

U.S. Customs and Border Protection



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN HEATING BOILERS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain heating boilers. Based upon the facts presented, CBP has concluded in the final determination that Canada is the country of origin of the heating boilers for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 13, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of this final determination on or before [insert 30 days from date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Barbara Kunzinger, Valuation and Special Programs Branch: (202) 325-0359.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 13, 2010, pursuant to subpart B of part 177, Customs Regulations (19 C.F.R. part 177, subpart B), CBP issued a final determination concerning the country of origin of heating boilers which may be offered to the U.S. Government under an undesignated procurement contract. This final determination, in HQ H119218, was issued at the request of Camus Hydronics Ltd. under procedures set forth at 19 C.F.R. part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511-18). In the final determination, CBP concluded that, based upon the facts presented, the heating boilers, assembled in Canada from parts made in the United States, Canada, and France, are substantially transformed in Canada, such that Canada is the country of origin of the finished article for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 C.F.R. § 177.29), provides that notice of final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the Federal Register.

Dated: October 13, 2010

SANDRA L. BELL
Executive Director
Regulations and Rulings Office of
International Trade

Attachment

HQ H119218

October 13, 2010
OT:RR:CTF:VS H119218

Ms. REGINA VARGO
GREENBERG TRAUIG, LLP
2101 L STREET NW, SUITE 1000
WASHINGTON, D.C. 200037

Re: U.S. Government Procurement; Heating Boilers

DEAR Ms. VARGO:

This is in response to your letter, dated August 3, 2010, requesting a final determination on behalf of Camus Hydronics Ltd. (Camus) of Ontario, Canada, pursuant to subpart B of 19 C.F.R. part 177.

Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), U.S. Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain heating boilers. We note that Camus is a party-at-interest within the meaning of 19 C.F.R. 177.22(d)(1) and is entitled to request this final determination as the manufacturer of these boilers under 19 C.F.R. 177.23(a).

FACTS:

This case involves the Camus *DynaFlame*, *DynaForce*, and *DynaMax* heating boilers fabricated and assembled in Canada from sheet metal and components primarily of United States (U.S.), Canadian, and (in the case of the *DynaMax*) French origin. All three boilers go through both a sub-assembly stage and an assembly stage in Canada, as well as testing, quality control, and packaging. A bill of materials was submitted with your request.

DynaFlame Boilers

The *DynaFlame* boiler is composed of 65 separate components. Of these, 22 are fabricated in Canada from sheet metal imported from the U.S. Most of the finished components, including the burner, headers, and controls, are also of U.S. origin. The fabrication process includes, among other things, shearing the flat stock to the required size; utilizing punch presses, tools, and dies; bending and welding the steel; and painting the steel components.

Four sub-assembly processes then occur in Canada; these include the assembly of the heat exchanger, the gas train, electronics and controls, and the combustion fan. Assembly of the heat exchanger requires, among other things, cutting copper finned tube to specific lengths, adjusting the tube to the required specifications, inserting the tubes into the headers, inserting and attaching a number of other components, and hydro testing the heat exchanger. The copper tubes used to make the heat exchanger are of U.S. origin. The gas train assembly requires fitting the components together by threading the components with nipples and fittings, and then painting all the

pipe black. Assembly of the electronics and controls requires installing and wiring the components together, and programming certain aspects of the control box. The combustion fan is assembled by separating the fan housing, installing the components, and then reassembling the housing.

The four sub-assemblies, along with the fabricated sheet metal parts and various other components, are then assembled into a finished *DynaFlame* boiler. Final assembly consists of, among other things, installing, wiring, and fastening the sub-assemblies to each other and the remaining components.

DynaForce Boilers

The *DynaForce* boiler contains almost 60 separate components. Of these, 18 are fabricated in Canada from sheet metal imported from the U.S. The sheet metal fabrication process for the *DynaForce* is the same as that for the *DynaFlame*. The heat exchanger is purchased already assembled from a Canadian supplier, and is assembled in Canada from U.S. origin stainless steel plates and tubes. The burner, controls, and fan kit are some of the U.S. origin components.

Like with the *DynaFlame*, the *DynaForce* goes through both a sub-assembly stage and an assembly stage. The sub-assembly stage has three processes: the gas train, electronics and controls, and the combustion fan. The assemblies of the gas train, electronics and controls, and the combustion fan for the *DynaForce* are very similar to those for the *DynaFlame*.

The three sub-assemblies, the heat exchanger, the fabricated components of sheet metal, and the remaining parts are then assembled to create the finished *DynaForce* boiler.

DynaMax Boilers

The *DynaMax* boiler contains over 50 separate components. Of those, 21 are fabricated in Canada from U.S. originating sheet metal. The fabrication process for the sheet metal is the same for the *DynaMax* as it is for the *DynaFlame* and *DynaForce*. The heat exchanger (along with the burner) is imported into Canada from France. The controls, sensors, fan, and pump are some of the components of U.S. origin.

As with the other two boilers, the *DynaMax* has both a sub-assembly stage and an assembly stage. The sub-assembly stage is composed of three sub-assembly processes: the heat exchanger, electronics and controls, and the plate exchanger. Although the heat exchanger is imported from France, it undergoes additional assembly in Canada. The heat exchanger sub-assembly consists of, among other things, inspection, attaching the pump, installing the burner and ignition, and testing the heat exchanger. Assembly of the plate exchanger requires selecting the required plate exchanger, attaching the fittings and labeling the fittings.

These three sub-assemblies are then assembled together with the fabricated components of sheet metal, the combustion fan, the gas train, and various other parts to become the finished *DynaMax* boiler.

ISSUE:

What is the country of origin of the subject boilers for the purpose of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R. § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int’l Trade 1983), *aff’d*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

The courts and CBP have also considered the essential character of the imported article in making these determinations. *See Uniroyal, Inc. v. United States*, 542 F. Supp. 1026, 3 CIT 220, 224–225 (1982) (where it was determined that imported uppers were the essence of a completed shoe) and *National Juice Products Association, et al v. United States*, 628 F. Supp. 978, 10 CIT 48, 61 (1986) (where the court addressed each of the factors (name, character, and use) in finding that no substantial transformation occurred in the production of retail juice products from manufacturing concentrate).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item’s components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary consid-

erations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In Headquarters Ruling Letter (“HRL”) 555532 (September 18, 1990), Customs held that electric and gas water heaters imported from Mexico were a product of Mexico. The Mexican manufacturer fabricated the shell with rolled steel from the U.S. and then assembled the fabricated shell with other components of the water heater, many of which were of U.S. origin. This is very similar to the process used by Camus in this case. Camus uses U.S. originating sheet metal to fabricate many parts, such as the boiler shell, and then assembles U.S., Canadian, and (in the case of the DynaMax) French originating components to create the completed boilers.

In HRL 561450 (April 14, 2000), a home espresso machine assembled in Italy from over 60 components from both Spain and Italy was considered to be a product of Italian origin. The assembly of the components was found to be a substantial transformation resulting in a new commercial product with a new name, character and use. Similarly, the assembly of the U.S., Canadian, and French components for the boilers involves at least 50 components. The assembly results in an article with a new name, character and use from that of the individual components — a boiler.

All three boilers undergo a substantial amount of work in Canada, from the fabrication of the sheet metal into components, the assembly of parts into subassemblies, and the final assembly — combining the subassemblies and the remaining components into the finished boilers. The number of components, the least of which being 50, is a meaningful assembly of individual components into the finished boilers. Although some of the more expensive parts are not of Canadian origin, no one part could function or run the boiler without the others.

Therefore, based on the totality of the circumstances in this case, we find that the Canadian processing results in a substantial transformation of the components and that the *DynaFlame*, *DynaForce*, and *DynaMax* boilers should be considered products of Canada for the purpose of U.S. Government procurement.

HOLDING:

Based on the facts of this case, the country of origin of the Camus *DynaFlame*, *DynaForce*, and *DynaMax* heating boilers is Canada for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

SANDRA L. BELL

Executive Director

*Office of Regulations and Rulings Office of
International Trade*

[Published in the Federal Register, October 21, 2010 (75 FR 65023)]



19 CFR PART 111

DOCKET NO. USCBP-2010-0038

RIN 1651-AA80

**PERMISSIBLE SHARING OF CLIENT RECORDS BY
CUSTOMS BROKERS**

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (CFR) pertaining to the obligations of customs brokers to keep clients' information confidential. The proposed amendment would allow brokers, upon the client's consent in a written authorization, to share client information with affiliated entities related to the broker so that these entities may offer non-customs business services to the broker's clients. The proposed amendment would also allow customs brokers to use a third-party to perform photocopying, scanning, and delivery of client records for the broker. These proposed changes are intended to update the regulation to reflect modern business practices, while protecting the confidentiality of client (importer) information. In addition, the proposed changes would align the regulations with CBP's previously published rulings concerning brokers' confidentiality of client information.

DATES: Comments must be received on or before December 27, 2010.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP-2010-0038.

- Mail: Trade and Commercial Regulations Branch, U.S. Customs and Border Protection, 799 9th Street, NW (Mint Annex), Washington, DC 20229-1179.

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 also be inspected on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Carrie Owens, Chief, Entry Process & Duty Refunds Branch, Regulations and Rulings, Office of International Trade, (202) 325-0266. For operational aspects, Anita Harris, Chief, Broker Compliance Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6069.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on any aspect of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

The statutory provision governing customs brokers is found in section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641). Spe-

cifically, section 641(f) authorizes CBP to promulgate “rules and regulations relating to the customs business of customs brokers as the Secretary...considers necessary to protect importers and the revenue of the United States...including rules and regulations governing...the keeping of...records by customs brokers...” *See* 19 U.S.C. 1641(f). The implementing regulations issued under the authority of § 641 are set forth in part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111).

In order to meet its obligations to protect the revenue and enforce the customs laws, it is essential that CBP receive full and complete information from importers with respect to their customs transactions. These transactions contain confidential business information, the unauthorized disclosure of which could cause competitive harm to the importer or other companies. Brokers occupy a unique role as conduits with respect to import transactions. As entities that are licensed and regulated by the U.S. government, brokers act as intermediaries between importers and CBP to assure that complete and accurate information is provided. Thus, a special relationship exists between the broker, its client (the importer), and CBP. The duties and responsibilities of customs brokers in transacting customs business on behalf of their clients, and, in particular, the confidential treatment that brokers must accord their records of such transactions, are governed by the regulations in 19 CFR part 111 issued under the authority of 19 U.S.C. 1641(f).

It is well settled that customs brokers have a fiduciary duty to protect client information. As such, brokers are subject to certain recordkeeping requirements set forth in part 111 of 19 CFR. In that regard, part 111 requires, among other things, that a broker maintain records of transactions (19 CFR 111.21), retain records (19 CFR 111.23), and make records available for official CBP inspection (19 CFR 111.25). Additionally, in carrying out its duties and responsibilities, a broker is required to exercise responsible supervision and control over the transaction of customs business (19 CFR 111.28(a)) (*see also* 19 U.S.C. 1641(b)(4)), and exercise due diligence in handling customs business matters (19 CFR 111.29(a)). Further, a broker is precluded from entering into an agreement with an unlicensed person to transact customs business if the fees generated from the transaction would inure to the benefit of the unlicensed person (19 CFR 111.36(b)).

Another significant requirement set forth in part 111 is that brokers maintain the confidentiality of client records. *See* 19 CFR 111.24. Section 111.24 of CBP regulations (19 CFR 111.24) covers a broad range of records as defined in § 163.1(a) (19 CFR 163.1(a)), and

protects client records and the information contained in those records. Specifically, § 111.24 currently provides that with the exception of 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. The purpose of the regulation is to prevent a broker from disclosing information it receives from a client to a third-party without the consent of the broker's client. It is noted that when a broker is issued its license by CBP, it agrees to abide by the rules governing brokers, including rules pertaining to the confidentiality of client records. To overcome this confidentiality requirement, a broker need merely request, and receive, a written release from the client authorizing disclosure of that client's information. Absent such a release, a broker who engages in information sharing is subject to disciplinary action for violating the confidentiality requirements of 19 CFR 111.24.

The issue of whether brokers may share client information with third-party business entities has previously been considered by CBP in the form of published rulings. CBP's longstanding position on this matter is that absent written client consent, a broker may not share client information. Specifically, in Headquarters ruling letters (HQ) 116025 (September 29, 2003) and HQ 116190 (June 14, 2004), CBP was asked whether a broker within a family of companies (such as related affiliates, subsidiaries, and parent companies) may share certain client background or aggregate revenue information with related affiliates who were not licensed brokers, but who were separately-incorporated and owned by the same parent company. CBP has consistently held that separately-incorporated companies constitute separate legal entities under the law, notwithstanding common ownership (*see* HQ 223804 (June 29, 1992); HQ 114166 (February 2, 1998); HQ 115248 (August 28, 2001)). Therefore, CBP found that absent a written release from the client authorizing disclosure of client information, section 111.24 precludes a broker from sharing client information with separately-incorporated affiliates of the same parent company. In CBP's view, client background and aggregate revenue information is collected and compiled from, and connected with, records pertaining to the business of clients serviced by the broker. As such, that information falls within the protection of § 111.24. CBP's position is that brokers can secure waivers of confidentiality from their clients in order not to violate the confidentiality requirements of section 111.24.

Similarly, in HQ 114404 (March 16, 1999), CBP held that a licensed broker must ensure that it will not disclose its clients' records to a parent company, unless disclosure is authorized by the client.

In HQ 114758 (November 7, 2000), the question presented was whether a licensed broker may transfer its ancillary financial functions to a related or affiliated company that is not a licensed broker. In that instance, CBP reiterated its position that disclosure to an unauthorized party of any information emanating from a transaction with a client of the broker would constitute a violation, and would subject the violating broker to possible penalty or other disciplinary action. CBP found that outsourcing ancillary financial and administrative services would run afoul of the broker confidentiality provisions, since the records sought to be outsourced would contain financial data or information derived from clients' files pertaining to customs business.

In that ruling, however, CBP acknowledged that there may be situations in which a broker may legitimately transfer some of its business operations to another company. For instance, in HQ 114411 (November 22, 1999), CBP had allowed a broker to outsource its human resources department to an employee leasing company on the condition that the leasing company would have no access to, or involvement in, the actual customs business work of the broker, and that the records of the clients of the broker would be kept confidential from the leasing company. Relying on HQ 114411, CBP held in HQ 114758 that a broker may outsource ancillary financial and administrative functions provided that the same safeguards are in place. Specifically, the broker would be allowed to outsource financial or administrative functions, provided the new service provider had no access to, or involvement in, the actual customs business work of the broker client. This meant that the new service provider could not perform any functions that would be dependent on information or data derived from client files. The broker could only outsource the aforementioned functions provided that the records of the broker's clients, and the information contained in those records would not be disclosed to the new service provider.

Finally, in determining whether a broker is meeting the requirements to keep clients' records confidential, CBP considers how the broker is exercising responsible supervision and control over the customs business it conducts pursuant to 19 U.S.C. 1641(b)(4). *See* HQ 225006 (February 15, 1994).

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 development of more modern and

efficient business practices, brought about by the changing structure and environment of the business community, has rendered the blanket prohibition of the current regulation somewhat antiquated. In particular, CBP understands that in an effort to streamline business practices, a broker may need to use a third-party service provider to perform the tasks of photocopying, scanning, and delivering client documents to support the business functions of the brokerage services. CBP further acknowledges that a broker may have a legitimate financial interest in providing its clients additional non-customs business services which are offered by affiliated entities related to the broker.

To that end, CBP believes policy reasons favor amending § 111.24 to update the regulation to reflect modern business practices, while protecting the confidentiality of client (importer) information. Therefore, consistent with the holdings in CBP's previously published rulings, this document proposes to amend the CBP regulations to align them with its rulings.

EXPLANATION OF PROPOSED AMENDMENTS

Permissible Sharing with Client Consent / Written Authorization:

With respect to a broker's interest in providing additional non-customs business services to its clients, CBP proposes to permit a broker to share client information with affiliated entities related to the broker so that the related affiliate may offer non-customs business services to the broker's client only on the condition that the client provides its express consent in a written authorization. The written authorization must specify the information the client authorizes the broker to share outside of the brokerage with affiliated entities related to the broker or with a party bound by contract to the broker. Requiring such consent would balance CBP's interest in the broker's maintaining confidentiality of importers' records with the business interest of the broker to offer additional non-customs business services to its clients.

Other Third-Party Services:

Photocopying and Scanning. CBP proposes to amend 19 CFR 111.24 to permit a broker to use a third-party service provider for the limited routine non-customs functions of photocopying and scanning for the broker without violating § 111.24, because these two functions are ancillary to the conduct of "customs business." It is noted, however, that even in providing the administrative tasks of photocopying and scanning, business information pertaining to the broker's client

would be revealed in the process. Therefore, in order to achieve a balance between the broker's need for a streamlined business process, and the requirement to maintain the confidentiality of client information, safeguards must be in place to ensure that the requirements arising from 19 U.S.C. 1641 and 19 CFR 111.24 are not compromised.

In that regard, the proposed amendment requires that the broker, consistent with its obligations under § 111.29(a), exercise due diligence in the selection of the third-party service provider. The broker must ensure that the requirements in § 111.36(b) pertaining to a broker's relations with unlicensed persons are complied with. Moreover, in accordance with § 111.28(a), a broker is required to exercise responsible supervision and control over its brokerage business. Thus, the broker must ensure that the party to whom records will be provided for photocopying or scanning will safeguard the information it obtains in the course of providing the subject services. Accordingly, the proposed amendment requires that the broker enter into a non-disclosure agreement with the third-party service provider that requires the third-party to keep the contents and information contained in any records pertaining to the broker's client confidential.

The written consent and the non-disclosure agreement as contemplated in the proposed amendment will be subject to the recordkeeping requirements prescribed for brokers as set forth in §§ 111.21(a), 111.23, and 111.25.

The proposed amendment in this document is designed to codify CBP's previously published rulings and to update the regulation so that it is streamlined with modern and efficient business practices, while protecting the confidentiality of client (importer) information.

Messenger Delivery Services. Because messenger/delivery services are also ancillary to the conduct of "customs business," CBP proposes to further amend 19 CFR 111.24 to provide that a broker may use a third-party messenger service for transporting and/or delivering client documents on the broker's behalf, if the broker safeguards the clients' records by sealing the documents so that the messenger cannot view, alter, or amend them.

REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have 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 per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule proposes to allow a broker, upon the client's consent in a written authorization, to share client (importer) information with affiliated entities related to the broker in order to offer non-customs business services to its clients. If brokers choose to share client (importer) information with an affiliated entity related to the broker, the changes to the regulation would potentially benefit the broker's client (importer) through the availability and access to additional non-customs business services. This rule also proposes to allow a broker to outsource its photocopying and scanning tasks to a third-party service provider, and to use a third-party messenger service provider for transport and delivery of client records. To the extent that brokers would use third-parties for copying, scanning and messenger services, the changes to the regulation would confer a benefit to the broker by allowing it to streamline its business.

The entities affected by this proposed amendment are brokers, importers, and third-party service providers and would likely consist of a broad range of large, medium, and small businesses; thus, the number of entities subject to this proposed rule would be considered "substantial." The effects of this amendment, however, would not rise to the level of being considered a "significant" economic impact.

Accordingly, CBP believes that the proposed amendment, if adopted, would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. However, we welcome comments on that assumption.

The most helpful comments are those that can give us specific information or examples of a direct impact on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur significant direct costs, CBP may, during the process of drafting the final rule, certify that this action does not have a significant economic impact on a substantial number of small entities.

EXECUTIVE ORDER 12866

The proposed amendment in this document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866 because it will not result in expenditures totaling \$100 million or more in any one year. The Office of Management and Budget (OMB) has not reviewed this regulation under that order. To the extent that licensed customs brokers are able to use lower cost third-party service providers to perform limited administrative tasks, this rule, if finalized, should confer benefits to brokers. Please see the **REGULATORY FLEXIBILITY ACT** section of this preamble for additional information regarding the potential economic impact of this proposed rule.

THE PAPERWORK REDUCTION ACT

The information collected under the provisions of this proposed rule has been submitted for approval by the Office of Management and Budget (OMB) under OMB control number 1651–0034. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The burden estimates for recordkeeping for the non-disclosure agreement as well as the client consent/written authorization are presented below:

Non-Disclosure Agreement:

Estimated Number of Recordkeepers: 11,986
 Estimated Number of Responses per Recordkeeper: 1
 Estimated Number of Total Annual Responses: 11,986
 Estimated Time Per Response: 1 hour
 Estimated Total Annual Burden Hours: 11,986

Client Consent/Written Authorization:

Estimated Number of Recordkeepers: 711,000
 Estimated Number of Responses per Recordkeeper: 1
 Estimated Number of Total Annual Responses: 711,000
 Estimated Time Per Response: 1 hour
 Estimated Total Annual Burden Hours: 711,000

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC, 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW (5th Floor), Washington, DC, 20229–1179.

Comments are invited on:

- (a) whether the recordkeeping is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) the accuracy of the agency's estimate of the burden of the recordkeeping;
- (c) ways to enhance the quality, utility, and clarity of the recordkeeping;

- (d) ways to minimize the burden of the recordkeeping on respondents, including through the use of automated recordkeeping techniques or other forms of information technology; and
- (e) estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide recordkeeping.

UNFUNDED MANDATES REFORM ACT OF 1995

This notice of proposed rulemaking will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$100 million or more, in the aggregate, to any of the following: state, local, or Native American tribal governments, or the private sector.

EXECUTIVE ORDER 13132

In accordance with the principles and criteria contained in Executive Order 13132 (Federalism), this notice of proposed rulemaking will have no substantial effect on the States, the current Federal-State relationship, or on the current distribution of power and responsibilities among local officials.

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002 and that such regulations are signed by the Secretary of Homeland Security (or her delegate).

LIST OF SUBJECT IN 19 CFR PART 111

Customs brokers, Duties and responsibilities, Records confidential.

PROPOSED AMENDMENTS TO THE CBP REGULATIONS

For the reasons stated above, it is proposed to amend part 111 of title 19 of the CFR (19 CFR Part 111) as set forth below.

PART 111 — CUSTOMS BROKERS

1. The general authority citation for part 111 continues to read as follows:

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

* * * * *

2. Section 111.24 is revised to read as follows:

§ 111.24 Records confidential.

(a) *Client Records.* The records referred to in this part and pertaining to the business of the clients serviced by the broker are considered confidential. Except as provided in paragraphs (b) and (c) of this section, the broker must not disclose the contents or any information connected with client records to any persons other than those clients, their surety on a particular entry, and the Field Director, Office of International Trade, Regulatory Audit, the CBP port director, the Immigration and Customs Enforcement agent, or other duly accredited officers or agents of the United States, except on subpoena by a court of competent jurisdiction.

(b) *Disclosure to Affiliated Entity Related to Broker.* Upon the client's consent in a written authorization to share client information outside the brokerage, a broker may disclose only to an affiliated entity related to the broker, information specified in the written authorization pertaining to the customs business of that client so that the affiliated entity may offer non-customs business services to the broker's client.

(c) *Other Third-Party Service Providers.* (1) *Photocopying and Scanning Services.* A broker may provide its clients' records to a third-party service provider for photocopying and/or scanning without violating the prohibitions set forth in the provisions of this part pertaining to confidentiality, provided that:

(i) The broker exercises due diligence in accordance with § 111.29(a) of this part in the selection of the third-party service provider for photocopying and/or scanning by ensuring that its association with the third-party does not violate the provisions in § 111.36(b) of this part; and

(ii) The broker enters into a non-disclosure agreement with the third-party service provider for photocopying and/or scanning that requires the third-party to keep the information contained in any records pertaining to the broker's client confidential.

(2) *Messenger Services.* A broker may provide its clients' records to a third-party messenger service provider for transport and delivery without violating the prohibitions set forth in the provisions of this part pertaining to confidentiality, provided that the clients' records are sealed in such a manner so that the third-party messenger service provider may not view, alter, or amend the documents to be delivered.

Dated: October 21, 2010

DAVID V. AGUILAR
Acting Commissioner
U.S. Customs and Border Protection

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