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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

19 CFR Part 111

USCBP - 2008-0059

CBP Dec. 10 - 28

RIN 1651 – AA74

Customs Broker License Examination Individual Eligibility Requirements

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

ACTION: Final rule.

SUMMARY: This final rule adopts, with one modification, proposed changes U.S. Customs and Border Protection (CBP) regulations regarding the requirements that an individual must satisfy in order to take the written examination for an individual customs broker's license, which is administered by CBP. Under this final rule, 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 U.S. Government. These changes will facilitate the overall licensing process by enabling individuals who have attained the age of 18 to take the examination in order to gain valuable experience while ensuring they would not be precluded from obtaining a license upon turning 21 because of citizenship or employment status.

EFFECTIVE DATE: This final rule is effective on [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Anita Harris, Chief, Broker Compliance Branch, Office of International Trade, (202) 863-6069.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides 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 broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. In the case of an applicant for an individual broker's license, section 641 states that the Secretary of the Treasury may conduct an examination to determine such applicant's qualifications for a license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The Homeland Security Act of 2002, 6 U.S.C. 101 et. seq., Public Law 107-296 (Nov. 25, 2002) (the "HSA") established the Department of Homeland Security (DHS) and transferred the U.S. Customs Service from the Department of the Treasury to DHS, effective March 1, 2003. Section 1502 of the HSA renamed the "Customs Service" as the "Bureau of Customs and Border Protection," which has since been renamed U.S.

Customs and Border Protection (CBP). See 72 FR 20131 (April 23, 2007) and 75 FR 12445 (March 16, 2010).

Treasury Department Order No. 100-16 (see Appendix to 19 CFR Part 0) delegates to DHS the authority to prescribe the rules and regulations relating to customs brokers.

The regulations issued under the authority of section 641 are set forth in part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These rules include the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 (19 CFR 111.11) sets forth the basic requirements for obtaining a broker's license. Paragraphs (a)(1) through (a)(4) of § 111.11 provide that, in order to obtain a customs broker's license, an individual must: be a citizen of the United States upon applying for the license and not an officer or employee of the United States; attain the age of 21 prior to the date of application for such license; be of good moral character; and, obtain a passing grade on the written examination within a 3-year period before submission of the application.

The regulations relating to the written examination for an individual customs broker's license are set forth in § 111.13 (19 CFR 111.13). Paragraph (b) of § 111.13, pertaining to the date and place of the examination, provides that an individual intending to take the examination must advise the appropriate port director in writing at least 30 calendar days prior to the scheduled examination date and remit the \$200 examination fee prescribed in paragraph (a) of § 111.96. There were previously no

additional requirements in § 111.13 that were required to be fulfilled in order for an individual to sit for the customs broker's license examination.

Notice of Proposed Rulemaking

On May 27, 2008, CBP published a notice of proposed rulemaking in the **Federal Register** (73 FR 30328; the "NPRM") that proposed to amend § 111.13 to more closely align the basic requirements that an individual must satisfy to take the written examination for a customs broker's license with the basic requirements an individual must satisfy to obtain an customs broker's license. In order to be eligible to take the written examination under the amendments proposed in the NPRM, an individual would be required to be a U.S. citizen on the date of examination and not be an officer or employee of the U.S. Government, and to have attained the age of 21 prior to the date of examination.

The NPRM explained that the proposed amendments would facilitate the overall licensing process by helping to ensure that those sitting for the examination are not automatically precluded from obtaining a license by reason of age, citizenship status, or employment. It was also noted that limiting the examination to U.S. citizens is a reasonable security measure that conforms to the existing citizenship requirement for obtaining a license. In addition, by barring U.S. Government employees from taking the examination, the changes proposed in the NPRM would help to eliminate the appearance of any conflict of interest or unfair advantage that might be associated with their federal government employment.

The NPRM also proposed non-substantive amendments to § 111.13(a), (c), and (e) to reflect the nomenclature changes effected by the transfer of the U.S. Customs Service to the Department of Homeland Security.

Comments were solicited in the NPRM of May 27, 2008. The comment period closed on July 28, 2008.

Discussion of Comments

Four commenters responded to the solicitation of comments in the NPRM. A description of the comments received and CBP's response is set forth below.

Comment:

One commenter did not support the proposed requirement that an individual attain the age of 21 prior to the date of the broker examination because this requirement would inhibit the career potential of individuals who can currently take and pass the examination and subsequently apply to obtain a customs broker's license upon turning 21 years old. In this regard, the commenter suggests that CBP reduce the age limitation proposed in the NPRM.

CBP Response:

After further considering the age limit issue, CBP agrees with the commenter that the limit should be lowered from the proposed 21 years to 18 years of age to provide greater opportunities for individuals who have graduated from high school and are in the process of gaining work experience before being eligible to apply for a broker's license. CBP notes that the age of majority (adulthood) in the United States is generally considered to be 18 years and that age 18 is consistent with the requirement that an application for an individual broker's license must be submitted within a 3-year

period after the applicant takes and passes the written examination. See 19 CFR 111.12(a). A less restrictive age requirement ensures that an individual will still be able to apply to obtain a license upon turning 21 years old while having the opportunity to work under the supervision and control of a licensed broker or brokerage for a greater time period after having taken the exam. Accordingly, since CBP is adopting the commenter's suggestion to modify the age limit, § 111.13(b) is amended in the final rule to require that an individual must only be 18 years old on the date of the examination.

Comment:

One commenter, an association that provides a preparatory training course for individuals intending to take the written examination, stated that it was initially concerned that the age and citizenship requirements proposed in the NPRM would negatively impact its business by reducing the number of applicants who are eligible to sit for the examination. However, the commenter specifically noted that only one out of 203 applicants enrolled in its course for the October 2008 examination would not have met the age and citizenship requirements to take the examination as proposed in the NPRM. As such, the commenter supports the proposed amendments since there was no economic impact on its business.

CBP Response:

CBP appreciates the commenter's input and its review of the potential impact that the proposed amendments would have had on its business. Since CBP is modifying the age requirement from 21 years to 18 years based upon the input of another

commenter, CBP believes there is even less of a restriction on those who would likely enroll in the commenter's preparatory course.

Comment:

A commenter opposed the amendments in the NPRM based upon the amount of time it takes to obtain a license after passing the examination. The commenter would only support the proposed amendments if CBP was required to issue a license within six months of passing the examination.

CBP Response:

CBP understands the commenter's concern regarding the timely issuance of customs brokers' licenses after passing the examination. However, CBP believes that requiring licenses to be issued within a mandatory timeframe would not be operationally practical or in furtherance of CBP's mission of facilitating legitimate trade. In this regard, CBP initially notes that the broker's examination is intended only to evaluate and verify an applicant's knowledge of relevant customs laws and regulations. The background investigation described in § 111.14, which must be completed after an individual passes the examination but before a license is issued, is intended to verify the accuracy of the statements made in the application, the business integrity of the applicant, and the moral character and reputation of the applicant. CBP has a legitimate interest in closely scrutinizing applicants who will be transacting customs business on behalf of importers before granting a license. Considering the general scope of the background investigation, the circumstances unique to each applicant's background that may require more time to investigate, and the number of Federal agencies that may ultimately assist in the investigation (e.g., Federal Bureau of

Investigation, U.S. Immigration and Customs Enforcement, CBP), it is clear that imposing a regulatory requirement to issue a license within an arbitrary time frame would not be operationally practical and would hinder CBP's ability to verify that licenses are issued to qualified individuals.

Comment:

One commenter, a large clothing retailer, did not support the amendment in the NPRM to preclude non-U.S. citizens from taking the examination. In support of its position, the commenter states that the private sector does not have an equivalent to the examination and notes that employers may hire and promote individuals based solely upon their ability to pass the examination. In addition, the commenter states that preventing non-U.S. citizens from taking the examination would be discriminatory since it would prevent legal resident aliens from advancing their careers in the sense that the examination is the only measurement of an individual's competence in the trade compliance field.

CBP Response:

CBP initially notes that the customs broker's license examination is not designed to be used as a tool by private sector employers to gauge whether job applicants or current employees possess the requisite knowledge to be employed or promoted in the trade compliance field. Rather, the examination is administered so that CBP can evaluate and verify an applicant's knowledge of relevant customs laws and regulations for purposes of granting an individual customs broker's license. In addition, CBP disagrees that the examination is the only measurement of an individual's competence in the trade compliance field because employers have the option to utilize

privately-developed benchmarks or other academic tools to evaluate an individual's aptitude. Moreover, CBP disagrees that preventing non-U.S. citizens from taking the examination would be discriminatory because the amendment set forth in the NPRM and adopted in this document will merely align the requirement for taking the examination with the existing statutory requirement of citizenship for obtaining a license. See 19 U.S.C. 1641(b)(2).

Conclusion

After analysis of the comments and further review of matter, CBP has decided to adopt as final, with the modification discussed above in the comment analysis, the NPRM published in the **Federal Register** (73 FR 30328) on May 27, 2008. In addition, minor editorial changes have been made to the regulatory text for clarity.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), it is certified that the amendments in this document do not have a significant economic impact on a substantial number of small entities because the final rule more closely aligns the requirements for taking the written examination for an individual customs broker's license with the requirements for actually obtaining a customs broker's license as to citizenship and employment. Accordingly, the amendments set forth in this document are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This final rule does not meet the criteria to be considered an economically "significant regulatory action" under Executive Order 12866 because it will not result in

the expenditure of over \$100 million in any one year. The Office of Management and Budget (OMB) has not reviewed this rule under that Order.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subject in 19 CFR Part 111

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

Amendments to the CBP Regulations

For the reasons set forth in the preamble, 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 general authority citation for part 111 continues to read as follows:

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

* * * * *

2. In § 111.13:

a. Paragraph (a) is amended by removing the words “Customs Headquarters” and adding in its place, the words “Customs and Border Protection (CBP) Headquarters”;

b. Paragraph (b) is amended by revising the heading and adding a new first sentence;

c. Paragraph (c) is amended by removing the word “Customs” each place it appears and adding in its place, the term “CBP”; and

d. Paragraph (e) is amended by removing the word “Customs” in the first sentence and adding in its place, the term “CBP”.

The addition and revision to paragraph (b) read as follows:

§ 111.13 Written examination for individual license.

* * * * *

(b) Basic requirements, date, and place of examination. In order to be eligible to take the written 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. * * *

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Date: August 18, 2010

Alan Bersin
Commissioner
U.S. Customs and Border Protection