows:

**§ 111.77 Notice of vacated or modified order.**

If, pursuant to § 111.76 or for any other reason, the Executive Assistant Commissioner issues an order vacating or modifying an earlier order under § 111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty, the appropriate Executive Director, Office of Trade, will notify the broker in writing and will publish a notice of the new order in the *Federal Register*.

**§ 111.78 [Amended]**

49. Section 111.78 is amended by removing the word “port” and adding the words “of the designated Center” after the word “director”.

**§ 111.79 [Amended]**

50. Section 111.79 is amended by removing the words “Assistant Commissioner” and adding in their place the words “appropriate Executive Director, Office of Trade,” wherever they appear.

51. Revise § 111.81 to read as follows.

**§ 111.81 Settlement and compromise.**

The Executive Assistant Commissioner, may settle and compromise any disciplinary proceeding which has been instituted under this subpart according to the terms and conditions agreed to by the parties including, but not limited to, the assessment of a monetary penalty in lieu of any proposed suspension or revocation of a broker’s license or permit.

**§ 111.91 [Amended]**



52. In § 111.91:

a. The introductory text is amended by removing the word “Customs” and adding in its place the term “CBP”; and

b. Paragraph (a) is amended by removing the phrase “ §§ 111.53 (a) through (f)” and adding in its place the phrase “§ 111.53 (a) through (g)”.

**§ 111.92 [Amended]**

53. In § 111.92, amend paragraph (a) by removing the word “Customs” and adding in its place the term “CBP”.

**§ 111.94 [Amended]**

54. Section 111.94 is amended by removing the word “Customs” wherever it appears and adding in its place the term “CBP”.

55. In § 111.96, revise paragraphs (a), (b) and (d) to read as follows.

**§ 111.96 Fees.**

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to § 111.12 of this part must pay a fee of \$300 for an individual license application and \$500 for a partnership, association, or corporation license application to defray the costs to CBP in processing the application. Each individual who intends to take the examination provided for in § 111.13 of this part must pay a \$390 examination fee before taking the examination. An individual who submits an application for a license must also pay a fingerprint check and processing fee; the director of the designated Center will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks and the CBP fingerprint processing fee, the total of which must be paid to CBP before further processing of the application will occur.

(b) *Permit application fee.* An application fee of \$100 must be paid in connection with a national permit issued under § 111.19 of this part to defray the processing costs, including costs associated with an application for reinstatement of a permit that was revoked by operation of law or otherwise.

\* \* \* \* \*

(d) *Triennial status report fee.* The triennial status report required under § 111.30(d) must be accompanied by a fee of \$100 to defray the costs of administering the reporting requirement. The report must be filed through the CBP-authorized EDI system and accompanied by payment or valid proof of payment of the triennial status report fee prescribed by this section. If a CBP-authorized EDI system is not available, the triennial status report must be filed with the director of the designated Center.

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Dated: March 3, 2020

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Chad F. Wolf,  
Acting Secretary  
Department of Homeland Security