

ROLE OF THE BROKER

Government Report for the October 7, 2014 COAC Quarterly Meeting Office of International Trade (OT)

CURRENT STATUS

In May 2014, the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) provided the following recommendations to CBP:

Role of the Broker

- COAC recommends that CBP enable brokers to operate through a single, national permit, eliminating the current district permitting requirement. COAC understands that CBP must modernize its permitting framework for Customs brokers to align broker permitting with the challenges and opportunities of 21st century electronic entry processing through such programs such as Automated Commercial Environment (ACE), Remote Location Filing (RLF), the Centers of Excellence and Expertise (CEE) and eBonds.
- COAC recommends that CBP engage the COAC and all stakeholders as soon as possible to review the existing Customs broker management process, related informed compliance publications and broker handbooks to ensure a modern, national broker management process is developed and implemented prior to CBP moving forward with the proposed change in the broker national permitting framework. COAC recognizes that today's current broker management process does not support a new national permitting framework.
- COAC recommends that the new national permit framework include requirements that Customs brokerage firms employ an adequate number of licensed brokers to ensure responsible supervision and control over their Customs business and that CBP work with the appropriate stakeholder groups to define these new supervision and control requirements and provide the COAC an opportunity to comment on any new framework before implementation. COAC understands the value the Customs broker license brings to CBP and the importing community.

Bona Fides

- The COAC recommends that CBP publish the Notice of Proposed Rulemaking regarding changes to CBPF 5106 by the end of 2014 fiscal year in order to solicit comments from stakeholders on the collection of the proposed 5106 data elements. The additional information will support CBP's effort to combat identify theft, antidumping duty evasion and other fraudulent schemes which undermine our global economy.
- The COAC recommends that consideration should be given to limiting additional information requirements from companies in good standing with an existing CBPF 5106 on file with CBP.
- The COAC recommends the 5106 information collection process be automated in ACE, with consideration for the role of the party providing the information. The COAC recommends that both importers of record and customs brokers should be able to file and query CBPF5106 data.

Contact: Broker Management Branch, Office of International Trade

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- The COAC recommends no changes be made at this time to the current regulations regarding the collection of a valid power of attorney in 19 CFR 111.
- The COAC recommends that functionality in ACE be built to help prevent corporate identity theft. Proposed functionality should enable the Importer of Record (IOR) to control and limit which customs brokers or filers, by filer code, are authorized to make entry in each port of entry tied to the Importer of Record number. This could serve as an additional tool to combat corporate identity theft, should an IOR choose to utilize this functionality. Additionally this ability would empower the IOR to use ACE to control the specific ports of entry in which entry can be made, and by which custom broker filer codes. An importer could potentially employ functionality that would restrict any entry from being made in their name in a specific port of entry if necessary. The IOR could use this functionality to address changes in their supply chain as they occur, and authorize entry into those ports for a specific customs broker filer code, several specific filers' codes, or all filers.

The COAC Role of the Broker Working Group last met in May 2014. CBP is focused on implementing the above recommendations, as well as previous recommendations for broker continuing education and the 19 CFR 111 rewrite.

BACKGROUND

In 2012, the following Role of the Broker trade transformation initiative elements were completed: automation of broker exam registration, transformation of broker licensing to incorporate more efficient background investigations, and automated application and payment processes.

CBP is still in need of one key element of the trade transformation initiative: an overhaul of the regulations contained in 19 CFR Part 111 and 141.

The Regulatory Revision Workgroup was established in 2011 by CBP, in partnership with the National Customs Brokers and Forwarders Association of America (NCBFAA), to work collaboratively to develop solutions to meet the challenges of 21st Century commerce as it relates to brokers' vital role. Additionally, the COAC Role of the Broker subcommittee submitted a position paper in October 2011 outlining 17 recommendations for CBP to consider. Among these recommendations was a statement that CBP should recognize the broker's role as a communicator and force multiplier to increase compliance, especially for small- and medium-sized importers. The COAC Role of the Broker subcommittee submitted a position paper in December 2012 that supported the CBP outreach efforts in the summer and fall of 2012.

In August 2013, the COAC Role of the Broker Subcommittee made two recommendations to CBP relating to continuing education:

- The continuing education component to the customs broker's license should be a minimum of 40 hours (32 accredited and 8 non-accredited hours) over the 36 month reporting period. CBP should take a measured and commercially reasonable approach to the 40 hours continuing education requirement for customs brokers wishing to reactivate a license that is inactive.

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- The reporting of continuing education should be tied into the triennial reporting of the licensed customs broker. It is further recommended that the reporting of the license holder and the reporting of continuing education be done together in ACE, making compliance easier for customs brokers.

Beginning in July 2013, the Role of the Broker Working Group met to discuss possible recommendations on importer *bona fides*. The discussions within the working group have been centered on what documentation is of significant value to this purpose and is readily available to the importer which they can provide to the customs broker, and that the customs broker, in turn, can furnish to CBP upon request. CBP has made very clear to the working group that the role of the customs brokers in obtaining *bona fides* is not to vet the importer, but to establish the identity of the authorized individual and their relationship to the importer of record. An example of a logical *bona fides* might be a government-issued photo identification of the authorized individual who was empowered to sign the Power of Attorney.

In November 2013, COAC made the recommendations appearing below to CBP:

- Modify 19 CFR section 111.36 (c) to require that brokers to obtain a power of attorney directly from the importer. Nothing should prevent the broker from communicating directly with the importer.
- Recommend that CBP continue to pursue information collection to improve their admissibility determination via the proposed revisions to the CBP Form 5106. CBP should continue to consult with COAC to finalize 5106 information requirements and the collection process. This could be helpful to CBP in addressing risks associated with traditional challenges related to AD/CVD, IPR, and other enforcement issues.
- Realizing that different brokers have different best practices for different business models, we recommend that CBP develop a program to recognize best practices within the broker industry and provide benefits to these brokers. These best practices may include power of attorney collection and validation. We expect that the specific benefits will be discussed during future COAC meetings.
- Given that the proposed changes to the CBP Form 5106 will address many of the concerns surrounding validation of *bona fides*, we recommend no changes be made at this time to the current regulations regarding the collection of a valid power of attorney. We will revisit this recommendation after the proposed 5106 changes have been reviewed by COAC.

Regulatory Overhaul

Potential amendments to the Part 111 and Part 141 regulations will address challenges like increasing the professionalism of the broker community; outdated definitions, non-relevant operating practices; and the identification of theft/shell importers of record. Proposed amendments to regulations would clarify the brokers' responsibilities related to importer validation; provide greater visibility with importers; modernize regulations to align with current trade practices; and create a new requirement for continuing broker education.

Over the summer of 2012, CBP conducted eight webinars, each of which reached out to approximately 400 participants. The webinars outlined the potential Part 111 changes and discussed establishing *bona fides*, broker permitting, impacts to business practices, the

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development of regulatory alternatives, and continuing education. CBP also conducted 32 roundtables with the local brokers associations to discuss the regulatory changes, particularly in regards to continuing education. During the outreach CBP conducted with the trade community, CBP has asked the following questions on importer *bona fides*:

- How can customs brokers enhance their relationships with their importers, particularly those importers who represent the greatest compliance risk for CBP (e.g., one-time importers and unknown importers)?
- How do you establish *bona fides* with your customers to ensure secure and compliant importations?
- How can CBP help you with the establishment of *bona fides* for your clients?

In February 2013, CBP convened a workgroup to discuss concerns on continuing education for licensed customs brokers. CBP briefed COAC on this framework in April 2013, and conducted two webinars open to the trade community in May 2013 and June 2013. CBP reinvigorated this workgroup in 2014 and is drafting a concept paper from which to build a regulatory proposal.

CBP met with NCBFAA in September 2014 to discuss other outstanding issues regarding Parts 111 and 141, including national permits; mandating a ratio of employees to licensed brokers as part of the definition of responsible supervision and control; establishing a checklist in Part 141 to establish importer *bona fides*; revisiting rulings regarding a strict interpretation of Part 111.24 (confidentiality); the customs broker exam; and the definitions of employee and customs business.

KEY ISSUES/POINTS

- CBP appreciates COAC's substantial efforts to formulate the national permitting recommendation, and looks forward to working with COAC and other stakeholders on their proposed changes to broker management in advance of implementing a new national permitting framework.
- CBP is looking forward to continue working with COAC to establish importer *bona fides*.

NEXT STEPS

CBP continues its internal work on updating the regulations in Parts 111 and 141. A regulatory proposal for national permits is expected to be submitted to the Offices of Chief Counsel and Regulations & Rulings in October 2014 to begin the regulatory drafting process. Technical drafting work on Part 111 will continue throughout 2014.