

Broker Regulations 2016

COAC Recommendations

Single Permit & Permit Process

1. Replace “district permit” and “national permit” with “the permit” or “permit” to better reflect the transition to a single permit framework that operates at the national level within the customs territory of the United States. Part 111
2. Implement COAC recommendation 15057 to require brokers to have a single permit that allows them to have sufficient authority to conduct customs business at the national level within the customs territory of the United States. §111.2
3. Prepare for the transition to a single permit by asking CBP to identify brokers that currently do not have a National Permit and work with them to properly and effectively transition to a single permit that operates at a national level. §111.2
4. Ensure customs business may only be conducted within the customs territory of the United States with the issuance of a permit. §111.19
5. Eliminate the process for brokers to receive permit waivers as they will not be required under a single permit operating at the national level. §111.19
6. Require brokers to provide satisfactory evidence of how he/she/the entity intends to exercise responsible supervision and control (“RSC”) to obtain a permit which includes, but is not limited to, a plan outlining the use of the ten (10) factors, list of physical offices, name and title of the licensed broker qualifying the permit; the list of other licensed brokers providing supervision and a list of employees conducting customs business. §111.19
7. Make enhancements to ACE for the broker to identify the name and primary point of contact associated with the broker’s permit. §111.19

Responsible Supervision & Control

8. Update the 10 factors, as appropriate, under responsible supervision and control (“RSC”) to better align with brokers’ current business practices; specifically clarify language to:
 - a. Factor 4: CBP initiated reject rate resulting from entries or entry summaries expressed as a percentage of the broker's overall business for the various customs transactions.
 - b. Factor 5: The maintenance of current electronic or other media editions of CBP Regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances.
 - c. Factor 6: The availability of an adequate number of individually licensed brokers for necessary consultation with the broker’s employees engaged in customs business.
 - d. Factor 7: The frequency of supervisory contact (whether physical or virtual) of an individually licensed broker to another office that does not have a resident individually licensed broker.
 - e. Factor 8: The frequency of audits and reviews conducted under the supervision of an individually licensed broker of the customs transactions handled by employees of the broker and evidence of corrective action taken as a result of the audits and reviews.

- f. Factor 9: The extent to which the individual who qualifies the permit is engaged in the customs business of the brokerage firm (removal of “district” and “national” permit language). §111.1
9. Provide guidance concerning the ten (10) factors demonstrating responsible supervision and control. Specifically, CBP should set forth best practices in a policy document, preferably in the Broker Handbook, including examples of how a broker, among other things, should: properly train employees; issue appropriate written instructions, guidelines and internal controls; maintain an adequate ratio of employees to a licensed broker based on factors such as the volume, type, diversity of business and commodities a broker handles etc.; engage in supervisory contact; and audit and review operations, etc.

License Examination

10. Pursue a Notice of Proposed Rule Making (NPRM) at once to enable CBP to administer an electronic exam format in calendar year 2017. In the long term, automate the exam, the process for notifying examinees of their exam results and the appeal process. §111.13
11. Explore further enhancements to the broker exam such as automated access to resources like the Harmonized Tariff Schedule (HTS) and Explanatory Notes. §111.13
12. Conduct the examination on the fourth Monday in April and fourth Monday in October to enhance applicant participation and CBP exam proctoring. In the long term, explore conducting a broker exam that can be taken ‘on-demand’ rather than conducted twice a year. §111.13
13. Explore having the broker industry (e.g., NCBFAA) assist in developing broker exam questions in conjunction with CBP.

Recordkeeping, Record Retention & Confidentiality

14. Require electronic customs records be stored in an electronic format within the customs territory of the United States. The records must be available and retrievable by the broker upon request by CBP to the parties addressed in §111.24. Duplicate records may be stored in non-customs territory of the United States. §111.21(a) and §111.23(b).
15. Duplicate records stored in non-customs territory of the United States must be available and retrievable by the broker upon request by CBP and parties as addressed in §111.24. §111.21
16. Require brokers to provide CBP with the contact information of the individual who is the designated contact in §111.21(c) as well as how and by whom the records are stored in the customs territory of the United States. This information is to be provided with the application of a new permit and through the triennial process. §111.23
17. Define “confidential business information” as including data, information or records that concern or relate to the production, sales, shipment, purchase, expenditures, payment, warehousing, inventory management or other information of commercial value or significance unless such information is otherwise available within the public domain. §111.1, 111.24
18. In addition to the current exceptions for sureties and duly accredited CBP or other U.S. officers or agents, enable the broker to disclose confidential business information to third parties to facilitate the movement of merchandise, perform security screenings or reviews, for collection purposes, to address any claim or potential claim against him/herself from the

importer, or otherwise to conduct business within the broker's scope of services consistent with its power of attorney. §111.24

19. Consider any necessary revisions to 19 CFR §163 in accordance §111.21, §111.23 and §111.24 recommendations.

Employee & Status Reporting

20. Streamline the employee reporting process through electronic submission and limit the required data elements to the employee name, social security number, date of birth, and current home address. §111.28
21. Eliminate the requirement for a broker to report terminated employees; require the broker to, at a minimum, to report employees involved in customs business, but allow the broker to report all employees if necessary; and modify the employee reporting timeframe requirements to harmonize reporting timelines and to allow for flexibility in reporting frequency. §111.28
22. Make enhancements to ACE that can better facilitate the electronic reporting of broker employee information (to include the system electronically determining if the broker is reporting new or terminated employees) and other broker-related functions.
23. Review the information included in the triennial reporting process and identify ways to better facilitate and satisfy reporting requirements for the information (e.g., maintaining current information on the ACE portal).

Relations Between Brokers & Importers

24. In all cases, the broker shall follow the importer's documented instructions regarding customs business to include the transmission of bills for services, copies of the entry releases and summaries, and other documentation or data filed on the importer's behalf. Ensure that importers to directly interact with the broker and provide guidance on processing merchandise. §111.36 (a)
25. Implement COAC recommendation 13023 regarding obtaining a power of attorney directly from the importer. Recommend CBP implement immediately to meet requirements in the Trade Facilitation and Trade Enforcement Act of 2016 until it can be promulgated in regulation. §111.36 (a)
26. Allow brokers to compensate freight forwarders for referring brokerage business without the conditions currently stated in the regulations. §111.36(c)

Fees

27. Remove specific fee dollar amounts and reference a single source (i.e. CBP.gov, policy directive, etc.) for specific information on the fees and their schedule where all broker-related fees can be posted in order for CBP to have greater flexibility in changing fee amounts, if needed. §111.96
28. Increase the permit fee to offset CBP's administrative costs. §111.96
29. Increase the exam fee to offset CBP's costs for administering an electronic exam. §111.13
30. Expand payment options for brokers and partners for broker-related fees to Pay.gov.

Obtaining & Vetting Importer Information

31. Implement COAC recommendations 13024, 13061, and 13062 regarding updates to CBP Form 5106 data elements, limiting additional information from companies in good standing, and collecting such information as practical via ACE. Proposed new section §111.43
32. Require customs brokers to collect appropriate and accurate data for the CBP Form 5106 as practical, available and necessary for a broker to conduct due diligence on, and verify the identity of, an importer including a foreign national. Proposed new section §111.43
33. Enhance ACE capabilities to enable importers to provide the remainder of CBP Form 5106 data at the importer's, as opposed to the broker's, disposal and also to enable customs brokers to review information maintained by relevant Federal agencies for purposes of verifying the identities of importers. Proposed new section §111.43
34. In order to implement section 116 of the Trade Facilitation and Trade Enforcement Act of 2016:
 - a. To verify the authenticity of such information the customs broker will take reasonable steps, for instance by reviewing publically available open source information regarding the importer's business and as appropriate, by reviewing the physical address of the importer particularly in the case of small or privately held companies and/or for individuals.
 - b. In cases where the review calls into question the authenticity of the information, the broker will conduct a further review inquiry, as reasonable and practical, to identify the importer. A customs broker shall maintain the records of the information collected to verify the identity of the importer consistent with appropriate recordkeeping guidelines. Proposed new section §111.43

Continuing Education

35. Pursuant to CBP's authority under 19 U.S.C. §1641(f), enabling it to prescribe rules or regulations it considers necessary to protect importers and the U.S. revenue, implement COAC recommendation 13010 requiring licensed brokers to have a minimum of 40 hours of continuing education during their triennial reporting period. However, allow flexibility in qualifying continuing education credits with no restrictions/requirements on accredited continuing education. Proposed new section.
36. As a policy recommendation, require a broker with a voluntarily suspended license to have a triennial period's worth of continuing education completed as a prerequisite to re-activate his/her suspended license. Also, recommend that CBP institute a waiver for this requirement upon a showing of good cause.

Broker Management

37. Institute a Broker Management office reporting to CBP HQ, with full-time, dedicated personnel on a national level, with each broker assigned to one team for management purposes.