(c) *Procedure when notice given.*—(1) *Opportunity for business submitter to object to disclosure.* A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) *Notice to FOIA requester.* When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business submitter has been given an opportunity to object to any disclosure of the requested commercial information. The requester will be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. The notice will also invite the FOIA requester to agree to a voluntary extension(s) of time so that CBP may review the business submitter's disclosure objection statement.

(d) *Notice of intent to disclose.* CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the commercial information to be disclosed; and,

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

Dated: June 20, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–20328 Filed 8–8–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 111

[CBP Dec. 03–15]

RIN 1515–AD14

Performance of Customs Business by Parent and Subsidiary Corporations

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to Customs Regulations to provide that corporate compliance activity engaged in by related business entities for the purpose of exercising ''reasonable care'' is not customs business and therefore is not subject to the customs broker licensing requirements. The amendments make clear that this corporate compliance activity concept does not extend to document preparation and filing, which is customs business subject to licensing requirements. The amendments will improve the operational efficiency of the affected business entities and, thereby, enhance their ability to ensure compliance with applicable customs laws and regulations.

EFFECTIVE DATE: Final rule effective September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Gina Grier, Office of Regulations and Rulings (202–572–8730).

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 also provides for the issuance of rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

Section 111.1 of the Customs Regulations (19 CFR 111.1) sets forth definitions that apply for purposes of part 111 and includes the following definition of ''customs business:''

> ''Customs business'' means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. ''Customs business'' also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, ''customs business'' does not include the mere electronic transmission of data received for transmission to Customs.

Section 111.2 of the Customs Regulations (19 CFR 111.2) sets forth the basic rules regarding when a person (that is, an individual, partnership, association, or corporation) must obtain a customs broker license and permit. Paragraph (a)(2) of § 111.2 specifies several exceptions to the license requirement including, in subparagraph (i), an exception for an importer or

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

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.

Comment: It is unclear whether employees of a corporate compliance office will be able to discuss with CBP issues concerning a related company's import transactions.

Response: Discussions with CBP regarding import transactions may amount to the transaction of customs business given that the statutory definition of ''customs business'' includes ''those activities involving transactions with the Customs Service * * *'' However, CBP recognizes that preventing communication between corporate compliance offices and CBP would frustrate the primary purpose of such an office, that is, to provide accurate advice to the related company. In another example of making an accommodation between broker licensing and reasonable care requirements, CBP has determined that representatives of corporate compliance offices may communicate directly with CBP on behalf of related companies regarding the activities performed by the corporate compliance office to ensure that reasonable care was used in connection with preparation and filing of Customs documents. However, they should be prepared to demonstrate their authority to represent the interests of the related companies by presentation of a power of attorney or other letter of authorization.

Comment: It is unclear whether there would be a violation of the proposed rule if a corporate compliance office were to supply specific tariff information in writing to a related company. This needs to be clarified, as do questions arising over whether related companies can file ruling requests or protests on behalf of each other.

Response: No violation would occur if the compliance office were simply supplying the specific tariff information to the related company. The related company importer could then use the information to fill out the documentation to be filed with CBP, or turn it over to a broker for that purpose. On the issue of ruling requests and protests, 19 CFR 177.1(c) and 19 CFR 174.12(a)(6), respectively, permit an ''authorized agent'' to file those documents.

Comment: Please explain why companies that employ in-house customs brokers cannot provide advice, or prepare and file documents, on behalf of related companies. Such centralization would help to achieve high compliance rates.

Response: The broker statute makes provision for various types of broker's licenses: individual, corporate, association, or partnership. While the mere providing of advice to a related company may present no problem, if a corporation wishes to transact customs business (for example, prepare and file documents) for others, it must obtain a corporate license of its own. This requirement does not disappear simply because the corporation has a person on its payroll who is individually licensed, because the employee's licensed status does not confer a similar status on the employer. Furthermore, the actions of the employee performed during the regular course of his employment will be attributed to his employer, not to him individually. An analogy may be drawn to the situation in which an insurance company hires an attorney to work in its policy underwriting department: the employment of the attorney does not entitle the insurance company to practice law.

Comment: Most corporations with centralized customs compliance functions have put into place standard operating procedures (''SOPs'') for responding to CBP inquiries, submitting documents to CBP, and working with their various customs brokers. If CBP takes a strict approach to what constitutes the actual preparation and filing of documents, corporations will be forced to redesign their SOPs to limit their compliance activities. Such changes would probably include a restructuring of the corporation's relationship with its customs brokers to ensure that in-house customs compliance personnel only provide information to customs brokers and, perhaps, review any documents to be filed with CBP. Restricting the in-house compliance activities in this manner does not advance the policy goal of fostering reasonable care under the Mod Act.

Response: A reference to document ''preparation'' was added to the definition of ''customs business'' in the broker statute by section 648 of the Mod Act, and this statutory change has been in effect since December 8, 1993. The proposed regulatory changes at issue here did not attempt to impose a change in the meaning of document preparation. Moreover, as already pointed out in this comment discussion, the reference to ''actual'' preparation in the proposed regulatory text was intended to clarify that permissible corporate compliance activities include activities leading up to, but not in fact directly involving, document preparation. Therefore, to the extent that a corporation has been in compliance with the statutory standard since the adoption of the Mod Act amendment in 1993, the proposed regulatory amendments would not require any change in the corporation's SOPs as regards compliance activities.

Although the Mod Act amended 19 U.S.C. 1484 by imposing a reasonable care responsibility on importers of record, it did not eliminate or modify the requirement in 19 U.S.C. 1641 that a person have a broker's license to conduct customs business on behalf of others. The Mod Act also made no changes to the identity of the persons who, pursuant to 19 U.S.C. 1484, have the right to make entry. Those persons are the owner or purchaser of the imported merchandise, or a licensed broker who has been appointed by the owner, purchaser or consignee. Consequently, CBP in defining ''corporate compliance activity'' had to take into account the requirements of the broker and entry statutes. By proposing the addition of an explicit provision allowing related companies to have centralized compliance departments whose role would be advisory in nature, CBP attempted to strike a balance between an importer's reasonable care obligations and the proscription regarding the performance of customs business on behalf of others without a broker's license. It is the position of CBP that the proposed amendments are not restrictive in their effect and that they will foster compliance with importers' reasonable care obligations.

Comment: The development of the Automated Commercial Environment (ACE), and the possibility that future entries will be filed over the Internet, provides the perfect opportunity for CBP to look at changing practices. ACE will allow all parties to a customs transaction the ability to input information about the transaction. It is out of step for CBP to restrict these activities to independent customs brokers.

Response: The proposed regulations would enhance, not restrict, the ability of related companies (including those that have in-house brokers) to engage in certain activities that previously under the broker regulations were restricted to importers or their appointed brokers. The liberalization in the proposed regulatory changes had to stop at document preparation and filing in order to ensure the most appropriate balance between reasonable care obligations and the terms of the broker statute.

Comment: CBP has recognized that the effectiveness of its new security measures (for example, C-TPAT, Account Management, Importer Self-Assessment) are enhanced by corporate centralization of customs functions, yet the proposed rule limits the ability of

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

discusses the replacement of the reference to ''voting shares.''

Comment: The proposed definition of related parties only refers to voting shares of corporations and does not address other voting interests such as joint ventures, partnerships, limited partnerships, limited liability companies, or any other legal structure now or hereafter existing. Such situations should be considered, and all possible business entities should be addressed, by the regulations.

Response: Even though CBP believes that the 50 percent ownership standard should be retained as stated above, CBP also recognizes that in today's business environment relationships may be forged between companies that fall outside of the traditional corporate parent/subsidiary structure. Accordingly, in the regulatory text adopted in this final rule document, references to parent, subsidiary, and sister corporations are replaced with the more generic terms ''business entity'' and ''related business entity or entities,'' with ''business entity'' defined as ''an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes.'' In addition, because voting shares are not the exclusive basis for determining the ownership level in a business, the references to ''more than 50 percent of the voting shares'' have been replaced in the final regulatory text with more general references to ''more than a 50 percent ownership interest.''

Comment: CBP should adopt a regulation to allow those entities transacting customs business on behalf of related affiliates to certify to CBP, upon request, that the entity exercises ''responsible supervision and control'' over the affiliate's customs activity.

Response: CBP is uncertain as to the purpose behind this suggestion. The exercise of responsible supervision and control is a concept that applies to licensed customs brokers, upon whom that duty falls whenever they engage in customs brokerage activities. A broker can be sanctioned by CBP for failing to exercise responsible supervision and control. Since compliance departments will not be required to have broker licenses in cases covered by this new regulatory provision, the suggestion of this commenter does not appear to be relevant to the present exercise. For this reason, CBP declines to adopt the suggested certification procedure.

Conclusion

Based on the comments received and the analysis of those comments as set forth above, CBP believes that the proposed regulatory amendments should be adopted as a final rule with the changes discussed above.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. CBP believes that the amendments will have only a minimal impact on overall customs broker operations because they do not authorize the preparation of documents and the filing of documents with CBP, which constitute the bulk of customs business services provided by brokers. CBP also believes that the amendments will provide positive economic and related benefits to other members of the import community. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated in the preamble, part 111 of the Customs Regulations (19 CFR part 111) is amended as set forth below.

PART 111—CUSTOMS BROKERS

■ 1. The general authority citation for Part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

■ 2. In § 111.1:

■ a. The definition of ''customs business'' is amended by adding at the end of the last sentence before the period the words ''and does not include a corporate compliance activity''; and

■ b. A new definition of ''corporate compliance activity'' is added in appropriate alphabetical order to read as follows:

§ 111.1 Definitions.

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Corporate compliance activity. ''Corporate compliance activity'' means activity performed by a business entity to ensure that documents for a related business entity or entities are prepared and filed with Customs using ''reasonable care'', but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a ''business entity'' is an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes, and the term ''related business entity or entities'' encompasses a business entity that has more than a 50 percent ownership interest in another business entity, a business entity in which another business entity has more than a 50 percent ownership interest, and two or more business entities in which the same business entity has more than a 50 percent ownership interest.

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Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–20327 Filed 8–8–03; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4439]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act

AGENCY: Department of State

ACTION: Final rule.

SUMMARY: The Department is amending its regulations to add two new nonimmigrant symbols to the nonimmigrant classification table. The amendments are necessary to implement recently enacted legislation. On November 2, 2002, the President signed into law the ''Border Commuter Student Act of 2002''. This legislation creates two new nonimmigrant visa classifications (F3 and M3) for citizens and residents of Mexico or Canada who seek to commute into the United States for the purpose of attending an approved F or M school. This rule adds these new classifications to the