

## § 111.2

## 19 CFR Ch. I (4-1-08 Edition)

a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which CBP will consider include, but are not limited to: The training required of employees of the broker; the issuance of written instructions and guidelines to employees of the broker; the volume and type of business of the broker; the reject rate for the various customs transactions; the maintenance of current editions of CBP Regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances; the availability of an individually licensed broker for necessary consultation with employees of the broker; the frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have a resident individually licensed broker; the frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker; the extent to which the individually licensed broker who qualifies the district permit is involved in the operation of the brokerage; and any circumstance which indicates that an individually licensed broker has a real interest in the operations of a broker.

*Department of Homeland Security or any representative of the Department of Homeland Security.* “Department of Homeland Security or any representative of the Department of Homeland Security” means any office, officer, or employee of the U.S. Department of Homeland Security, wherever located.

[T.D. 00-17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03-15, 68 FR 47460, Aug. 11, 2003]

### § 111.2 License and district permit required.

(a) *License*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, a person must obtain the license provided for in this part in order to transact customs business as a broker.

(2) *Transactions for which license is not required*—(i) *For one’s own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(ii) *As employee of broker*—(A) *General.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(1) *Authorized to sign documents.* The broker has authorized the employee to sign documents pertaining to customs business on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the port director, but must provide proof of its existence to Customs upon request; or

(2) *Authorized to transact other business.* The broker has filed with the port director a statement identifying the employee as authorized to transact customs business on his behalf. However, no statement will be necessary when the broker is transacting customs business under an exception to the district permit rule.

(B) *Broker supervision; withdrawal of authority.* Where an employee has been given authority under paragraph (a)(2)(ii) of this section, the broker must exercise sufficient supervision of the employee to ensure proper conduct on the part of the employee in the transaction of customs business, and the broker will be held strictly responsible for the acts or omissions of the employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen. The broker must promptly notify the port director if authority granted to an employee under paragraph (a)(2)(ii) of this section is withdrawn. The withdrawal of authority will be effective upon receipt by the port director.

(iii) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(iv) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for that merchandise for transportation in bond without being a broker.

(v) *Noncommercial shipments.* An individual entering noncommercial merchandise for another party is not required to be a broker, provided that the requirements of §141.33 of this chapter are met.

(vi) *Foreign trade zone activities.* A foreign trade zone operator or user need not be licensed as a broker in order to engage in activities within a zone that do not involve the transfer of merchandise to the customs territory of the United States.

(b) *District permit—(1) General.* Except as otherwise provided in paragraph (b)(2) of this section, a separate permit (see §111.19) is required for each district in which a broker conducts customs business.

(2) *Exceptions to district permit rule—(i) National permits.* A national permit issued to a broker under §111.19(f) will constitute sufficient permit authority for the broker to act in any of the following circumstances:

(A) *Employee working in client's facility (employee implant).* When a broker places an employee in the facility of a client for whom the broker is conducting customs business at one or more other locations covered by a district permit issued to the broker, and provided that the employee's activities are limited to customs business in support of that broker and on behalf of that client but do not involve the filing of entries or other documents with Customs, the broker need not obtain a permit for the district within which the client's facility is located;

(B) *Electronic drawback claims.* A broker may file electronic drawback claims in accordance with the electronic filing procedures set forth in part 143 of this chapter even though the broker does not have a permit for the district in which the filing is made;

(C) *NCAP participation.* A broker who is a participant in the National Customs Automation Program (NCAP) may electronically file entries for merchandise from a remote location and

may electronically transact other customs business that is provided for and operational under the NCAP even though the entry is filed, or the other customs business is transacted, within a district for which the broker does not have a district permit; and

(D) *Representations after entry summary acceptance.* After the entry summary has been accepted by Customs, and except when a broker filed the entry as importer of record, a broker who did not file the entry, but who has been appointed by the importer of record, may orally or in person or in writing or electronically represent the importer of record before Customs on any issue arising out of that entry or concerning the merchandise covered by that entry even though the broker does not have a permit for the district within which those representations are made, provided that, if requested by Customs, the broker submits appropriate evidence of his right to represent the client on the matter at issue.

(ii) *Filing of drawback claims.* A broker granted a permit for one district may file drawback claims manually or electronically at the drawback office that has been designated by Customs for the purpose of filing those claims, and may represent his client before that office in matters concerning those claims, even though the broker does not have a permit for the district in which that drawback office is located.

[T.D. 00-17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03-15, 68 FR 47460, Aug. 11, 2003]

### § 111.3 [Reserved]

### § 111.4 Transacting customs business without a license.

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 19 U.S.C. 1641. The penalty will be assessed in accordance with subpart E of this part.