

## II. Regulatory Requirements

This Policy Guidance is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Policy Guidance does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: June 26, 2017.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 744

#### Control Policy: End-User and End-Use Based

#### CFR Correction

■ In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2017, on page 498, in supplement number 4 to part 744, under United Arab Emirates, remove the entry for "Indira Mirchandani".

[FR Doc. 2017-13802 Filed 6-29-17; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Part 111

[Docket No. USCBP-2016-0059; CBP Dec. No. 17-05]

**RIN 1651-AB07**

#### Modernization of the Customs Brokers Examination

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with changes, the amendments proposed to the U.S. Customs and Border Protection (CBP) regulations concerning the customs broker's examination provisions. Specifically, this rule transitions the examination to a computer automated customs broker examination, adjusts the dates of the examination to account for the fiscal year transition period and payment schedule requirements, and increases the examination fee to cover the cost of delivering the exam.

**DATES:** Effective July 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Julia Peterson, Chief, Broker Management Branch, Office of Trade, U.S. Customs and Border Protection, (202) 863-6601, [julia.peterson@cbp.dhs.gov](mailto:julia.peterson@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides, among other things, that a person (an individual, corporation, association, or partnership) 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 a broker's license and permit, and provides for disciplinary action against brokers that have engaged in specific infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in title 19 of the Code of Federal Regulations, part 111 (19 CFR part 111). Part 111 sets forth the regulations regarding, among other things, the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits, including examination procedures and requirements.

Currently, a customs broker's examination consists of a paper test booklet and a scannable answer sheet which is administered by the Office of Personnel Management (OPM). CBP supplements OPM's resources by providing CBP officials to proctor the examination and space to conduct the examination. There is a \$200 fee to take the examination. This fee, which has not changed since 2000, currently does not cover the administrative costs of the paper-based examination as the costs of administering the examination have

increased. At the same time that CBP is looking to update its fee to reflect the costs of administering the exam, OPM has informed CBP that it will no longer administer the paper-based examination and it is shifting all the examinations it administers to an electronic format.

On September 14, 2016, CBP published a document in the **Federal Register** (81 FR 63149) proposing to amend title 19 of the Code of Federal Regulations ("19 CFR") to modernize the customs broker's examination provisions. Specifically, CBP proposed amending the customs broker's examination provisions, which are contained in 19 CFR part 111, to permit automation of the examination. CBP proposed removing references to the "written" examination to accommodate the transition from the paper and pencil format to an electronic format; and proposed removing the requirement that CBP grade the examinations to permit officials at the Office of Personnel Management (OPM) or OPM contractors to grade the examinations. CBP proposed removing the reference to "Headquarters" to allow CBP offices nationwide to assist in preparing the examination. CBP also proposed moving the examination dates to the fourth Monday in April and October to allow more time between the start of the federal fiscal year and the October examination date. To cover the costs of administering the examination, plus the cost of automating the examination, CBP proposed to increase the fee. CBP proposed removing the special examination provision because it was unnecessary. Finally, to better reflect CBP's organizational structure, CBP proposed updating the information on whom to contact when an applicant either would miss an examination, or would file an appeal of examination results. CBP proposed these changes to benefit both applicants and CBP. For applicants, automation would standardize the testing environment and equipment for all examinations, and provide earlier notification of test scores. For CBP, automation would provide for a more efficient use of CBP staff and administrative resources. The notice of proposed rulemaking requested public comments. The public comment period closed on November 14, 2016.

#### Discussion of Comments

Eight comments were received in response to the notice of proposed rulemaking.

*Comment:* Six commenters sought clarification about the transition from a paper and pencil format to computer automated examinations as described in

the proposed rule. Three of them requested an additional explanation of how the removal of “written” from the description of the examination in the proposed regulations determined the examination format. One commenter suggested replacing “written” with another term, such as “multiple choice,” to describe the exact examination format in the regulations.

**CBP Response:** CBP disagrees that the regulations need to define a specific form of examination. CBP is removing the term “written” to describe the examination from the regulation to provide flexibility in the transition from the paper and pen format to delivering the examination via computer. For that reason, CBP is not limiting the examination format by including specific parameters, such as “multiple choice.” CBP understands the applicants’ desire for transparency on the type of question (e.g. multiple choice, true/false, essay) that will appear on the examination; therefore, CBP will provide guidance to the public on *CBP.gov* prior to the administration of the electronic examination.

**Comment:** Several commenters raised specific questions about the process of taking the new electronic examination. Commenters asked whether applicants could choose a testing site; whether applicants could bring electronic reference materials to the site, and, if not, whether they would have sufficient space to use their paper reference materials and receive scrap paper for solving problems; whether they could change their answers during the allotted time; whether they could skip questions and return to them later; and whether the computer program would track skipped questions for the examinee. Commenters also asked whether CBP would have a contingency plan for technical difficulties, whether CBP was going to test the automated examination program before requiring it nationwide, whether it would provide a practice test, when it would provide the answer key, and when it would provide the results to the applicants.

**CBP Response:** CBP understands the concerns about a new examination format; thus CBP will provide guidance to the public on *CBP.gov* prior to the administration of the electronic examination.

The selection of an examination location depends on the information in the application. Applicants select their business port when they register for the customs broker’s examination; CBP assigns the applicants to the exam locations closest to their selected port. With the examination location notification, CBP will provide the

applicant with contingency plans for system failures, power outages, and other site-related breakdowns or emergencies. The examination sites themselves will offer ample room for hard copies of reference material, and the guidance on *CBP.gov* will describe the permitted reference materials. Applicants will receive scrap paper at examination sites. The examination sites, however, will provide access to only one computer monitor per examinee. Applicants will not have access to a second monitor or be permitted to access reference materials on-line.

The electronic examination itself will allow applicants to skip answers, to return to skipped or completed answers, and to change their answers during the examination period. After the broker’s examination development team completes its testing of the electronic examination, CBP will provide a link to a sample practice examination so that applicants can familiarize themselves with the format and how to navigate within the examination. The guidance CBP will provide on *CBP.gov* will include information on how and when CBP anticipates it will provide a copy of the examination and its answer key. CBP will post the examination online at *CBP.gov* after the completion of all the examinations at all examination locations. CBP will post the examination answer key on *CBP.gov* after it vets the examination results.

**Comment:** Several commenters questioned the examination fee increase to \$390, or requested more information about the basis for the increase in the fee. They compared the new fee to other licensing fees, and the increase in the examination fee to increases resulting from inflation or changes in the cost of living since 2000; and stated that the fee would be expensive for individuals beginning their trade careers. Commenters questioned how automation could be so expensive when it would save administrative resources.

**CBP Response:** CBP appreciates that the fee may be expensive for some individuals but CBP disagrees that its examination fee increase is too high as it is set to cover CBP’s costs to provide the exam under the new exam process. The fee is not being changed merely to adjust the existing fee for inflation, or to bring it in line with licensing fees for exams in unrelated fields, but to reflect CBP’s costs of providing the exam. The Office of Personnel Management has informed CBP that it will soon no longer administer the current paper based examination. Instead, the exam will now be electronic and provided at private testing centers. While the

automation itself saves money by reducing the time spent preparing and grading the exam, the need to rent testing centers with professional proctors will increase the overall exam costs. The increase in costs over time due to inflation, coupled with the need to change to an all-electronic exam administered at private testing centers, makes it necessary to increase the customs broker exam fee from \$200 to \$390 for CBP to recover all of its costs to administer the customs broker exam.

**Comment:** Commenters said that an individual’s brokerage does not always reimburse for the cost of the exam and that \$390 would be a large expense for individuals.

**CBP Response:** CBP acknowledges that not all brokerages reimburse their employees for the cost of the exam and some only reimburse their employees when they pass the exam. This is consistent with the analysis that indicates only that there is some portion of brokerages who do reimburse their employees and that there are brokers who are sole proprietors. This discussion takes place in the Regulatory Flexibility Act section of this document, which analyzes the impact on small entities. Small entities, as defined by the Regulatory Flexibility Act, includes small businesses but does not include individuals (other than sole proprietors). Therefore, the cost to individuals was not analyzed in this section. For an analysis of the costs of this rule to all parties, see the Executive Orders 13563, 12866, and 13771 and Regulatory Flexibility Act sections in this notice.

**Comment:** Several commenters requested additional information on what costs were covered by the fee.

**CBP Response:** As requested, CBP has revised the administrative costs section in the fee study to include a more detailed description of what is included in the costs for informational purposes. Exam administration costs are the costs associated with administering the customs broker license exam. CBP contracts with the U.S. Office of Personnel Management (OPM) to administer the exam. The contracted services include, but are not limited to: The development of the exam onto an electronic platform, the renting of testing locations, the providing of equipment and proctors, the grading of the exam, the mailing of individual score sheets to each examinee, and the providing to CBP of an array of exam metrics including distractor analysis and frequency distribution. The fee study documenting the proposed fee changes, entitled “Customs Broker License Examination Fee Study,” has

been included in the docket of this rulemaking (Docket No. USCBP–2016–0059). As stated in the fee study, there were two inputs to determining the new examination fee—the costs to both CBP and OPM and the number of examinees. The cost of administering the examination is increasing to \$390 because CBP now has to hire professional proctors and rent out formal testing centers instead of using port staff to proctor the exam and port facilities to administer the exam.

*Comment:* Several commenters objected to eliminating the special examination provision, mentioned CBP had applied the provision in 2001, and requested that it remain, in case of extenuating circumstances or unforeseen emergencies.

*CBP Response:* CBP agrees and will retain the special examination provision at 19 CFR 111.13(c) with changes to reflect that the special examination will also be modernized to allow for electronic testing. In addition, CBP changed the provision to require that special examination requests be submitted to the Executive Assistant Commissioner, Office of Trade.

*Comment:* Although no one objected to moving the customs broker's examination dates later in April and October, several commenters suggested that neither Monday nor Friday were ideal dates for business reasons.

*CBP Response:* CBP agrees that moving the exam administration date to the fourth Wednesday in October and in April would be beneficial. Accordingly, CBP changed the administration date from the fourth Monday to the fourth Wednesday in 19 CFR 111.13(b).

## Conclusion

Accordingly, after review of the comments and further consideration, CBP has decided to adopt as final, with the changes discussed above, and grammatical corrections, the proposed rule published in the **Federal Register** (81 FR 63149) on September 14, 2016. Specifically, the final rule will change the examination dates to the fourth Wednesday in April and October (not the fourth Monday); and, will retain the special examination provision with changes in § 111.13(c) (19 CFR 111.13(c)).

## Executive Orders 13563, 12866, and 13771

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

## 1. Purpose of the Rule

Customs brokers are private individuals and/or business entities (partnerships, associations or corporations) that are regulated and empowered by CBP to assist importers and exporters in meeting federal requirements governing imports and exports. Customs brokers have an enormous responsibility to their clients and to CBP that requires them to properly prepare importation and exportation documentation, file these documents timely and accurately, classify and value goods properly, pay duties and fees, and safeguard their clients’ information.

CBP currently licenses brokers who meet a certain set criteria. One criterion is that each prospective broker must first pass a broker license exam. CBP’s current paper-based examination method will soon no longer be available and so CBP is shifting to an all-electronic exam. The all-electronic exam has benefits to both CBP and the trade, such as a faster processing time, which lets examinees know their results more quickly and efficiently, and a significant reduction in administrative duties for CBP employees. However, administering this new electronic exam is also more expensive. Additionally, the current \$200 fee does not cover the costs of the current paper exam. CBP is therefore increasing the examination fee

from \$200 to \$390 in order to fully cover all of CBP’s costs of administering the broker examination.

CBP is also changing the date of the semi-annual customs broker exam from the first Monday in October and April to the fourth Wednesday in October and April for easier administration.

## 2. Background

It is CBP’s responsibility to ensure that only qualified individuals and business entities can perform customs business on another party’s behalf. The first step in meeting the eligibility requirements for a customs broker license requires an individual to pass the customs broker license examination. Currently paper-based, the customs broker examination is an open-book examination consisting of 80 multiple-choice questions.

An individual currently must meet the following criteria in order to be eligible to take the customs broker examination:

- Be a U.S. citizen at least 18 years of age;<sup>1</sup>
- Not be an employee of the U.S. federal government; and
- Pay a \$200 examination fee.

The customs broker examination is offered semi-annually, in April and October, and an examinee has four and a half (4.5) hours to complete it. Based on prior year exams from 2004 to 2013, CBP estimates that there will be approximately 2,600 examinees per year, or 1,300 examinees per session. Currently the broker exam is given at 50 testing locations around the country. CBP anticipates that changing the exam format from paper-based to electronic would result in no change in the number of testing locations in the country; the only change would be the type of testing location. The exam is currently administered at hotels and ports throughout the country. In the future, the exam will instead be held at privately operated formal testing locations.

Beginning in October 2017, the current paper testing option will no longer be available and the broker examination will be fully electronic. Despite the higher costs of an electronic exam, it has many favorable features which would benefit both CBP and the examinees, including shorter wait times for examinees to get their test results and a reduction in the time CBP staff

<sup>1</sup> Although U.S. citizens at least 18 years old may take the broker license exam, a U.S. citizen must be at least 21 years old to apply to become a licensed customs broker. An individual has three years, from the time the individual takes the customs broker exam, to apply to become a licensed customs broker.

spends on administrative matters related to the exam, such as arranging facility space for and proctoring the exam, fielding questions from examinees and mailing test result notices.

### 3. Costs

As discussed above, CBP currently charges a \$200 fee for the customs broker license examination. This fee is used to offset the costs associated with providing the services necessary to operate the customs broker license examination. Based on a recently completed fee study entitled, "Customs Broker License Examination Fee Study," CBP has determined that these fees are no longer sufficient to cover its costs.<sup>2</sup> Currently, examinees go to either a port or to a rented event space in a hotel to take the paper exam with a 35-page test booklet and a scannable answer sheet, which must subsequently be collected and graded. The new all-electronic version of the exam will be administered entirely on a computer where the examinees answer the questions directly on the screen and the exam is graded automatically. As the electronic exam uses all private facilities with professional proctors, this automated method will be more expensive than the paper exam. Furthermore, the current fee is not enough to cover even the current costs of administering the exam. Exam administration costs include the development of the exam in an electronic platform, the renting of testing locations, the providing of equipment and proctors, the grading of the exam, the mailing of individual score sheets to each examinee, and the providing to CBP of an array of exam metrics including distractor analysis and frequency distribution. As stated above, the current \$200 fee has not been changed since 2000. According to data provided by CBP's Broker Management Branch, administrative and testing costs have increased since the fee was last changed. This increase in administrative fees coupled with switching to an all-electronic exam administered at private testing centers, makes it necessary to increase the customs broker exam fee from \$200 to \$390 for CBP to recover all of its costs to administer the customs broker exam.

CBP has determined that the fee of \$390 is necessary to recover the costs associated with administering the customs broker license examination once the exam is made electronic. The customs broker examination is an

established service provided by CBP that already requires a fee payment. Absent this rule, CBP would be operating the exam at a loss and this fee is intended to offset that loss. As such, a change in the fee is not a net cost to society, but rather a transfer payment from test takers to the government.<sup>3</sup> CBP does recognize, however, that the fee change may have a distributional impact on prospective customs brokers. In order to inform stakeholders of all potential effects of the final rule, CBP has analyzed the distributional effects of the final rule in section "5. Distributional Impact."

### 4. Benefits

As discussed above, CBP is increasing the customs broker license examination fee from \$200 to \$390. The broker exam fee was last changed in 2000 when it was reduced from \$300 to the current fee of \$200. The lower cost paper-based examination that is currently being administered is being replaced by an all-electronic exam in an effort to fully modernize the customs broker testing procedure. This fee increase will allow CBP to fully recover all of its costs, including those to provide a fully electronic version of the customs broker examination beginning in October 2017. As discussed above, the fee increase is neither a cost nor a benefit of this rule since the broker exam fee is already an established fee. Thus, the fee increase is considered a transfer payment. As stated above, in order to inform stakeholders of all potential effects of the final rule, CBP has analyzed the distributional effects of the final rule in section "5. Distributional Impact."

In addition to increasing the examination fee, CBP is changing the date the examination is given from the first Monday in October and April to the fourth Wednesday in October and April. Administering the examination on the first Monday in October is administratively difficult because it is too close to the conclusion of the Federal Government's fiscal year at the end of September. With this rule's changes, CBP and the examinees will benefit through greater predictability in years where federal budgets are uncertain.

### 5. Distributional Impact

Under the final rule, the customs broker license examination fee will increase from \$200 to \$390 in order for CBP to fully recover all of its costs to administer the broker examination. As

noted above, these costs are increasing due to a shift in the administration of the exam that will go into effect beginning with the October 2017 exam.

The customs broker license examination fee will cost individuals an additional \$190 when they register to take the customs broker license examination. As discussed above, CBP estimates that there will be 2,600 examinees per year (1,300 per session) who will take the customs broker license examination. Using this estimate and the additional cost that each examinee will incur, CBP estimates that the fee increase will result in a transfer payment to the government of approximately \$494,000 per year (2,600 examinees per year \* \$190 proposed fee increase = \$494,000).

### Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The final rule will apply to all prospective brokers who take the broker exam. The fee is paid by the individual taking the broker exam and individuals are not considered small entities under the Regulatory Flexibility Act. However, some of these individuals are sole proprietors or may be reimbursed for this expense by their brokerage, so we consider the impact on these entities. The U.S. Census Bureau categorizes customs brokers (as well as freight forwarders and marine shipping agents) under the North American Industry Classification (NAICS) code 488510. As shown in Exhibit 1 below, approximately 96 percent of business entities in this NAICS code are small. As this rule will affect any prospective broker or his/her employer, regardless of its size, this rule has an impact on a substantial number of small entities.

The direct impact of this rule on each individual customs broker examinee, or his/her employer, is the fee increase of \$190. To assess whether this is a significant impact, we examine the annual revenue for customs brokers. The U.S. Census Bureau categorizes customs brokers under the NAICS code 488510. In addition to customs brokers, this NAICS code also includes freight

<sup>3</sup> Transfer payments are monetary payments from one group to another that do not affect total resources available to society. See OMB Circular A-4.

<sup>2</sup> The fee study is included in the docket of this rulemaking (Docket No. USCBP-2016-0059).

forwarders and marine shipping agents.<sup>4</sup> The Small Business Administration (SBA) publishes size standards that determine the criteria for being considered a small entity for the purposes of this analysis. The SBA considers a business entity classified under the 488510 NAICS code as small if it has less than \$15 million in annual receipts. We obtained the number of firms in each revenue category provided by the U.S. Census Bureau (see Exhibit

1 below). To estimate the average revenue of all firms under this NAICS code, we first assumed that each firm in each revenue category had receipts of the midpoint of the range. For example, we assumed that the 4,354 firms with annual receipts of between \$100,000 and \$499,999 had average receipts of \$300,000. We then used the number of firms in each category to calculate the weighted average revenue across all small firms. Using this method, we

estimate that the weighted average revenue for small businesses in this NAICS code is \$1,496,197. The \$190 increase in the broker exam fee, then, represents 0.01 percent of the weighted average annual revenue for brokers. CBP does not consider 0.01 percent of revenue per exam to be a significant impact. Accordingly, CBP certifies that this rule does not have a significant economic impact on a substantial number of small entities.

#### EXHIBIT 1—BUSINESS ENTITY DATA FOR NAICS CODE 488510

Annual receipts (\$) (Midpoint)	Number of firms	Small
<100,000 (50,000) .....	1,834	Yes.
100,000–499,999 (300,000) .....	4,354	Yes.
500,000–999,999 (750,000) .....	2,040	Yes.
1,000,000–2,499,999 (1,750,000) .....	2,300	Yes.
2,500,000–4,999,999 (3,750,000) .....	1,087	Yes.
5,000,000–7,499,999 (6,250,000) .....	427	Yes.
7,500,000–9,999,999 (8,750,000) .....	242	Yes.
10,000,000–14,999,999 (12,500,000) .....	233	Yes.
>15,000,000 .....	548	No.
Total .....	13,065	96 Percent are Small (12,517/13,065).

Source: U.S. Census Bureau.

#### Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(l) of the Homeland Security Act of 2002. Accordingly, this final rule to amend such regulations may be signed by the Secretary of Homeland Security (or his delegate).

#### List of Subjects in 19 CFR Part 111

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

#### Amendments to the CBP Regulations

For the reasons given above, part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111) is amended as set forth below:

#### PART 111—CUSTOMS BROKERS

- 1. The authority citation for part 111 continue to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

Section 111.3 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

#### § 111.11 [Amended]

- 2. In § 111.11, paragraph (a)(4) is amended by removing the words “a written” and adding in its place the word “an”.

#### § 111.12 [Amended]

- 3. In § 111.12, paragraph (a) is amended by removing the word “written” from the two places that it appears in the fifth and sixth sentences.

#### § 111.13 [Amended]

- 4. In § 111.13:
  - a. The section heading is revised;
  - b. Paragraph (a) is amended by:
    - 1. Removing the word “written” in the first sentence;
    - 2. Removing the words “and graded at” in the second sentence and adding in their place the word “by”; and
    - 3. Removing the phrase “Headquarters, Washington, DC” from the second sentence;
  - c. Paragraphs (b) through (d) and (f) are revised.

The revisions read as follows:

#### § 111.13 Examination for individual license.

\* \* \* \* \*

(b) *Basic requirements, date, and place of examination.* In order to be eligible to take the examination, an individual must on the date of examination be a citizen of the United States who has attained the age of 18 years and who is not an officer or employee of the United States Government. CBP will publish a notice announcing each examination on its Web site. Examinations will be given on the fourth Wednesday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event and the agency publishes in the **Federal Register** an appropriate notice of a change in the examination date. An individual who intends to take the examination must complete the electronic application at least 30 calendar days prior to the scheduled examination date and must remit the \$390 examination fee prescribed in § 111.96(a) at that time. CBP will give notice of the exact time and place for the examination.

(c) *Special examination.* If a partnership, association, or corporation loses the required member or officer

<sup>4</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=488510&search=2012%20NAICS%20Search>.

having an individual broker's license (see § 111.11(b) and (c)(2)) and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and § 111.45(a) before the next scheduled examination, CBP may authorize a special examination for a prospective applicant for an individual license who would serve as the required licensed member or officer. CBP may also authorize a special examination for an individual for purposes of continuing the business of a sole proprietorship broker. A special examination for an individual may also be authorized by CBP if a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district (see § 111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and § 111.45(b) before the next scheduled examination. A request for a special examination must be submitted to the Executive Assistant Commissioner, Office of Trade, in writing and must describe the circumstances giving rise to the need for the examination. If the request is granted, the Executive Assistant Commissioner, Office of Trade or his/her designee, will notify the prospective examinee of the exact time and place for the examination. If the individual attains a passing grade on the special examination, the application for the license may be submitted in accordance with § 111.12. The examinee will be responsible for all additional costs incurred by CBP in preparing and administering the special examination that exceed the \$390 examination fee prescribed in § 111.96(a), and those additional costs must be reimbursed to CBP before the examination is given.

(d) *Failure to appear for examination.* If a prospective examinee advises the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, electronically in a manner specified by CBP at least 2 working days prior to the date of a regularly scheduled examination that he will not appear for the examination, CBP will refund the \$390 examination fee referred to in paragraph (b) of this section. No refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination provided for under paragraph (c) of this section.

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section,

the examinee may challenge that result by filing a written appeal with the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. CBP will provide to the examinee written notice of the decision on the appeal. If the CBP decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Executive Assistant Commissioner, Office of Trade, U.S. Customs and Border Protection, within 60 calendar days after the date of the notice on that decision.

#### § 111.96 [Amended]

##### ■ 5. In § 111.96:

- a. Paragraph (a) is amended by removing the word "written" from the second sentence and removing the phrase "\$200 examination fee" in the second sentence and adding in its place the phrase "\$390 examination fee"; and
- b. Paragraph (e) is amended by removing the words "United States Customs Service" and adding in their place the words "U.S. Customs and Border Protection, or paid by other CBP-approved payment method".

Dated: June 27, 2017.

**Elaine C. Duke,**

*Deputy Secretary.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9808]

**RIN 1545-BL17**

**RIN 1545-BN74**

#### **Regulations Regarding Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD 9808), which were published in the **Federal Register** on Friday, January 6, 2017 (82 FR 2046). These regulations are related to

withholding of tax on certain U.S. source income paid to foreign persons, information reporting and backup withholding with respect to payments made to certain U.S. persons, and portfolio interest paid to nonresident alien individuals and foreign corporations.

#### **DATES:**

*Effective Date:* These corrections are effective June 30, 2017.

*Applicability Date:* The corrections to §§ 1.1441-0; 1.1441-1(b)(7)(ii)(B), (e)(3)(iv)(B) and (C), (e)(4)(ii)(B)(1), (e)(4)(ix)(D), (e)(5)(ii) through (e)(5)(ii)(B), (e)(5)(ii)(D) through (e)(5)(v)(B)(3), (e)(5)(v)(B)(5) through (e)(5)(v)(D), and (f) through (f)(4); 1.1441-1T; 1.1441-3(d)(1); 1.1441-4; 1.6045-1(m)(2)(ii) and (n)(12)(ii); and 1.6049-5(c)(1) through (c)(4) are applicable on January 6, 2017.

#### **FOR FURTHER INFORMATION CONTACT:**

Nancy Lee, (202) 317-6942 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The final and temporary regulations that are the subject of these corrections are §§ 1.1441-0, 1.1441-1, 1.1441-1T, 1.1441-3, 1.1441-4, 1.6045-1, and 1.6049-5, promulgated under sections 1441, 6045, 6049, and 7805 of the Internal Revenue Code. These regulations affect persons making payments of U.S. source income to foreign persons and persons making payments to certain U.S. persons subject to reporting and backup withholding.

##### **Need for Correction**

As published, the final regulations contain a number of items that need to be corrected or clarified. Several portions of TD 9808 could not be incorporated due to inaccurate amendatory instructions. Most of the correcting amendments to TD 9808 are needed to clarify or correct the results of these inaccurate amendatory instructions. The correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes, specifically to make a conforming change to the entry in the table of contents (§ 1.1441-0) for § 1.1441-1(e)(4)(ix); to correct typographical errors in §§ 1.1441-1(e)(4)(ix)(D), 1.1441-1T(c)(3)(ii), and 1.1441-3(d)(1); to clarify that allowances for electronic signatures in § 1.1441-1T(e)(4)(i)(B) and use of third party repository in § 1.1441-1T(e)(4)(iv)(E) are limited to Forms W-8; to remove an obsolete cross-reference