

Customs Broker Regulations-Big Changes Coming Through Modernization

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U.S. Customs and Border Protection (CBP) modernization has arrived with a proposed list of changes that restructure certain fundamentals of the business. CBP issued its Notice of Proposed Rulemaking on June 5, 2020. The most noteworthy proposed changes to the broker regulations found at 19 CFR Part 111 include: (1) transitioning all brokers to national permits and elimination of broker districts and district permits; (2) updates to the “responsible supervision and control” requirements for management of broker operations; (3) efforts to ensure that all “customs business” is conducted within the United States; and (4) requirements that customs brokers have direct communication with the respective importers.

National Permits - The proposed rules will fully expand the activities allowed under a national permit so that holders may conduct any type of customs business within the customs territory of the United States. In order to do so, CBP proposes eliminating the need of a district permit, which was historically the official document that allows a licensed customs broker to conduct customs business on behalf of others within a particular district. If a broker wished to offer services covering multiple geographic locations, then multiple district permits were required.

Responsible Supervision and Control - The proposed rules amend the traditional factors used by CBP to determine whether brokerage employees who are not themselves licensed brokers are properly supervised. The change will move a nonexclusive list of factors that CBP considers from the definition of “responsible supervision and control” to a specific section on the subject. The proposed changes also eliminate certain of the regular reporting requirements that brokers are today required to make to CBP regarding their employees, such as former home addresses and former employers.

Customs Business in United States - The proposed rules clarify that all customs business, as the term is defined at 19 CFR 111.1, must be conducted within the customs territory of the United States. Essentially, customs brokers are not permitted to offshore or otherwise outsource the delivery of regulated activities. The changes will also clarify that 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. Each broker must also maintain an accurate and current point of contact in CBP-authorized EDI systems.

Broker-Importer Communications - The proposed rules also include restrictions on third-party interaction in the broker-importer relationship. Specifically, the rules will require brokers to obtain

their customs Power of Attorney (POA) forms directly from the importer of record or the drawback claimant. This change will eliminate the possibility that a freight forwarder or other third-party agent also acting under a POA could engage the customs broker on behalf of the importer.

These changes are intended to coincide with other trade initiatives within the agency, namely, the Centers of Excellence and Expertise and the Automated Commercial Environment (ACE). One effect of those initiatives is the transition of operational trade functions that traditionally resided with the Ports of Entry and Port Directors to the Centers and Center Directors. The Center structure is based on subject matter expertise rather than geographic location, which no longer aligns with the legacy district system. Similarly, the development of ACE allows brokers the technical functionality to file entry information outside of the Port of Entry, let alone the respective district.

The deadline for public comments is August 4, 2020. In addition to comments from the broker community, CBP is also interested to receive 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 supports such recommended change.

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