

companies to effectively centralize import operations.

Response: As stated throughout this comment discussion, both CBP and importers must operate within the confines of existing law. In this case due regard must be given to the entry and broker provisions of 19 U.S.C. 1484 and 1641. CBP believes that the proposed regulatory changes will enhance, rather than limit, the ability of related companies to centralize their import operations. To the extent that the proposed amendments may not go as far as the commenter would like, that is a function of the limits imposed by the statutory provisions in question.

Comment: As an alternative to the suggested changes, the definition of "person" in 19 CFR 111.1 could be changed so that the parenthetical phrase "(including subsidiaries and sister companies)" is added after the word "corporation." With a definition such as this, corporations could conduct the same activities for subsidiaries as they do for themselves.

Response: CBP examined but rejected this approach when drafting the proposed regulations. Altering the definition of "person" in such a manner that subsidiaries are considered to be the same person as their parent would have consequences that go beyond the corporate compliance issue at hand. This is because the new definition will apply to everything that takes place under part 111 of the Customs Regulations, not just to corporate compliance activities. Since a person must obtain a license to conduct customs business as a broker, questions would inevitably arise whenever a parent or subsidiary corporation applied for a license. For example, would a license granted to a parent also cover its subsidiaries, since by definition they would be one and the same person? Or would a subsidiary even have the right to apply for a license in its own name, given that its identity had been subsumed into that of the parent? Furthermore, the legal separation between parent and subsidiary corporations is recognized elsewhere in the Customs Regulations, and thus the elimination of that separation from the broker regulations would not only create a legal inconsistency but would also have the potential to create confusion in other regulatory contexts.

Comment: A better approach would be to change the definition of "for one's own account" to clearly encompass the transaction of customs business on behalf of subsidiary companies. In this manner, the definition of "customs business" could remain unchanged, and it would be unnecessary to carve out

limited exceptions when interpreting the definition.

Response: CBP also considered this option when formulating the regulatory proposals. However, for essentially the same reasons stated in the preceding comment response for not changing the definition of a "person," CBP decided not to adopt this approach.

Comment: The proposed rule does not clarify the distinction between the assigning of a Harmonized Tariff Schedule number to inbound items for entry submission to CBP and the review of internal classification databases. The former is a part of the entry process, and is thus customs business, while the latter is merely a corporate compliance activity.

Response: While CBP agrees that the tariff classification of items to be entered may constitute a customs business activity depending on the context in which it is done, this regulatory initiative also recognizes that some accommodation must be made to enable companies to meet their reasonable care obligations. To this end, the proposed regulations would allow a compliance department to provide tariff classification advice to a sister or parent entity for all purposes, including advice regarding the assigning of tariff numbers for placement on an entry. However, that compliance department may not prepare the actual entry document.

Comment: The proposed definitions of eligible related parties are clear and do not create any particular problems.

Response: CBP agrees that the definitions are clear. However, as indicated later in this comment discussion, some adjustments to the proposed text are made in this final rule document in response to concerns raised in other comments.

Comment: CBP should replace the proposed related party definition with the related party standard employed for customs valuation purposes. One commenter specifically suggested that CBP should resort to the more limited related party definition as expressed in 19 U.S.C. 1401a(g)(1)(G).

Response: CBP believes that the related party definition used generally for valuation purposes is too broad for application in the context under review here. For example, the valuation definition includes relationships between family members. Its wholesale adoption would thus be inappropriate.

The narrower suggestion, that CBP use the more limited related party definition as set forth in 19 U.S.C. 1401a(g)(1)(G), is also unacceptable. That provision confers a relationship on "[t]wo or more persons directly or indirectly controlling, controlled by, or

under common control with, any person." According to a notice entitled "Transfer Pricing; Related Party Transactions" published in the **Federal Register** (58 FR 5445) on January 21, 1993, determinations of "control" must be made on a case by case basis within the context of the administrative review procedures available to the importing public under parts 174 and 177 of the Customs Regulations. The adoption of a definition that requires the issuance of a protest review decision or a ruling to determine if a party qualifies would be difficult to administer, and, as such, would not be appropriate in the present regulatory context.

Comment: As an alternative to the 50 percent ownership requirement, the rule should allow ownership of some equity or voting shares coupled with proof of the retention of substantive management rights, such as the right to designate officers or directors. Such a standard would take into account modern forms of corporate organization while also assuring that only those entities exerting control were engaged in permissible compliance activity.

Response: Receiving accurate information from importers is crucial to CBP's mission. The agency fosters accuracy through the issuance of informed compliance publications and binding rulings and by offering outreach programs to the importing community. It also makes use of the procedures that enable it to seek redress against persons who file inaccurate or incomplete entry documentation. Among its options in this regard, CBP can assess liquidated damages against an importer of record for a breach of the basic importation bond, or discipline licensed brokers pursuant to 19 U.S.C. 1641. Corporate compliance offices under this new regulatory scheme will not be subject to similar actions by CBP, because they will not be importers of record or, in most cases, licensed brokers. Absent some assurance of accountability, CBP would be reluctant to allow an unlicensed third party to participate in the entry process, because the accuracy of the information generated by that third party may be questionable. CBP, in imposing a substantial ownership standard (that is, more than 50 percent of the voting shares), seeks to establish what might be best described as cascading accountability by ensuring that entities offering compliance services are accountable to importers who are, in turn, accountable to CBP. Accordingly, the proposed standard is retained in the final rule. With regard to the point concerning modern forms of corporate organization, see the response to the next comment, which also