

exporter (and his authorized regular employees or officers acting only for him) transacting customs business solely on his own account and in no sense on behalf of another. Section 111.4 of the Customs Regulations (19 CFR 111.4) provides that any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of section 641.

The scope of "customs business" and the broker licensing requirement took on added importance as a result of the amendments made in 1993 by the Customs Modernization Act (the Mod Act) provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057). Those Mod Act amendments included a revision of section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) to, among other things, add a requirement that an importer of record exercise "reasonable care" in connection with the entry requirements under that section. In order to foster compliance with the customs laws and regulations under this added statutory responsibility, many importer groups consisting of a parent corporation and one or more subsidiary corporations chose to centralize their in-house customs experts into one corporate entity and to make the services of those experts available to the group as a whole.

However, when requested to issue an administrative ruling on the issue, the U.S. Customs Service (Customs, the predecessor agency to the current Bureau of Customs and Border Protection, referred to hereafter in this document as CBP) consistently took the position that many of the activities performed under this type of arrangement would involve the transaction of "customs business," which would require a broker license under § 111.2(a)(1). This conclusion was based on the reasoning that (1) the parent corporation and each subsidiary corporation is a separate legal "person," and (2) therefore, the parent or subsidiary corporation in which the customs expertise resides would be transacting customs business not solely on its own account as provided under § 111.2(a)(2)(i) but rather on behalf of another "person."

Members of the trade community on a number of occasions had indicated to Customs that the result reached in the administrative rulings described above was unsatisfactory because it did not afford importers sufficient opportunity to address multiple related aspects of an

individual customs transaction or groups of transactions. They believed that this was an impediment to their ensuring that reasonable care is exercised by all corporate affiliates for purposes of 19 U.S.C. 1484.

In response to the concerns expressed by the trade, Customs on October 15, 2002, published in the **Federal Register** (67 FR 63576) a notice setting forth proposed amendments to the Customs Regulations that would expand the permissible use of in-house experts by corporations and their affiliates to include activity that is intended to meet the corporation's "reasonable care" obligations under 19 U.S.C. 1484 and that would not fall within the definition of "customs business" in 19 U.S.C. 1641. The proposed amendments involved the addition of a new § 111.1 definition for the term "corporate compliance activity" to describe the permissible activities (and with a specific exclusion for document preparation and filing); the addition of language at the end of the existing § 111.1 definition of "customs business" stating that it does not include a corporate compliance activity; and the addition of a new paragraph (a)(2)(vii) to § 111.2 to clarify that a company performing a corporate compliance activity is not required to be licensed as a broker.

The October 15, 2002, notice invited the submission of public comments on the proposed regulatory changes, and the public comment period closed on December 16, 2002. A total of 28 commenters responded to the solicitation of comments in the notice. The comments submitted are summarized and responded to below.

Discussion of Comments

Comment: The proposed amendments will benefit the importing community for several different reasons. For example, divisions and sister subsidiaries will be better able to meet the standards of reasonable care. Similarly, subsidiaries will be able to better leverage and benchmark best practices from within the parent company and subsidiaries, thereby improving the compliance activities of the entire corporation. Under the proposed rule, centralized corporate or affiliate groups can be more flexible in their ability to hire qualified people to provide common expertise for subsidiary companies that small divisions may not be able to afford or justify by themselves. The commenter provided a number of other examples of the beneficial aspects of this proposed rule.

Response: CBP agrees in principle with the general nature of these comments which reflect the purpose behind the regulatory proposal.

Comment: The goal of this proposal, which is to enable related companies to engage in corporate compliance activity on behalf of one another, could best be achieved through the modification or revocation of the rulings which created the controversy in the first place.

Response: CBP considered but rejected that option because a modification or revocation of those rulings might give rise to a false premise, that is, that the rulings were not legally correct when they were originally issued. To the extent that the rulings in question are inconsistent with the Part 111 texts as amended by this final rule document, those rulings will be considered to be modified or revoked without further action on the part of CBP—see § 177.12(d)(1)(vi) of the Customs Regulations (19 CFR 177.12(d)(1)(vi)) which was adopted in T.D. 02-49, published in the **Federal Register** (67 FR 53483) on August 16, 2002.

Comment: The proposed new definition of "corporate compliance activity" in § 111.1 is imprecise and will only create confusion. By seeming to allow all activities that do not involve the preparation or filing of documents, the proposed amendment raises concerns that other inter-corporate activities set forth in the definition of "customs business" will be allowed.

Response: CBP does not agree that the definition is imprecise and will create confusion. The commenter has correctly understood the effect of the proposed regulatory amendment, that is, that related companies will be permitted to conduct any activities mentioned in the definition of "customs business," other than the actual preparation and filing of documents, so long as those activities fall within the definition of "corporate compliance activity."

Comment: It is improper for CBP to include corporate compliance activities in 19 CFR 111.2(a)(2) as an exception to the requirement that a license is required, since it has already been made clear that these activities do not fall within the definition of "customs business."

Response: On further consideration of this matter, CBP agrees with the point made by this commenter, because the definition of "customs business" in 19 CFR 111.1 is being amended specifically to exclude corporate compliance activity from customs business, making an exception to the license requirement redundant. Accordingly, the regulatory changes adopted in this final rule