

document do not include the addition of proposed new paragraph (a)(2)(vii) to § 111.2.

*Comment:* CBP needs to narrow the definition of “customs business” and broaden the definition of “corporate compliance activity.” Specifically, the latter definition should not exclude document preparation and filing.

*Response:* Document preparation is specifically mentioned as one of the activities falling within the statutory and regulatory meaning of “customs business.” The filing with CBP of those prepared documents is the logical next step and involves direct representations to the Government agency responsible for administering the matters to which those documents pertain. These considerations formed the basis for excluding document preparation and filing from the definition of “corporate compliance activity.” In defining “corporate compliance activity,” CBP endeavored to strike a balance between an importer’s obligation to exercise reasonable care and the licensing requirements of 19 U.S.C. 1641. This balance is achieved by allowing related companies to provide advice while at the same time precluding them from preparing and filing documentation.

*Comment:* The prohibition against document preparation and filing should be lifted if steps are taken to ensure that the importer of record remains liable.

*Response:* By focusing on the liability of the importer of record, this comment appears to misconstrue CBP’s primary focus in this matter, which was the customs broker statute and regulations. The exception regarding document preparation and filing by a related company was included in the definition of “corporate compliance activity” only in recognition of the explicit terms of 19 U.S.C. 1641 and not in order to suggest that an importer of record’s liability would cease if the documents were prepared and filed by a related company. The legal obligations of importers of record, whether contractual under their bonds or otherwise imposed by other statutes or regulations, will remain undisturbed by this amendment to the customs broker regulations.

*Comment:* The regulations pertaining to “corporate compliance activity” should restrict document preparation and filing to those entry documents that are required to be filed under 19 U.S.C. 1484.

*Response:* CBP disagrees, because the document preparation and filing aspect of “customs business” extends to preparation and filing activities performed after the filing of the entry and entry summary. This rule is reflected in 19 CFR 111.2(b)(2)(i)(D),

which provides that a broker who did not file the entry, but who is appointed by the importer of record to make written or oral representations to CBP after entry summary acceptance, must have a national permit if the broker does not have a district permit where the representations will be made.

*Comment:* While the proposed amendment will be beneficial both to the industry and to CBP, it does not make clear whether related parties can assist each other in responding to Customs Form 28 Requests for Information or Customs Form 29 Notices of Action, or in preparing or filing Post Entry Amendments, Supplementary Information Letters, documents relating to compliance audits or assessments, or certificates of origin.

*Response:* The prohibition against preparing and filing documents under the broker statute and regulations applies not just to the entry and entry summary, but to all other documents for which preparation and filing constitutes “customs business” or for which no explicit allowance is made by statute or regulation for preparation or filing by an “authorized agent.” Examples of documents for which there is an explicit allowance for action by an authorized agent are protests, ruling requests, and certain drawback documents. Since the proposed definition of “corporate compliance activity” contained no limitation or exception regarding the scope of document preparation and filing, the prohibition would apply to those specific examples mentioned by this commenter to the extent that they involve a customs business activity. However, a determination on whether a specific action constitutes a customs business activity can only be made on a case-by-case basis, for example through the binding ruling process.

*Comment:* Certain activities should be specifically authorized in the regulatory text (for example, classifying and valuing goods, providing advice on origin marking requirements, providing training to related companies, preparing responses to marking and penalty notices and prior disclosures, and representing companies before CBP in an audit). Alternatively, the definition of “corporate compliance activity” should be amended to include offering specific advice on the classification, valuation, or admissibility of merchandise.

*Response:* CBP does not believe that it would be advisable to include specific authorized activities within the regulations, because it would be impractical to list every conceivable activity that related companies may

perform for each other. Listing some but not others would potentially create confusion or uncertainty as regards activities not listed. Some of the responses to comments in this final rule document may provide guidance on which activities are or are not permissible. For example, it has already been explained above that advisory activities will be allowed, while written communications with Customs in most circumstances would not be permitted. Importers with questions on a particular activity may request that the matter be resolved through the binding ruling process.

*Comment:* It is common for corporations to establish subsidiaries that have their own boards of directors and officers, but no employees. An example would be a sales or procurement subsidiary. In such cases, the parent may be preparing the subsidiary’s documentation. The proposed regulations, with their restrictions on document preparation, are problematic in this regard.

*Response:* The preparation of documents under the corporate organizational scenario described by this commenter would constitute the performance of customs business in violation of the broker statute. Adoption of the proposed regulatory amendments would not alter that fact. The purpose of this rulemaking initiative is to facilitate the exercise of reasonable care, not to facilitate circumvention of the statutory obligation to seek the assistance of a licensed broker when a company, for its own business reasons, chooses not to have employees who can prepare and file documents with CBP.

*Comment:* CBP needs to further define what constitutes “preparation” within the context of a corporate compliance activity. Does the gathering and organization of information fall within the definition? Does it include the preparation of background documentation whose contents will be reflected on the entry?

*Response:* The proposed definition of “corporate compliance activity,” which precludes the “actual preparation or filing of the documents or their electronic equivalents,” in effect addresses the issue raised in this comment. The word “actual” is intended to emphasize that the documents in question are those that will be filed with CBP. Therefore, any work performed in anticipation of document preparation, including the gathering and organizing of information and its recordation on background paperwork, will be allowed under this provision.