

# Commercial Operations, Revenue and Entry (CORE)

## Broker Management Branch

*Operationalizing Customs Broker Modernization  
Regulations External Webinar*

November 9, 2022



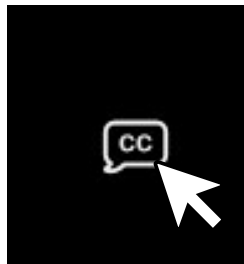
U.S. Customs and  
Border Protection



# General Presentation Information

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# Agenda

1. Introduction
2. Operationalizing New Customs Broker Regulations
  - i. Increase in License Application Fees
  - ii. Transition to National Permit
  - iii. Broker Oversight and Recordkeeping Requirements
  - iv. Responsible Supervision and Control
  - v. Separation from Client
  - vi. Power of Attorney
  - vii. Reminders
3. Q&A





# Broker Management Branch (BMB) Introduction

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# Operationalizing Changes to 19 CFR 111

## Language updated to reflect title change or authority delegation under the Broker Modernization Regulations (87 FR 63267)

- ✓ Port Director → Processing Center
- ✓ Assistant Commissioner → Executive Assistant Commissioner or Executive Director
- ✓ Customs → CBP
- ✓ Secretary of Homeland Security → Executive Assistant Commissioner



# “Processing Center”



## Processing Center Definition

- ✓ Processing Center means the broker management operations of a Center of Excellence and Expertise (Center) that process applications for a broker's license, applications for a national permit, as well as submissions required in Part 111 for an already-licensed broker



## Management of Licenses and Permits

- ✓ The processing Center Broker Management Officer (BMO) has the responsibility for oversight of the license and permit and conducting general compliance visits
- ✓ Broker reporting required to meet regulations that cannot be submitted through ACE must be submitted to the processing Center BMO at the port location through which the national permit and license were issued
- ✓ The BMO Contact List is on the cbp.gov broker page - <https://www.cbp.gov/trade/programs-administration/customs-brokers>



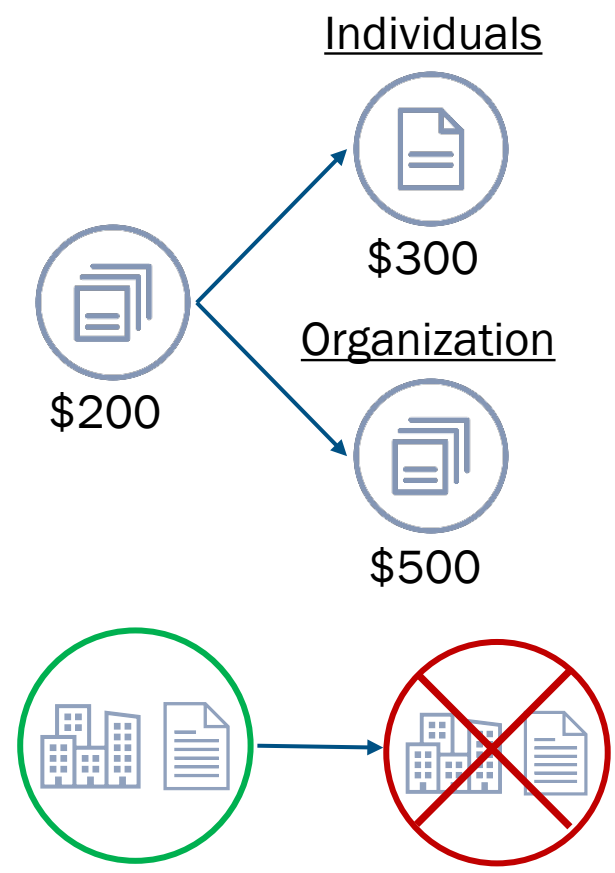
## Compliance and Penalties

- ✓ Informed compliance activities, enforcement visits and penalty case initiation are developed by the discovering CBP employee who may not be affiliated with the national permit/license processing Center



# § 111.12(b) and § 111.96(a) Increase in License Application Fees and Elimination of Posting Notice

- ✓ License application fees increase from \$200 per application to \$300 for an individual license application and \$500 for an organization license application
- ✓ Fee increase applies to applications filed on or after December 19, 2022
- ✓ Posting notice of application is eliminated



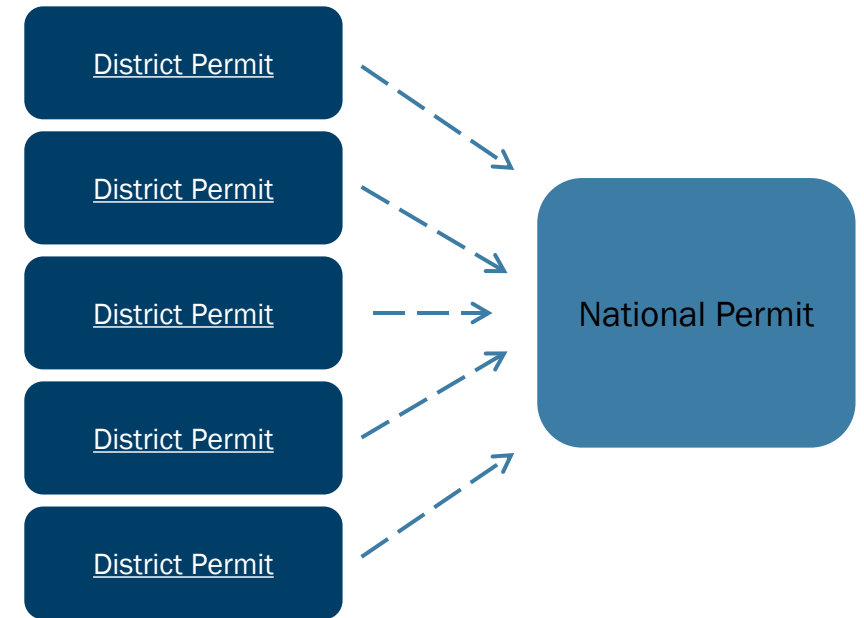
*Customs Broker Guidance Chapter 4: Broker Licensing Process*



# § 111.2(b) Elimination of District Permit

When the Final Rule is effective on December 19, 2022:

- ✓ CBP requires **only** a national permit to transact customs business nationally
- ✓ CBP no longer waives the permit application fees when the permit application is filed concurrently with the license application
- ✓ BMOs in the processing Centers accept and process national permit applications



## *Customs Broker Guidance Chapter 5: National Permit*





# National Permit Transition



## Deactivation of District Permits

- ✓ CBP anticipates no lapse in active permits during the transition to a national permit
- ✓ CBP will transition brokers with only district permits to pending national permits before the Final Rule effective date and district permits will remain active until the Final Rule effective date
- ✓ District permits will only be deactivated after the Final Rule is effective, transitioned national permits are active, and ACE national permit programming is in place
- ✓ The national permit will operate as the current permits do; broker applies, CBP grants it; there is an annual user fee; the national permit remains active as long as CBP receives an annual user fee unless the broker cancels it, or it is revoked by operation of law or for cause



## 2023 Annual Permit User Fee Payments

- ✓ Payments will be owed after 12/19/2022 on only active national permits
- ✓ A later than usual user fee due date will be published in the Federal Register to allow brokers sufficient time to submit fees after the Final Rule effective date



# 111.19 (a) and (b) National Permit Application Requirements



## For All Applicants

- ✓ Broker license number and date of issuance if available
- ✓ Address, telephone number, and **email address** of the office designated as the office of record (see § 111.1)
- ✓ **Name, telephone number, and email address of the point of contact described in § 111.3(b)**
- ✓ List of all employees and employee information prescribed in § 111.28
- ✓ **Supervision plan describing how responsible supervision and control will be exercised over customs business conducted under the national permit, including compliance with § 111.28**
- ✓ Location where records will be retained (see § 111.23)
- ✓ **Name, telephone number, and email address of the knowledgeable employee responsible for broker-wide records maintenance and financial recordkeeping requirements (see § 111.21(d))**
- ✓ Application and user fees or receipt showing fees have been paid



## For Applicants Applying on Behalf of a Partnership, Association, or Corporation

*All requirements for individual applicants in addition to the following:*

- ✓ **An applicant applying for a national permit on behalf of an organization must be a licensed broker employed by the organization and will exercise responsible supervision and control over the activities conducted under the national permit**
- ✓ **Name of the partnership, association, or corporation and the title held by the licensed broker applicant within the organization**
- ✓ **Copy of the documentation issued by a state or local government that establishes the legal status and reserves the business name of the organization**
- ✓ **Name, broker license number, office address, telephone number, and email address of each individual broker employed by the organization**

*Customs Broker Guidance Chapter 5: National Permit*



# National Permit Application Requirements Supervision Plan



- ✓ A broker **applying for a national permit** on or after 12/19/2022 must provide a supervision plan for exercising responsible supervision and control over its customs business
- ✓ The broker's supervision plan should include compliance with 19 CFR 111.28 based on the broker's specific circumstances, such as the size of the brokerage, the complexity of customs business, and types of transactions.
- ✓ More information on responsible supervision and control factors and considerations for each factor is available on the Customs Broker Modernization Regulations [webpage](#)
- ✓ CBP will attach the plan to the broker's ACE permit record



# § 111.21(b) Breach of Records



Brokers must provide notification to the **CBP Office of Information Technology Security Operations Center (CBP SOC)** at [cbpsoc@cbp.dhs.gov](mailto:cbpsoc@cbp.dhs.gov) of any known breach of physical or electronic records relating to the customs business

- ✓ **Brokers must electronically notify CBP within 72 hours of the discovery of the breach**, and provide any known compromised importer identification numbers
- ✓ **Within 10 business days** of the initial notification, brokers must electronically provide an **updated list** of any additional known compromised importer identification numbers
- ✓ If **additional information is subsequently discovered**, brokers must electronically provide that information **within 72 hours of discovery**
- ✓ If reporting guidance is needed, brokers may call **CBP SOC** at (703) 921-6507

*Customs Broker Guidance Chapter 10: Broker Oversight*





# § 111.21(c) Designation of CBP Contact for Recordkeeping



- ✓ Each broker must designate a knowledgeable employee to be the contact for brokerage-wide recordkeeping requirements and must maintain accurate and current POC information with CBP through the Automated Commercial Environment (ACE portal), or in writing to the processing Center if the broker does not have an ACE portal account

*Customs Broker Guidance Chapter 10: Broker Oversight*



# Knowledgeable Point of Contact



- ✓ The broker must designate a knowledgeable and current point of contact (POC) available to CBP during and outside of normal operation hours to respond to customs business issues
- ✓ The POC should be able to either respond to CBP inquiries or provide a contact within the brokerage who can respond
- ✓ The broker must report any updates to the POC information in his/her ACE portal account. If the broker does not have an ACE portal account or ACE reporting functionality is not available, updates to the POC information must be provided in writing to the processing Center and the BMO will update in ACE
- ✓ The broker should add and update the POC to the national permit “Contacts tab” in ACE through the broker’s account portal access. For brokers without an ACE portal account the BMO will add/update the POC to the national permit Contacts tab when the broker provides the information

## *Customs Broker Guidance Chapter 10: Broker Oversight*



# § 111.23 Place of Records Retention



- ✓ A licensed customs broker **must maintain originals of 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 Part 111 and Part 163 of 19 CFR
- ✓ The requirement to store original records within the customs territory of the U.S. does not preclude brokers from submitting an alternative storage plan as described in 19 CFR 163.5(b)

## *Customs Broker Guidance Chapter 10: Broker Oversight*



# § 111.28(a) Responsible Supervision and Control Factors (1 of 2)

✓ 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:

- ✓ **The training provided to broker employees;**
- ✓ **The reject rate for the various customs transactions relative to overall volume;**
- ✓ **The level of access broker employees have to current editions of CBP regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances;**
- ✓ **The issuance of instructions and guidelines to broker employees;**
- ✓ **The volume and type of business conducted by the broker;**
- ✓ **The availability of a sufficient number of individually licensed brokers for necessary consultation with employees of the broker;**

*Customs Broker Guidance Chapter 10: Broker Oversight*

Continue 





# § 111.28(a) Responsible Supervision and Control Factors, continued

- ☑ The frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have an individually licensed broker;
- ☑ The frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker;
- ☑ 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 brokerage;**
- ☑ Any circumstances which indicate that an individually licensed broker has a real interest in the operations of a broker;
- ☑ The timeliness of processing entries and payment of duty, tax, or other debt obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client;
- ☑ Communications between CBP and the broker, and the broker's responsiveness and action to communications, direction, and notices from CBP; and
- ☑ Communications between the broker and its officer(s) or member(s), and the broker's responsiveness and action to communications and direction from its officer(s) or member(s)

## *Customs Broker Guidance Chapter 10: Broker Oversight*



# § 111.28 Employ a Sufficient Number of Licensed Brokers

A sole proprietorship, partnership, association, or corporation must employ a sufficient number of licensed brokers relative to:

- ✓ Job complexity
- ✓ Similarity of subordinate tasks
- ✓ Physical proximity of subordinates
- ✓ Abilities and skills of employees
- ✓ Abilities and skills of the managers

- ✓ The broker is responsible for determining how many licensed brokers are needed to maintain responsible supervision and control over his/her customs business
- ✓ If CBP is concerned that the broker is not maintaining responsible supervision and control, we will assess the broker and may consider the number of licensed brokers employed as part of the assessment

### Example Scenario:

If CBP is investigating why the broker is frequently filing late statement payments and identifies that the broker transacts a high volume of customs business out of five offices around the country but only employs one broker to manage all the business transacted, CBP may consider that information when determining whether the broker is providing sufficient responsible supervision and control over its business.

## *Customs Broker Guidance Chapter 10: Broker Oversight*



# § 111.28(b) Reporting New and Terminated Employees



Brokers must report a new employee or a terminated employee **within 30 days of the start of employment or termination**



Reporting must be done through the ACE portal, or in writing to the processing Center if a broker does not have a portal account

Current Employees listed on a broker's local permits in ACE will be migrated to the national permit in the modernized portal

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# § 111.28(b)(2) Reporting New Employees



- ✓ Upon the **Final Rule effective date**, each broker that intends to transact customs business must provide the following information on **each of its employees upon application for a national permit**:
  - **Name** of employee
  - **Social security number** of employee
  - **Date and place of birth** of employee
  - **Current home address** of employee
  - **Date of hire** of employee
- ✓ After the initial employee information submission, **updated information must be submitted** through the ACE portal if **any of the above required information on a current employee changes**. For brokers that do not have an ACE portal account, the information must be submitted in writing to the processing Center

## *Customs Broker Guidance Chapter 10: Broker Oversight*





# Broker Reporting and the Automated Commercial Environment (ACE)



- ✓ CBP will provide pre- and post-deployment support calls and have reference guides available on [cbp.gov](http://cbp.gov) for changes in the ACE modernized portal
- ✓ In the modernized ACE accounts portal, brokers may update the following, which will satisfy broker reporting requirements as outlined in 19 CFR part 111:
  - New and terminated employee information (19 CFR 111.28(b))
  - Office of record address and recordkeeping location address (19 CFR 111.19(b)(9), 111.23(a))
  - Recordkeeping point of contact information(19 CFR 111.21(d))
  - Knowledgeable outside business hours point of contact information (19 CFR 111.3(b))
- ✓ Brokers can find information on applying for an ACE portal account on [cbp.gov](http://cbp.gov) “Getting Started with CBP Automated Systems”



# § 111.32 Report to CBP of Separation From Client

- ✓ A broker 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 the U.S. Government or commit any criminal act against the U.S. Government**
- ✓ A broker may report to CBP the separation from/cancellation of representation of a client, in accordance with 19 CFR 111.32, by phone, email, or mail to a supervisory point of contact at the client's assigned Center of Excellence and Expertise
- ✓ The following information should be reported:
  - The broker's contact information
  - The former client's business name(s) and address(es)
  - Date of separation or cancellation
  - A description of the potentially fraudulent or criminal activity conducted by the former client.
  - Documentation evidencing how/why the broker determined their former client was engaged in possible fraud or criminal activity.
  - Any other information that would assist CBP's investigation
- ✓ A broker's identity and any other information submitted will be protected to the extent possible in accordance with law, including but not limited to the Privacy Act, the Freedom of Information Act, the Trade Secrets Act, and CBP and DHS regulations



## *Customs Broker Guidance Chapter 10: Broker Oversight*



# § 111.36(c)(3) Direct Power of Attorney With Client



- ✓ A broker must execute a power of attorney (POA) directly with an importer of record or drawback claimant (client) and not through a freight forwarder or other third party in order to transact customs business on behalf of the client. As of December 19, 2022, the broker must have a direct POA in place when transacting customs business on behalf of the client
- ✓ The term “directly” means the client must execute and sign the POA by directly communicating with the broker and cannot have an agent or third party sign or negotiate the POA in their stead.
- ✓ An agent or other third party cannot serve as a barrier to communications between the broker and the client, however, the client may have an agent or third party assist in executing the POA, for example by: providing translation services; providing counsel in reviewing the terms of a POA; or, providing courier services to relay a written POA, but cannot communicate with the broker instead of or in place of the client.
- ✓ The new requirement for brokers to execute a POA directly with a client does not prohibit a Broker A-Broker B relationship as long as the client authorizes its broker (Broker A) to allow other brokers (Broker B) to transact any portion of the customs business conducted on behalf of the client

## *Customs Broker Guidance Chapter 10: Broker Oversight*



# Entry Filing under the National Permit Structure



- ✓ When transmitting data in the B record after the National Permit deployment, the extended B-record should continue to be used in the same way it is being used today
- ✓ Line release will not be affected by the national broker permit deployment
- ✓ Northern border permitted ports will not be affected
- ✓ Reconciliation entries should continue to be filed in the same way they are filed today
- ✓ No changes to statement processing
- ✓ ABI profile validations will remain the same
- ✓ CERT testing is available now. Contact your ABI client rep if you have questions about CERT Testing
- ✓ Contact your ABI service provider if you have questions about using your ABI software



# Final Rule Effective Date Reminders

- Designate a knowledgeable employee to be the contact for brokerage-wide recordkeeping requirements through the ACE portal\*
- Designate a knowledgeable and current point of contact available during and outside normal operation hours through the ACE portal\*
- Begin submitting employee reporting list through the ACE portal\*
- Ensure a valid direct POA is in place prior to transacting customs business on behalf of a client
- The CY 2023 annual user fee is owed for **only** the national permit

\*Brokers without a portal account must submit information in writing to the processing Center through which the permit/license was issued





Questions?