



## Government Audits: Are You Prepared?

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# CBP Broker Management Reviews vs. Broker Audits (what's the difference?)

# CBP Broker Management Audits: Are You Prepared?: Local Broker Reviews

- Broker “audits”
  - Formal RAD Audit (“Cindy type” audits)
  - Local Port “Broker Reviews”
- Local “Broker Management Reviews”
  - Port responsible for oversight and management of licensed and permitted brokers in their district
  - Port Director (aka Broker Compliance unit) has significant discretion in management of brokers, interpretation of law/ regulations and corrective action
  - Port can “spot” check and/or respond to perceived issues based on internal (CBP) or external referrals (supposed to give 48hr notice)

# CBP Broker Management Audits: Are You Prepared?: Local Broker Reviews

- Local “Broker Compliance Reviews”
  - May lack uniformity and consistency from Port to Port
  - May use a “checklist” of items to review
    - See CBP “Broker Management Handbook” Pages 85 to 105.
    - Key subject areas for review:
      - ✓ Verification of Employee Information/ Organizational issues & information
      - ✓ Power of Attorney issues: Review files and compare to entry activity; validation of POA
      - ✓ Up to-date regulatory information (regulations/ HTS/ information notices, etc. )
      - ✓ Recordkeeping and record retention issues

# CBP Broker Management Audits: Are You Prepared?: Local Broker Reviews

- Key subject areas for local Broker review:
  - ✓ Client waivers of transmittal of entry / bill for services rendered if broker is employed for the “transaction of customs business” by freight forwarder (19 CFR 111.36(a))
  - ✓ Finance and payment issues (i.e., Is the importer annually notified of optional payment in accordance with 19 CFR 111.29(b)?)
    - Note: how is client notified if billing through Freight Forwarder?
    - **Client Payment / Refund reconciliations** (“Each broker must provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment to the Government has been made, or received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 calendar days of receipt.” 19 CFR 111.29(a))
  - ✓ Evidence of responsible supervision and control

# CBP Broker Management Audits: Are You Prepared?: Local Broker Reviews

- Common questions -- Documenting “Responsible Supervision and Control”
  - Who is providing “responsible supervision and control?”
  - What system does the broker have for notifying employees of changes in Customs laws, regulations, rulings and procedures?
  - Are there Standard Operating Procedures for employees to follow?
  - How often are SOP’s updated?
  - What training program/materials are provided to new employees?
  - What on-going training program/materials are provided to all employees?
  - What is the company’s reject rate? What is the process for correcting entry rejects?
  - Is the licensed employee qualifying the permit involved in correcting entry rejects?
  - The frequency (and quality) of internal audits and reviews
  - The frequency (and quality) of visits by of supervisory visits of an individually licensed broker to another office of the broker that does not have a resident individually licensed broker

CBP Newsroom Travel Trade Border Security

TRADE > CUSTOMS BROKERS

## Customs Brokers

### BECOMING A CUSTOMS BROKER

- Overview & General Information
- Broker Examination
  - Customs Broker License Examination
  - Exam and Key Downloads
  - FRN: CBP Broker Appeals Final Rule
  - How To Appeal

### INFORMATION FOR CUSTOMS BROKERS

- 3530-007 Broker/Entry Compliance
- Broker Compliance: Misuse of Licenses and Filer Codes
- Broker ISA Pre-Certification Pilot Program
- Employing a Person Convicted of a Felony
- FAQs about Trade Names and Corporations
- Fee Schedule
- National Permits
  - Example National Permit application
- Triennial Status Report
  - FAQs about the Triennial Status Report
  - Triennial Status Report Form
- Validating the Power of Attorney

ORIGINATING OFFICE: CO:TO:EC: [redacted]

CUSTOMS DIRECTIVE [redacted]

Number: 099-3530-007 [redacted]

Issue Date: August 11, 1992 [redacted]

SUBJECT: Broker/Entry Compliance [redacted]

1. PURPOSE [redacted]

This Directive establishes national policies and operating procedures for ensuring the compliance of the broker community with Customs requirements. [redacted]

2. AUTHORITY [redacted]

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641); Part 111, Customs Regulations (19 CFR 111). [redacted]

3. BACKGROUND [redacted]

The Customs Service obligation to collect and protect the revenue and to enforce the Customs and related laws includes responsibility for the regulation of Customs brokers. [redacted]

Headquarters responsibility for administering broker licensing and compliance programs rests with the Entry Compliance Branch, Office of Trade Operations, 202-927-0380. [redacted]

4. GOAL OF THE COMPLIANCE PROGRAM [redacted]

The Customs Service acknowledges the importance of the broker community in our commercial activities. Brokers provide a vital service as intermediaries between the Government and the importing and exporting community, and have played a significant role in the success of our automation efforts and other commercial initiatives. [redacted]

Washington, DC 20229-1194

Attn: Broker Management Branch

## CBP Broker Management Audits: Are You Prepared?: Local Broker Reviews

- Customs response to broker violations
- Depends upon whether “violation” is
  - egregious (flagrant-- gross irresponsibility) or,
  - Non-egregious
- For non-egregious violations sequence of Customs actions:
  - communication and education about a particular deficiency
  - a warning letter
  - a penalty (penalties over \$ 10K require HQ approval)
  - a larger penalty and a warning about suspension
  - suspension/revocation of the license



## How CBP Selects Broker Audit Candidates

The Broker audit selection process utilizes a risk-based approach which takes into consideration current CBP priorities.

Regulatory Audit (RA) performs two types of broker audits:

- Quick Response Audits include a review of specific concerns
- Compliance Broker Audits include a comprehensive review of the Broker's operations

The type of broker audit CBP conducts is based in part on the needs of the referrer (typically the Port Broker Compliance Unit).

## CBP Broker Audit Team Members

The Broker audit team may consist of the following:

- Regulatory Audit
  - Assistant Field Director
  - Auditor(s)
- Entry Division Staff
- Local Port Broker Management Office Staff

# Broker Audit Timeline

- CBP Conduct's an internal risk assessment
  - Broker's Compliance Unit file, previous audit reports
  - Past penalty actions, unresolved issues, correspondence
  - Reasons for late filed entries and rejects
  - CBP broker data to assess areas of risk and activity levels (including refund checks and supp duty bills)
  - Cargo exams, import specialist reviews, and rejected entry reviews and results
- Broker Notified of Audit & Entrance Conference is Scheduled
  - Walk-through entries are selected and requested based on targeted risks (e.g. CF28/29 issues)
  - Internal Control Questionnaire is sent to broker

# Broker Audit Timeline

- Internal Control/Compliance Testing
  - Internal control interviews are conducted
  - Sample(s) conducted for all risk areas (POA, broker billing, refunds, supp duty bills, etc.)
  - Requests for documentation to support internal control procedures
  - Documentation will be requested with timelines between 1 week and 30 days
- Findings are presented to the company prior to drafting the audit report
- Audit report is drafted and provided to the broker for comment
- Final Audit Report is issued (usually within 6 to 9 months of entrance conference)

## Broker Audit Overall Objective

- To determine whether Broker was fulfilling its obligations to its clients and to CBP in accordance with 19 CFR 111 and related laws and regulations.



# Main Broker Audit Sub-Objectives

## Licensing

Is the broker properly licensed/permitted to transact CBP business on behalf on clients?

## Responsible Supervision & Control

Did the broker (license holder) exercise responsible supervision and control over brokerage (Ten Factors)?

## Powers of Attorney

Did the broker have valid powers of attorney to transact business on behalf of clients?

## Broker Billing, Payment of Duties/Fees & Refunds

Did the broker appropriately handle billing, payment of duties and fees to CBP, and client refunds?

## Licensing

- Are brokerage and qualifying broker properly licensed?
- Were all fees paid timely (permit fee, user fee, status report fee)?
- Is brokerage licensed as a corporation, partnership, or an association?
- Did brokerage have at least one validly licensed officer employed (during the audit scope period) and at least one licensed individual within the district?
- Was triennial status report filed timely?

## Responsible Supervision (Ten Factors)

The audit team will consider the **10 factors of Section 111.1** when determining whether a broker is demonstrating **responsible supervision and control**:

1. The **training** required of employees;
2. The issuance of **written instructions and guidelines** to broker employees;
3. The **volume and type of business** of the broker;
4. The **reject rate** for various customs transactions;



## Responsible Supervision (Ten Factors Cont.)

5. The **maintenance of current editions** of the CBP Regulations, the HTSUS, and Customs issuances;
6. The **availability** of the individually licensed broker for **necessary consultation** with employees;
7. The **frequency of supervisory visits** by the individually licensed broker to another office that does not have a resident individually licensed broker;
8. The frequency of **audits and reviews by the individually licensed broker** of the customs transactions handled by the employees;

## Responsible Supervision (Ten Factors Cont.)

8. The extent to which the individually licensed broker who qualifies the district permit is involved in the **operation** of the brokerage; and
9. Any circumstance which indicates that an individually licensed broker has a **real interest in the operations** of the brokerage.

These may not be the only elements that the team will look at to determine whether the broker demonstrated responsible supervision and control.

# Validity of Powers of Attorney

When reviewing powers of attorney, the CBP audit team determines whether the broker:

- had a valid Power of Attorney from the client prior to importation (CFR 141.46 and CFR 141.32)?
- included the notification to the importer required by 19 CFR 111.29(b)(i) on the methods of payment?
- have direct contact with the actual importer of record (19 USC 1641(b)(4))?
- obtain powers of attorney from the actual importer of record or an unlicensed third party?
- validate the power of attorney?

## Relations with Unlicensed Third Parties Background

- A broker may conduct transactions via an unlicensed third party, such as a freight forwarder but there are limitations . . .
- Broker must transmit directly to the importer:
  - (i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, unless this requirement is **waived in writing by the importer**; or
  - (ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker.
  - **(how will you prove this?)**

## Relations with Unlicensed Third Parties Relations with a Freight Forwarder (Cont.)

- Broker Forwarder / Agreements
- No part of any agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement,
- May forbid or prevent direct communication between the importer or other party in interest and the broker

## Relations with Unlicensed Third Parties Review by Audit Team

- The CBP audit team will review copies of POAs and invoices/bills issued by the broker for sample entries and determine whether
  - the broker obtained and validated the power of attorney and
  - billed the actual importer of record.
- if the unlicensed third party was billed, the team then determines whether the unlicensed third party billed the actual importer of record.
- And if so, at what cost?

## Relations with Unlicensed Third Parties Review by Audit Team (Cont.)

- An unlicensed party should not be billing the actual importer of record for entry services.
- An unlicensed party should not be billing the actual importer of record at a fee that would result in the unlicensed third party benefiting from the services rendered by the licensed broker.
- How have you tested this?

# Broker Internal Control Questionnaire

- Control Environment
- Risk Assessment
- Control Activities
- Information & Communication
- Monitoring

## Information and Communication

70. Describe the procedures or method used to disseminate relevant Customs information between employees (classification issues etc.).
71. Describe the procedures or method used to disseminate relevant Customs information between importers (classification issues etc.).
72. 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

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

## U. S. Customs & Border Protection Office of International Trade Office of Regulatory Audit

### Broker Internal Control Questionnaire

#### Introduction

The purpose of the Internal Control Questionnaire is to obtain information about (Name of brokerage) organizational structure and internal controls related to Customs transactions. The questionnaire is designed to give the audit team a general understanding of (Name of brokerage) operations and internal control structure as well as to inform the audit candidates 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.

25. 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).
27. How does the brokerage ensure that its employees are trained to conduct the CBP business they transact and that they stay informed?
28. Does the broker/brokerage maintain a training log of the training provided/taken by the employees? If yes, please provide a copy.

#### Risk Assessment

36. How does the brokerage assess, identify, analyze, and manage risk related to CBP activities?
37. What risks related to customs activities has the brokerage identified, and what control mechanisms have been implemented?
43. Does your brokerage have a designated individual who is responsible to validate POA(s)?
44. What is the procedure to validate POA(s)?

**Responses are used to identify RED FLAGS!**



## CBP Broker Audits: Example Findings

- Broker Audit Report concluded Broker did not demonstrate responsible supervision and control because:
  - No controls or procedures in place showing when audits or reviews were to be conducted
  - Did not have evidence of any audits or reviews performed on the Customs transactions handled by his employees;
  - Did not have guidelines in place for training of employees
  - Did not provide evidence of providing required training to employees;
  - The policies and procedures in place for employees were not sufficient to ensure compliance with Customs laws and regulations.
  - The broker-generated In-House Broker Handbook did not contain the process to be followed to ensure entries were correctly filed.
  - There were no procedures as to who ensures the accuracy of the entries prior to filing.

## CBP Broker Audits: Example Findings

- Broker Audit Report concluded
- Confidentiality of client Records
  - Audit report concludes that broker “did not keep the records of clients confidential per 19 CFR 111.24”
  - Records were kept in unlocked cabinets and boxes in the broker’s warehouse in an “open area” accessible to any person entering.
  - CBP C-TPAT auditors found the warehouse facilities to be “secure” with appropriate locks, gates and fences.
  - CBP Auditor considered the physical security of the records and not the question of an actual disclosure to a 3<sup>rd</sup> party.

# Other Government Agency (OGA) Audits: Are You Prepared?

- Government regulatory requirements affecting activities of Customs Brokers and Forwarders
  - APHIS- Animal and Plant Health Inspection Service
  - FSIS - Food Safety and Inspection Service
  - ATF- Bureau of Alcohol, Tobacco, Firearms and Explosives
  - CPSC - Consumer Product Safety Commission
  - EPA- Environmental Protection Agency
  - FCC - Federal Communications Commission
  - FDA- Food and Drug Administration (Food, Drugs, Medical Devices, etc.)

# Other Government Agency (OGA) Audits: Are You Prepared?

- **Broker and Forwarder -- Regulated activities:**
  - TTB -Alcohol and Tobacco Tax and Trade Bureau
  - NHTSA (DOT)- National Highway Traffic Safety Administration
  - BIS - Bureau of Industry and Security
  - U.S. Census Bureau (FTR)
  - OFAC - Office of Foreign Assets Control
  - DDTC - Directorate of Defense Trade Controls

# Other Government Agency (OGA) Audits: Are You Prepared?

- **Other Agencies**

- do not have formalized “audit” programs like CBP
- have investigative powers and investigate activities related to their regulatory authority and/or jurisdiction.
- may use their own staff or use DHS-ICE (i.e., export enforcement)

- **CBP Reg Audit will not “audit” or investigate on behalf of other Agencies unless**

- there is an agreement between the agency and CBP (similar to that with CPSC)

# Other Government Agency (OGA) Audits: Are You Prepared?

- OGA's or PGA's generally require the submission of information or documentation to support entry of subject goods
- Required Information or documentation is generally an element of admissibility
- Required Information or documentation may also be an “entry record” under the (a)(1)(A) List.

# Other Government Agency (OGA) Audits: Are You Prepared?

- **FDA's Filer Evaluation Program**

- Importers and third parties working on behalf of importers file information with FDA about products offered for import.
- FDA conducts “filer” evaluations of those who submit information electronically to ensure that they are submitting accurate data
- FDA will conduct on site review at broker for FDA entries
- Generally, 50 or so FDA transactions 10% may be for disclaimed transactions

# Other Government Agency (OGA) Audits: Are You Prepared?

- Objective is to audit 1,000 filers per year
- Selection Criteria
  - New filers
  - Larger filers
  - Filers with recent predict errors
  - Large filers will be reviewed yearly
- Re-evaluate filers with excessive error rates within nine months, as volume and resource constraints permit.
- FDA looking to provide incentive for filers to improve their outcomes quickly.
- Corrective Action Plan Based on the filers error rate, and type of error
- FDA may require both electronic and paper submissions



# Other Government Agency (OGA) Audits: Are You Prepared?

- **Required FDA Data**

- If a foreign product requires FDA approval, five specific data elements, in addition to the information required by U.S. Customs, must be submitted for FDA review.
  1. FDA Manufacturer
  2. Commercial Description
  3. FDA Shipper (FDA Shipper is the actual shipper of the product.)
  4. FDA Country of Origin (FDA only regulates the CD player and considers the country of origin to be Korea, where the CD player was manufactured.)
  5. FDA Product Code

# Other Government Agency (OGA) Audits: Are You Prepared?

- **Optional FDA Data**

- Providing optional FDA data often speeds the FDA review process. Below are descriptions of the five optional data elements
- Affirmation of Compliance
  - Affirmation of Compliance (AofC) codes, transmitted at the FDA line level, is one data element used in this screening process.
  - Qualifier information depends on the affirmation but is usually a number, such as a model number, application number or a date.
  - For example the AofC ANA stands for Abbreviated New Animal Drug Number.
  - The qualifier would be the actual number issued by FDA's Center for Veterinary Medicine for the animal drug product identified in the FDA line.

# Other Government Agency (OGA) Audits: Are You Prepared?

- **Quantity**

- Quantity Data provides additional information to FDA about the product and how it is packaged.
- The basic format for Quantity Data is in multiple pairs of data – quantity and unit of measure, i.e., 500 cases, 12 ounces, fluid, 1000 cartons, etc. Up to 6 data pairs may be submitted.

- **Value**

- Value must be submitted in U.S. dollars.
- The value of the FDA line cannot exceed the value of the U.S. Customs Service entry.

- **Consignee**

- The FDA consignee data field only needs to be transmitted when the consignee transmitted for U.S. Customs Service data is not a U.S. firm.
- The reason is that FDA must know where the product is going.

# Other Government Agency (OGA) Audits: Are You Prepared?

- The quality of the data submitted to the FDA will count more than ever.
- Importers need to work closely with filers to ensure data quality.
- Poor data quality or missing data will increase the targeting scores for your subsequent entry lines (importers and filers).
- Higher risk scores increase the likelihood of physical examination by the FDA.



## For Industry

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### Import Program

[Affirmation Of Compliance Code](#)

[ITACS](#)

**[Import Filer Evaluation Outcomes](#)**

[Importations of Drugs](#)

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[Import Program Overview](#)

[Import Alerts](#)

[Import Operations](#)

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[Import for Export](#)

[Import Policy and Information by Product](#)

### Import Filer Evaluation Outcomes

Importers, or third parties working on behalf of importers, file information about products offered for import into the United States. FDA conducts evaluations of those filers who submit information electronically to help ensure that they are submitting accurate data.

FDA is posting filer evaluation outcomes on-line, prospectively, starting from the beginning of FY2012, to help increase the accuracy of the information submitted to FDA and the accountability among the actors in the supply chain. This list will be updated monthly, and it will post the most recent outcome for each filer.

Because this list is prospective, and updated monthly, interested parties should not make any inferences with regard to the status of filers that do not have filer evaluation outcomes posted on this site.

FDA recognizes that the filer evaluation process currently does not distinguish between serious mistakes or omissions and typographical errors, and FDA is working to improve this process. In general, FDA attempts to re-evaluate filers with excessive error rates within nine months, as volume and resource constraints permit. FDA is exploring procedures that would speed up this re-evaluation, which would provide an incentive for filers to improve their outcomes quickly.

The following files list filers alphabetically, and it discloses one of five different outcomes for each filer:

- Paperless – Satisfactory evaluation result, FDA has determined that electronic filing is appropriate.
- Corrective Action Plan – Based on the filer's error rate, FDA has determined that continued electronic filing is appropriate, but FDA has requested a corrective action plan.



## Inspections, Compliance, Enforcement, and Criminal Investigations

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### Compliance Manuals

#### Regulatory Procedures Manual

RPM Introduction

Ch. 1 - Regulatory Organization

Ch. 2 - FDA Authority

Ch. 3 - Commissioning

Ch. 4 - Advisory Actions

Ch. 5 - Administrative Actions

Ch. 6 - Judicial Actions

Ch. 7 - Recall Procedures

Ch. 8 - Emergency Procedures

► **Ch. 9 - Import Operations And Actions**

Ch. 10 - Other Procedures

Ch. 11 - Glossary

RPM Appendix

### Ch. 9 - Import Operations And Actions

**Note:** Chapter 9 (Rev. 2002) is currently under revision. Editorial revisions made by DIOP in January 2008.

#### Chapter 9

- [9-1 - Import Procedures](#)
- [9-2 - Coverage of Personal Importations](#)
- [9-3 - Importation of Biological Products](#)
- [9-4 - FDA National Import Procedure Regarding Warehouse Entries](#)
- [9-5 - Release Notices](#)
- [9-6 - Detention without Physical Examination \(DWPE\)](#)
- [9-7 - Notice of Detention and Hearing](#)
- [9-8 - Response \(Hearing\) to Notice of Detention and Hearing](#)
- [9-9 - Notice of Refusal of Admission](#)
- [9-10 - Reconditioning](#)
- [9-11 - Supervisory Charges](#)
- [9-12 - Bond Actions](#)
- [9-13 - Import Information Directives](#)
- [9-14 - Priority Enforcement Strategy for Problem Importers](#)
- [9-15 - Import For Export](#)
- [9-16 - Importations for Trade Shows/Fairs, Exhibits and Special Events](#)
- [9-17 - Secured Storage \(Temporary Removal Due to Pending Revision\)](#)
- [9-18 - Communication Concerning Assessment of Civil Monetary Penalties by CBP in cases involving Imported Food](#)

# Other Government Agency (OGA) Audits: Are You Prepared?

- **Brokers should have:**

- Specific worksheets / checklists to review with importers on OGA subjects (i.e., do you import anything with . . . )
- Specific procedures and training for employees on identifying and processing OGA shipments
- Specific written SOPs with clients for processing OGA shipments
  - Registration numbers for supplier & importer, accession numbers, product codes etc.,
  - Clear guidelines on who prepares/issues OGA declarations/ certifications
  - Which shipments/products require OGA declarations or
  - Timely responses to notices or refusals of admissions