

# Revisions to Broker Regulations:

What Has Changed and What is Changing?

**NCBFAA Annual Meeting**

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# Panel

Moderator: Ken Bargteil, V.P. Import Compliance, Kuehne + Nagel, Inc.

- Heather Sykes, CBP Branch Chief, Office of Broker Management, Office of Trade
- Mary Ann Comstock, Compliance Manager, UPS Supply Chain Solutions, Inc.
- Myra Reynolds, Corporate Import Manager, John S. James Co.

# AGENDA

- **Confidentiality of Client Records 19 CFR 111.24**
- **Continuing Education Requirements**
- **Employee Reporting 19 CFR 111.2(a)(2)(ii)(A); 111.28(b); 111.30(d)(1)**
- **Broker – Freight Forwarder Relationship**
- **Validating Importers**

# Records - Confidential

*19 CFR 111.24 – The Records referred to in this part and pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients, their surety on a particular entry, and the Field Director, Office of International Trade, Regulatory Audit, the special agent in charge, the port director, or other duly accredited officers or agents of the United States, except on subpoena by a court of competent jurisdiction.*

# HQ-116025 UPS

*Issue – whether or not UPS brokerages may share certain customer background and aggregate revenue information with affiliated companies that are not licensed brokers.*

“Information” - Name, address, phone numbers, contact names, e-mail addresses in addition to UPS internal data, including commodity and history.

“Revenue”- Aggregated Gross and Net Revenue and profit to UPS.

# ISSUE

Whether the proposed sharing of customer information violates the requirement as prescribed by *19 CFR 111.24*, that a broker keep client records confidential.

# UPS Arguments

*19 CFR 1641(f) – Limits CBP authority to those regulations “relating to the Customs business of a broker.” (Plain meaning)*

*19 CFR 111.24 does not prohibit a broker from sharing with non-licensed affiliates, client background and aggregate revenue information. Contending that such information is internally generated and unrelated to the transaction of customs business.*

# CBP Response

*19 CFR 1641(f) – (also states) including rules and regulations governing the licensing of or issuance of permits to Customs brokers.*

*“... the identity of a client is information that appears on entry documents, and thus does relate to the transaction of ‘Customs business’”*



# HOLDING

The proposed sharing of the customer information as outlined in this ruling is prohibited under *19 CFR 111.24*

# Where are we now?

August 16, 2013, NCBFAA filed for Modification or Revocation of 6 rulings, citing:

*“CBP’s interpretation of 19 CFR 111.24 not only requires brokers to confidentially maintain information that is readily available to the public but also hamstringing the broker’s ability to effectively service their importer-client and to execute certain legitimate business functions that are essential to the operation of a customs brokerage business.”*

# HOLDING

Pending?

# The Broker – Forwarder Relationship

*19 CFR 111.36 Relations with unlicensed persons*

*(c) Relations with a freight forwarder. A broker may compensate a freight forwarder for referring brokerage business, subject to the following conditions:*

*(1) The importer or other party in interest is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions.*

# The Broker – Forwarder Relationship

19 CFR 111.36 creates the opportunity for a business relationship between a customs broker and freight forwarder, focusing on the benefits received by the Importer.

- Importers receive services from a licensed customs broker
- Forwarder is well positioned to arrange for customs clearance, facilitating documentation and communication with the exporter (and possible NRI)
- Does CBP benefit from this arrangement ... or not?
- Does this provide a 'window of opportunity' that unscrupulous parties might benefit from?

# The Broker – Forwarder Relationship

*19 CFR 141.31 General requirements and definitions*

*(a) Limited or general power of attorney. A power of attorney may be executed for the transaction by an agent or attorney of a specified part or all the Customs business of the principal.*

In essence the agent or attorney may select and issue a power of attorney to a Customs Broker on behalf of the principal.

# The Broker – Forwarder Relationship

HQ 225375 (Internal Advice) issued October 31, 1994 held: ***“A freight forwarder acting under an importer’s power of attorney may sign for the importer another power of attorney which appoints a licensed customhouse broker as the importer’s agent.”***

It also stated ***“... plain language of the Power of Attorney would permit the freight forwarder to act on behalf of the importer to appoint a licensed broker as the importer’s agent.”***

# The Broker – Forwarder Relationship

## Symbiotic!

- Many of us incorporate both Customs Brokerage and Freight Forwarding activities/divisions under one corporate umbrella
- Many more of us have well established ‘partnerships’ with freight forwarders around the world
- The Freight Forwarder is as much of a trade facilitator as a Customs Broker – we each have a role to play.

## That’s Life!

- The world is full of ‘good’ and ‘bad’ actors – how do we ensure we are part of the ‘good’?





# The Broker – Forwarder Relationship

## Factors to consider:

- Freight Forwarders are not bound by 19 USC 1641, and may or may not perform due diligence activities when collecting POA's
- When the POA is issued to a Customs Broker and the Customs Broker acts as an agent of the grantor/principal, does that broker have a duty to validate or check the bona fides of the POA? Yes!
- What about the bad actors? Identity theft – shell companies – IPR violations – smuggling schemes
- How do customs brokers protect themselves?

# The Broker – Forwarder Relationship

## Possible Solutions:

- Place the burden for collecting Importer bona fides where it belongs – on the Importers
- Remove the ‘stand alone’ forwarder from the equation, requiring the Customs Broker to directly interact with the grantor/principal who issues the Power of Attorney.
- Modification to 19 CFR 111.36(c)(1)
- Modification to 19 CFR 141.31
- Revoke HQ 225375

# Importer Bona Fides

**Do you know, who you know?  
What are importer bona fides?**



# Importer Bona Fides

- CBP has expressed interest in creating a requirement for Importers to provide identifying information proving the legal existence and place of business along with other related data to their customs broker as a condition for importing.
- This would require an amendment to 19 CFR 141. A companion change in Part 111 would require the customs broker to retain this information as part of their recordkeeping requirement.

# The Total Picture

- Additionally, CBP is expanding the data requirements for their Form 5106.
- Together these changes should inhibit identity theft and importation by shell companies.

# Benefits

- More certainty regarding Importer legitimacy
- Reduced identity theft
- Reduced Antidumping and countervailing duty evasion
- Reduced IPR infringement
- Better accountability throughout the supply chain

# Questions?

