



Broker Audits: How Prepared Are You?



Presenters



Cindy Deleon is founder of Deleon Trade LLC and Senior Trade Auditor. Cindy utilizes her audit experience to assist clients in strengthening internal control program to ensure U.S. Customs compliance and passing of focused assessments and customs audits. She works with clients to identify risks in import operations and develop compliance manuals and procedures. Before starting her consulting career in 2007, Cindy served as a Senior Auditor and Assistant Field Director of U.S. Customs and Border Protection's Regulatory Audit Division in Chicago for 12 years. While working at U.S. Customs she conducted and supervised multiple focused assessment audits, quick response audits, fraud investigations, free trade agreement reviews, drawback audits, NAFTA audits, and prior disclosure reviews of Fortune 500 and midsize companies.



Paulie Nichols is a Broker Audit Specialist. She has nearly 25 years of experience in all aspects of customs brokerage and logistics. Paulie has been a licensed customs broker and certified customs specialist since 2005. She has extensive experience in commodity classification and compliance, as well as an excellent understanding of import regulatory requirements. She designed and implemented supply chain and security protocols to get her company's C-TPAT certification, developed compliance manuals and procedures as well as conducting comprehensive training sessions for both brokers and importers. She has conducted internal audits, risk assessments and has assisted clients in responding to CBP inquires, requests for information, prior disclosures and ruling requests. As the license qualifier she successful completed a US Customs broker audit receiving a favorable review.

CONGRATULATIONS!



NOW WHAT?

Whether it's a phone call or an email from an auditor, a letter stating that an audit will be taking place or a audit survey questionnaire from regulatory audit, you will be advised the purpose of the audit.

Review Scope (from a broker audit questionnaire)

When the broker responds to the questionnaire completely and comprehensively, the audit team can plan its approach to the audit. The results of the questionnaire, interviews, with brokerage officials, survey of company procedures, and limited testing will be used to determine the effectiveness of the broker's internal control system. Answering the questionnaire affords the brokerage the opportunity to evaluate its own operations and internal controls pertaining to customs activities.

Do not:

- Panic
- Give more information than asked
- Delay updating your procedures

Do:

- Take the call or respond to the inquiry
- Provide the requested information
- Start reviewing your compliance procedures immediately

“A man who does not plan long ahead will find trouble at his door.” — Confucius

From: [REDACTED] <[REDACTED]@cbp.dhs.gov>

Sent: Tuesday, July 17, 2018 1:14 PM

To: [REDACTED]

Subject: RE: revised date

Hi [REDACTED],

We are confirmed for August 23rd and 24th. Thank you for working me on the meeting time.

Just to recap what we spoke about earlier. I will be sending you a list of entries to provide the entry document packets, a list of the power of attorneys for the brokerage's clients, and a questionnaire inquiring about [REDACTED] procedures. In addition, at the time of our meeting we will request a current list of employee.

Please let me know if you have any question or concerns. I will be in touch again soon.

Thanks,

[REDACTED]
Auditor

Customs and Border Protection

Office of Trade, Regulatory Audit & Agency Advisor Services

Houston Field Office



Preparing the documents requested by the Auditor

The requested documents were chosen for a reason. If there is any error or question, you want to find it first.

- Review all documents for accuracy
- Make sure all requested and required documents are included
- Confirm the POA is valid and accurate for the date of the entry
- Run a query to see if the entry has been liquidated and if there has been any post entry filing (remember another broker can file a post entry on your file)
- Confirm duty has been paid and obtain proof of payment
- Check the classification (Was it provided by the client? Is it reasonable?)
- Confirm there was no ADD/CVD applicable
- If ADD/CVD was disclaimed do you have written confirmation from importer?
- Make sure deductions have proper documentation
- Make sure FTA entries have required documentation
- If you find an error, have a plan in place to correct it keeping the importer in mind



The Official Notification and Request

2350 N Sam Houston Pk_wy E Suite 1050
Houston, TX 77032



U.S. Customs and
Border Protection

July 31, 2018

[REDACTED]
VP Import Compliance, LCB, CCS
[REDACTED]

Dear [REDACTED]:

This letter confirms arrangements made by U.S. Customs and Border Protection (CBP), Regulatory Audit to meet [REDACTED] officials on August 23, 2018 at 9:00 a.m. at your premises located at [REDACTED] Houston TX for an entrance conference initiating a broker compliance audit.

→ The purpose of our audit is to determine whether [REDACTED] is fulfilling its obligations as a Customs broker to its clients and to Customs and Border Protection (CBP) in accordance with Title 19 Code of Federal Regulations (CFR) 111 Subpart C and related laws and regulations. Our audit scope period will include importations for the period of January 1, 2017 through December 31, 2017.

→ We request [REDACTED] provide CBP with a presentation of the company's Customs Broker practices. Specifically, a step by step explanation of the importation process from the contracting of the transaction, to the point where the merchandise is imported into the US and applicable payments are received and deposited into the broker's account(s) and applicable duties, fees and other payments are made from the broker's account(s).


In order to assist in this demonstration, we have selected 4 entries for [REDACTED] to walk us through the step by step processes, highlight any controls or procedures that the company uses to ensure complete and accurate declarations to CBP for all aspects of the Customs entry. Please compile and provide the entry documentation and all supporting records related to these entries during the Entrance Conference including any correspondence associated with the initial contracting of the importation and instructions related to the transaction, either to or from the importer of record, consignee or any companies providing logistical services.

To facilitate the initial review of these walkthrough transactions, we are requesting that all supporting documentation and accounting records related to the entries be provided for review. The documents and records being requested included (but are not limited to), the following:

You will need the assistance of your accounting department

- Customs Entry Package Form (CF7501 and CF3461); Commercial Invoice, Packing List, Delivery Order, Bill of Lading, transportation records;
- Broker invoice for entry services and any other services provided to client;
- Proof of receipt of payment for broker services;
- Proof of deposit into broker account;
- Proof of payment for duties and fees to Customs and Border Protection;
- Account Payable Records;
- Account Receivable Records;
- Bank Statements;
- Canceled Checks;
- Automated Clearing House (ACH) Statements;
- Correspondence with Importer and Government Agencies;
- Powers of Attorney; and,
- Up to date client list for CY 2017.

In addition to the items requested above, we will conduct a review of Powers of Attorney that are in force for [REDACTED] 2017 importer clients, which will be provided by August 3, 2018.

 Enclosed please find an Internal Control Questionnaire. We request that you complete and return the questionnaire by COB, August 14, 2018. You may return the questionnaire electronically to [REDACTED] at [REDACTED]@cbp.dhs.gov.

We expect our initial fieldwork to last two days and conclude Friday afternoon. Future fieldwork will be scheduled as agreed. We look forward to working with you and your staff. If you have any questions please contact [REDACTED] at (281) [REDACTED].

Sincerely,

[REDACTED]

[REDACTED]
Assistant Field Director
Regulatory Audit & Agency Advisory Services
Office of Trade
Houston, Texas

Be prepared for the worst, and hope for the best

The Questionnaire

Introduction

The purpose of the Internal Control questionnaire is to obtain information about the customhouse broker's organizational structure and internal controls related to customs transactions. The questionnaire is designed to give the audit team a general understanding of the broker's operations as well as to inform the broker of the areas on which the review may focus. As each broker's operations are unique, this questionnaire may have been modified to fit the circumstances of each audit candidate.

General

- Who will be completing and signing the questionnaire
- Who will be the contact person during the review (audit)
- Does the brokerage operate under any other names
- Are there any prior locations
- Does the brokerage own any other companies

Control Environment

- Legal name, address, IRS number
- License number(s), filer code, type of entity (i.e. sole proprietorship, corporation, etc.)
- Years in business, all permits
- Lists of members or officers, employees, license holders
- List all permitted offices and permit qualifiers
- Provide copies of all permits and most recent user fee payments

The Questionnaire

Control Environment – continued (actual questions)

- Are you **C-TPAT** certified? If so, please provide a copy of your validation certificate.
- List the members or officers of the firm who are licensed brokers. Also, indicate who your qualifying license holder is.
- If there has been a change in owners, licensed members or officers, in the past five years. If so, has the district been notified? Please provide a copy of the notification.
- Is your accounting books maintained on a calendar year or fiscal year basis? If fiscal year, please identify the time period.
- Provide an organizational chart of the brokerage, which includes all permitted district offices and a list of owners, their percentage of ownership and title.
- What is the scope of the broker's business operations that involve interaction with CBP?
- Does the brokerage have operating policies and procedures manuals for customs operations? If yes, provide a copy of the manual(s) (preferably in electronic format).
- Does the brokerage participate in any of the following U. S. Customs and Border Protection programs?
 - a. Periodic Monthly Statements
 - b. Automated Clearing House
 - c. Reconciliation
 - d. Electronic Invoice Processing/Remote Location Filing
 - e. Pre-Arrival Processing System
 - f. Drawback
 - g. **C-TPAT**
 - h. ACE
 - i. Electronic Protest



**Don't be surprised by
duplicate questions**

How do I know if my compliance program is sufficient?

Does it address

- The 10 Factors of Responsible Supervision and Control?
- The 5 Components of Internal Control?
- All areas of risk that concern CBP and how they are mitigated?
- Your business (customized)?

It should not be

- A regurgitation of the Regulations
- A “how-to-file-an-entry” guide
- Overly detailed on each process and procedure
- A wish list of what you want to do
- Unattainable or unrealistic

Don't open the door for CBP to look closer

The Questionnaire

Control Environment – continued (actual questions)

- How does the brokerage ensure that its employees are trained to conduct the CBP business they transact and that they stay informed?
- Does the broker/brokerage maintain a training log of the training provided/taken by the employees? If yes, please provide a copy.
- How does an employee access the policies and procedures manual?
- What training program/materials are provided to new employees?
- What on-going training programs/materials are provided to all employees?
- Are the following materials available to employees?
 - a. CBP Regulations:
 - i. Are the CBP regulations up to date?
 - ii. How are they updated (e.g. by CBP Bulletin or Federal Register?)
 - b. Harmonized Schedule: How is the broker/brokerage Harmonized Tariff Schedule maintained and updated?
 - c. Information Notices: How are the employees informed of and trained on Information Notices and Administrative Mail Messages?
- How often are SOPs updated?
- Are the broker's records centralized? How and where? Provide locations and addresses where a review of entry transactions and financial records can be conducted.
- Is the qualifying licensee working for or qualifying the license or permit for another broker/brokerage or any other company? If yes, explain (include title, main responsibilities, and hours).

The Questionnaire

Risk Assessment

- How does the brokerage assess, identify, analyze, and manage risk related to CBP activities?
- What risks related to customs activities has the brokerage identified, and what control mechanisms have been implemented?

Don't be fooled, it's all about RISK



CBP Broker Risks

Invalid POA
Disclaimed ADD/CVD
Accurate billing
3rd party billing/no waiver
Broker acting as IOR entries
CF28 and CF29
Rejects
Excessive Census Overrides
New Clients
New Employees
High Value/Volume Importers
Free Trade Agreements
Late Payments
Reconciliation
TIB
Post Summary/Entry Corrections
Refunds

ACE and Broker's System Reports

Bond Query / EIN Search / Secretary of State
Disclaimed ADD/CVD Report
Duty Billed vs Duty Paid Report
IOR vs Billing Party Report
ES-003 E/S Line Tariff Details (for broker IOR#)
ESM-7025 CBP form 28, 29, 4647 Status
ES-004 Rejected and Cancelled E/S
ES-012 E/S Census Warnings and Overrides
ES-003 E/S Line Tariff Details (for client IOR#)
Files by User Report
ES-003 E/S Line Tariff Details (sorted by value)
ES-003 E/S Line Tariff Details (sorted by FTA)
ES-005 Late Filed Entry Summaries
ES-503 Reconciliation Entry Summaries
ES-704 TIB Closure / ES-008 TIB Expiration
ES-003 E/S Line Tariff Details (sorted by Line PSC)
AM-008 E/S Line Detail with Liquidation Type

Control Activities

- Number and type of entries
- Do you have waivers in place (111.19(d)(2))
- Hiring methods/procedures
- How do you solicit or get new customers
- How do you obtain and maintain POAs
- Who is responsible to validate POAs
- What is the validation procedure for POAs
- What is your third party POA validation process
- If POAs validated by employee does the licensed permit qualifier review them
- Do you have joint brokerage authority with another broker (sub POA)
- Are employees granted POA to sign documents and what is the procedure
- How do you inform clients of duty liability
- How do you bill clients who are the IOR
- How do you bill clients who are not the IOR
- How do you forward documents to the IOR when they are not the bill to party
- What is your procedure for release of cargo
- How do you handle refunds of duty, taxes and fees
- What internal controls ensure accuracy and timeliness of filing
- How do you handle problems or errors
- How do you handle rejects
- How do you handle CF28, CF29, seizures, penalties, etc. internally and externally
- How do you handle post entry corrections
- Do you compensate 3rd parties for referrals
- How do you bill brokers or 3rd parties for:
 - a) Brokerage services
 - b) CBP duties, taxes and fees
- How is the IOR billed for your services by:
 - a) The brokerage
 - b) The freight forwarder
- How do you handle entry summary when payment has not been received
- How do you handle census errors
- How do you handle CBP informed compliance notifications and warning letters
- Do you provide classification services and explain what you provide
- What resources and tools are used to ensure proper and accurate classification
- If clients provide classification databases do you verify the accuracy and if so how is it done and how often
- Who classifies the entries filed
- Who signs the entries
- How do you track and maintain entry files

Keep those emails!

Information and Communication

- Describe the procedures or method used to disseminate relevant Customs information between employees (classification issues etc.).
- Describe the procedures or method used to disseminate relevant Customs information between importers (classification issues etc.).
- How does the brokerage follow up with and/or provide relevant Customs information to an importer when a CF28 or 29 has been issued by CBP

Monitoring

- What methods of oversight and monitoring does the brokerage's management use to ensure compliance with customs requirements?
- How does the brokerage verify/monitor the accuracy of Power of Attorney information and identify the person responsible for that function?



Didn't we already cover these?

The Risk Assessment is only part of it. The internal controls are worthless if no one is monitoring them and making changes if they aren't working.

Is someone reviewing the POA information on a regular basis? Has the company moved, changed names, changed owners, etc.? Are they an active client?

Miscellaneous

- Provide information relating to the broker's accounting system:
 - a) Are records maintained manually or by automated means?
 - b) What system is in place for tracking and maintaining entry files?
 - c) Are records ever disposed of? If so what is their retention period?
 - d) What system is in place for disposal of records?
 - e) If automated, please provide written overview of the hardware and software used to generate accounting and CBP related transactions.
 - f) Describe the books, records, filing, and accounting systems as they relate to CBP transactions.
 - g) If the records are not maintained at this CBP district, has required approval been obtained to consolidate records in another district? (19 CFR 111.23(a)(1)) If yes, please provide a copy of the approval letter.
 - h) Is the broker/brokerage utilizing the service of an outside accounts to prepare their financial statements? If so please provide their name, address and contact information
- Provide a list of the brokerage's current employees (the names, date and place of birth, social security number current home addresses) and include their date of hire.
- Provide a list of your clients.
- Provide a description, by type and activity code, of the CBP bonds that the broker/brokerage currently has on file with CBP. Please provide the bond number, surety, and termination date of each bond.
- How does the broker monitor bond sufficiency?
- Does the broker act as an Importer of Record for themselves or their clients?
- What are the policies and procedures in place for determining when the broker's bond will be used and when the broker will act as importer of record?
- What percentage of entries are filed against single transactions bonds?
- How does your company calculate the STB bond amount requirements?
- Does your company communicate with Sureties?

Example Compliance Manual Table of Contents

1. Scope and Purpose
2. Company Structure
 - a. Hierarchy Flow Chart and Responsibilities
 - b. Licensed Permit Qualifier (19CFR 111.19(d))
 - c. Employee Changes (19CFR 111.28(b))
 - d. Permits and payment processes
 - e. Hiring Procedures
3. Company Policies
 - a. Anti-bribery
 - b. Communications
 - c. Code of Ethics
4. C-TPAT
5. Client Management
 - a. Quoting and Sales
 - b. New Client Packet and Setup
 - c. Onboarding procedure
 - d. Client SOP Management
6. Power of Attorney
7. Import Operations Process (Entry Processes)
 - a. ISF
 - b. Receiving Documents
 - c. Document Preparation
 - i. Classification
 - ii. Valuation
 - iii. Deductions/Additions
 - iv. Quantity Verification
 - v. Binding Rulings
 - vi. Parts Database
 - d. Monitoring Arrival
 - e. Customs Clearance
 - f. ADD/CVD entries
 - g. FTA Entries
 - h. PGA Entries – including IPR
 - i. Returned Goods Entries (9801)
 - j. Managing Errors/Rejects
 - k. Census Warnings
 - l. Cargo Release/Document Required
 - m. Document Imaging System (DIS)
 - n. Remote Location Filing
 - o. Outport Broker Procedures
 - p. Delivery
 - q. Resources
 - i. HTS
 - ii. Regulations
 - iii. Informed Compliance Notifications
8. ACH Management – Duties & Processing
9. CF28, CF29, Requests for Information, Other CBP Notifications and Bills
10. Post Entry Processing and Controls (Including Prior Disclosures)
11. Billing and Accounting
 - a. 3rd Party Billing and waivers
 - b. Refunds
12. Training
 - a. New Hire
 - b. Continuing Education/Training
 - c. Training Logs
13. Auditing and Reports
14. Record Keeping

Do you think your written procedures will pass muster during a CBP audit?

Yes, I believe so. **A**

No Way Jose! **B**

We have no REAL
written procedures. **C**

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Example CBP Audit Agenda

U. S. Customs and Border Protection
Office of Trade
Regulatory Audit & Agency Advisor Services
Houston, Texas
Entrance Conference Agenda
XXXXXXXX
August 29-31, 2018

Wednesday, August 29, 2018:

9:00 – 10:30	Introductions/ Regulatory Audit Entrance Conference PowerPoint Presentation
10:30 – 10:45	Break
10:45 – 12:00	Company Presentation: Company Background, Operations and Internal Controls System. Discuss audit timetable. Begin discussion of controls and business practices
12:00 – 1:00	Lunch - Open
1:00 – 2:30	Begin Review of Walkthrough Transactions provided by the audit team to the company.
2:30 – 2:45	Break
2:45 – 5:00	Continue Review of Walkthrough Transactions and Evaluating Internal Controls (interviews with responsible/knowledgeable personnel)
5:00 – 5:30	Question and Answer Session, Conclude day

Example CBP Audit Agenda

Thursday, August 30, 2018:

8:00 – 8:30	Open Agenda (questions, review, etc.)
8:30 – 11:30	Finalize review of Walkthrough Transactions and evaluating Internal Controls (interviews with responsible/knowledgeable personnel) and Begin Testing Sample Transactions.
11:30 – 12:30	Lunch - Open
12:30 – 4:45	Testing Sample Transactions
2:00 – 2:15	Break
2:15 – 5:00	Continue Testing Sample Transactions
5:00 – 5:30	Question and Answer Session, Conclude day

Friday, August 31, 2018:

8:00 – 12:00	Finalize Testing Sample Transactions
12:00 – 1:00	Lunch - Open
1:00 – 2:00	Hold close out meeting. Q&A Session, review and agree upon list of pending items, document agreement on the timeline from the company.

How to manage your relationship with the Auditors

- ✈ Review all documents/data before submitting to CBP
(look at all risk areas not just the one under audit)
- ✈ Be careful NOT to offer up more information and documents than requested
- ✈ Do not say YES to all CBP requests, make sure they are reasonable and within the scope of the engagement, and in writing
- ✈ Have your counsel review requests and/or attend meetings with the auditors
- ✈ Prepare department heads should additional information be requested
- ✈ Always know who is coming to onsite meetings, import specialist, agent, AFD, etc.





DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION

CUSTOMHOUSE BROKER AUDIT REPORT

October XX, 2018

Regulatory Audit and Agency Advisory Services
Office of Trade
Houston Field Office

WARNING

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Introduction and Background

U.S. Customs and Border Protection (CBP) completed a Customhouse Broker Audit of [REDACTED] located at [REDACTED] Houston, Texas.

[REDACTED] was established in [REDACTED] provides services such as customs brokerage, consulting, and compliance. [REDACTED] has hubs in [REDACTED] and [REDACTED]. The company is Customs-Trade Partnership Against Terrorism (C-TPAT) certified.

39,280 entries were processed by the brokerage during the audit period of January 1, through December 31, 2017. Total merchandise value for the entries was \$ [REDACTED] and estimated duty was \$ [REDACTED].

Objective, Scope, and Methodology

Our objective was to determine whether the brokerage is fulfilling its obligations as a Customs broker to its clients and to Customs and Border Protection (CBP) in accordance with 19 C.F.R.111 Subpart C and related laws and regulations.

The scope of the audit was for entries filed by [REDACTED] during the period of January 1 through December 31, 2017 under filer code [REDACTED] and its taxpayer ID number [REDACTED].

Our risk assessment included a review and analysis of information available to CBP regarding imports filed under filer code [REDACTED] from the Automated Commercial Environment and potential risk identified, as well as our consultation with the Port of Houston Broker Compliance Division. We performed an assessment of internal control and concluded controls were in place during the scope of the audit for CBP related transactions.

To accomplish our objective, we:

- Determined the potential risks to CBP and developed the preliminary assessment of risk by evaluating analytical reviews of CBP data and other information applicable to the auditee;
- Obtained an understanding of [REDACTED]'s procedures as a customhouse broker by analyzing the broker audit questionnaire responses, walking through four entry transactions, and performing interviews with [REDACTED]'s representatives;
- Determined whether brokerage has notified CBP with all changes in employees in a timely manner (19 C.F.R. 111.21(c) and 111.28(b));
- We tested a non-statistical sample of 29 entries of powers of attorney (POAs) on file related to import activity from the audit scope period. We then determined whether the broker had proper authority to conduct CBP transactions on behalf of their client (importers) and if the broker had a valid POA from the client prior to transacting Customs business for their client (19 C.F.R. 111.2, 19 C.F.R. 111.29, 19 C.F.R. 141.43 and 19 C.F.R. 141.46);
- Tested a non-statistical sample of 29 entries and determined whether the broker billed their clients for services related to CBP transactions (19 C.F.R. 111.29 and 19 C.F.R. 11.36);

- In addition to the risks we addressed in our sample of 29 entries, we determined:
 - Whether [redacted] filed, procured or assisted in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false, as described in 19 C.F.R. 111.32;
 - Whether [redacted] kept correct, orderly, and itemized records of all its financial transactions as a broker files and whether it kept and maintained on file copies as described in 19 C.F.R. 111.21; and
 - Whether [redacted] kept records retained within the broker district that covers the Customs port to which they relate unless the broker chooses to consolidate records at one or more other locations, and provides advance notice of consolidation to Customs, as described in 19 C.F.R. 111.23;
- We assessed [redacted] in regards to the 10 factors of responsible supervision and control, and considered the results of our audit testing in making a determination as to whether [redacted] has demonstrated and exercised the ten factors of responsible supervision and control as described in 19 C.F.R. 111.1.

 **They tested the 10 Factors of Responsible Supervision**

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). These standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. GAGAS Section 3.82(b) requires a peer review once every three years; we are in the initiation phase of that process to meet the GAGAS requirement.

**What
are
the
10
Factors**

1. The training required of employees of the broker;
2. The issuance of written instructions and guidelines to employees of the broker;
3. The volume and type of business of the broker;
4. The reject rate for various CBP transactions;
5. The maintenance of current editions of the CBP Regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances;
6. The availability of an individually licensed broker for necessary consultation with employees of the broker;
7. 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;
8. The frequency of audits and reviews by an individually licensed broker of the CBP transactions handled by employees of the broker;
9. The extent to which the individually licensed broker who qualifies the district permit is involved in the operation of the brokerage; and
10. Any circumstance which indicates that an individually licensed broker has a real interest in the operations of a broker.

Are you currently conducting risk based post entry audits?

Yes and they are documented

Yes but they are not documented

Not currently conducting audits

Who has time for audits?

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Official CBP Broker Audit Report



Summary of Audit Results

We determined there is reasonable assurance [REDACTED] is fulfilling its obligations as a Broker to its clients and to CBP in accordance with 19 C.F.R. 111 Subpart C and related laws and regulations. Based on our audit, we specifically determined [REDACTED] was compliant with the following:

- We determined the brokerage has notified CBP with all changes in employees in a timely manner (19 C.F.R. 111.21(c) and 111.28(b));
- We determined the broker had proper authority to conduct CBP transactions on behalf of their client (importers) and the broker had a valid POA from the client prior to transacting Customs business for their client (19 C.F.R. 111.2, 19 C.F.R. 111.29, 19 C.F.R. 141.43 and 19 C.F.R. 141.46);
- We determined the broker billed their clients for services related to CBP transactions (19 C.F.R. 111.29 and 19 C.F.R. 11.36);
- We determined [REDACTED] did not file, procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false, as described in 19 C.F.R. 111.32;
- We determined [REDACTED] kept correct, orderly, and itemized records of all its financial transactions as a broker files and kept and maintained on file copies as described in 19 C.F.R. 111.21;
- We determined [REDACTED] kept records retained within the broker district that covers the Customs port to which they relate unless the broker chooses to consolidate records at one or more other locations, and provides advance notice of that consolidation to Customs, as described in 19 C.F.R. 111.23;
- We determined [REDACTED] has demonstrated and exercised the ten factors of responsible supervision and control as described in 19 C.F.R. 111.1.

Comments of Responsible Officials

[REDACTED] provided the following comments:

[REDACTED]
Field Director
Regulatory Audit and Agency Advisory Services
Office of Trade
Houston, Texas



Summary of Audit Results

Through our review of [REDACTED]'s compliance with applicable CBP laws and regulations, we determined [REDACTED] had violations in the POA review area, the Broker Billing and Payment of Duties and Fees review area, and the Responsible Supervision and Control review area. The conclusions for each audit area are summarized below.

Conclusion

Our audit determined that [REDACTED] was not fulfilling its obligations as a customhouse broker to its clients and to CBP in accordance with 19 C.F.R. § 111 Subpart C and related laws and regulations.

POA:

The brokerage did not have adequate POA validation procedures in place which resulted in 5 POA violations out of a sample of 50; 3 violations of 19 C.F.R. § 111.29(b), and 2 violations of 19 C.F.R. § 141.46.

Broker Billing and Payment of Duties and Fees:

[REDACTED] did not have adequate broker billing procedures in place for billing an unlicensed third party which resulted in five violations of 19 C.F.R. § 111.36(a) and was not able to demonstrate direct contact with the importer of record in violation of 19 U.S.C. § 1641(b)(4), giving an unlicensed third party control over the Customs transaction.

Responsible Supervision and Control:

[REDACTED] failed to exercise reasonable care or demonstrate responsible supervision and control over their Customs transactions in accordance with 19 C.F.R. § 111.28(a) and 19 United States Code (U.S.C.) § 1641(b)(4).

Condition

POA Review

Our review disclosed that [REDACTED] had 5 errors on 50 POA samples. We reviewed the POAs to ensure the elements of the POA were complete, and that the required method of payment written notification was on or attached to the POA in order to determine the POA's accuracy, completeness, and validity. We determined that the following POAs contained errors as follows:

- Three POAs did not have the method of payment written notification on or attached to the POA: [REDACTED] Inc., [REDACTED], LLC, and [REDACTED], in violation of 19 C.F.R. § 111.29(b);
- One POA showed the broker name incorrectly as "[REDACTED] Brokers," the legacy business name prior to being incorporated, i.e. without the "Inc.": [REDACTED] Corporation, in violation of 19 C.F.R. § 141.46; and,
- One POA had a name mismatch between the sub-POA given to [REDACTED] and the original POA given to the freight forwarder: [REDACTED], LLC, in violation of 19 C.F.R. § 141.46.



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Broker Billing and Payment of Duties and Fees Review

Our review disclosed that [REDACTED] had 5 errors on 12 samples for broker billing and payment of Customs duties and fees. We reviewed the billing of duties and fees from CBP to [REDACTED], and subsequent payment to CBP, as well as the billing of the duties and fees from [REDACTED] to the importer of record, and subsequent payment to [REDACTED]. We determined that [REDACTED] billed and received payment of duties and fees from an unlicensed third party, a freight forwarder, instead of the importer of record for 5 of the 12 sampled transactions. In all five of these billing transactions, where an unlicensed third party was billed instead of the importer of record, [REDACTED] could not demonstrate that they transmitted either a copy of their bill for brokerage services rendered, or a copy of the entry summary to the importer of record, and they could not provide documentation that the importer of record provided a billing waiver in writing in violation of 19 C.F.R. § 111.36(a), as follows:

*****Samples not shown*****

In addition, [REDACTED] did not provide documentation that supports they had direct contact with the importer of record in violation of 19 U.S.C. § 1641(b)(4).

Responsible Supervision and Control Review

We reviewed the 10 factors of responsible supervision and control per 19 C.F.R. § 111.1 and the results of the review areas of POAs and Broker Billing and Payment of Duties and Fees, and we determined that [REDACTED] did not demonstrate or exercise responsible supervision and control in violation of 19 C.F.R. § 111.28 and 19 U.S.C. § 1641(b)(4).

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Cause

- [REDACTED] did not have adequate POA validation procedures in place; and,
- [REDACTED] did not have adequate broker billing procedures in place; therefore, they did not bill the actual importer of record for services related to CBP transactions, and failed to obtain a written waiver from the actual importer of record. In addition, [REDACTED] did not demonstrate direct contact with the importer.

Effect

[REDACTED]’s failure to adequately validate the powers of attorney for 5 of 50 samples tested allowed for the transactions to be submitted to CBP potentially without proper authority from the importer of record. In addition, [REDACTED]’s failure to obtain a valid written waiver from the actual importer of record for billing the unlicensed third party for transactions initiated by unlicensed persons for 5 of 12 samples tested, and the lack of direct contact with the importer of record on these 5 transactions allowed for the potential introduction of false information to be submitted to CBP and a loss of control of the transaction. Both impede CBP from verifying data used to screen what enters the country and possibly compromises our nation’s trade and security laws.



Can you produce all required 3rd Party Billing Waivers if audited by CBP?

Yes, in all cases required. **A**

Yes I think so but haven't checked, we will check after this session! **B**

No probably not, but we will after this session! **C**

Absolutely not, but we will after this session! **D**

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Corrective Action

██████████ obtained updated POAs for four of the five powers of attorney violations. ██████████ was not able to obtain the fifth POA update as the importer of record is no longer a client of ██████████. In addition, ██████████ stated that they have updated their third-party billing procedures related to obtaining a written waiver from the importer of record when a third party (such as a freight forwarder) is involved in the import transaction and billing process; however, we have not validated the updated procedures.

Recommendations



We recommend that the broker:

- Develop and implement adequate procedures to validate all elements of the POA prior to conducting Customs business on behalf of the importer of record, including the required method of payment statement; and,
- Develop and implement adequate procedures to obtain written billing waivers for those importers of record transactions being billed to an unlicensed third party, such as a freight forwarder.



We recommend that the Port monitor the broker's development and implementation of corrective procedures for:

- Validating powers of attorney to ensure valid and complete powers of attorney are obtained; and,
- Obtaining billing waivers from importers of record when the transactions include billing unlicensed third parties.



Furthermore, we recommend that the Port take appropriate administrative and /or enforcement action deemed necessary.

It ain't over till it's over



Parting thoughts:



- ✓ Complete Questionnaire now
- ✓ Ensure procedures are up-to-date
- ✓ Provide and document training
- ✓ Conduct routine audits
- ✓ Confirm waivers for 3rd party billing
- ✓ Be prepared for walk-thru presentations
- ✓ Prepare staff and management

- ✗ Don't wait, prepare now
- ✗ Don't forget to document
- ✗ Don't audit your own work
- ✗ Don't be too candid
- ✗ Don't forget to obtain waivers
- ✗ Don't use outdated POA language