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**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**19 CFR Part 111**

**[Docket No. USCBP-2020-0042]**

**RIN 1651-AB03**

**Continuing Education for Licensed Customs Brokers**

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** U.S. Customs and Border Protection (CBP) is considering the amendment of its regulations to mandate continuing education for licensed customs brokers. CBP is seeking comments on a potential framework of continuing education requirements for licensed customs brokers in order to assess the current situation among members of the customs broker industry and analyze the potential impact of such a framework on customs brokers.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by Docket No. USCBP 2020-0042, by *one* of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2020-0042.

2. *Mail*: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE (10<sup>th</sup> Floor), Washington, DC 20229-1177.

3. *Confidential Information*: If you want to submit a comment with confidential information that you do not wish to be made available to the public, please submit the comment as a written/paper submission by mail to the address listed above (*see* “Mail”).

*Instructions*: All submissions received must include the agency name and docket number for this rulemaking. All comments received (other than those submitted with confidential information) will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Confidential Submissions*: To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies of your comments. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” CBP will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted by CBP on <http://www.regulations.gov>. Submit both copies by mail, as instructed under **ADDRESSES** above (*see* “Mail”). If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and you must identify this information as “confidential.”

For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Due to the relevant COVID-19 related restrictions, CBP has temporarily suspended on-site public inspection of the public comments. Please note that any submitted comment that CBP receives by mail will be posted on the above-referenced docket for the public’s convenience, except for those containing confidential information (pursuant to the procedures set forth above).

**FOR FURTHER INFORMATION CONTACT:** Elena D. Ryan, Special Advisor, Programs and Policy Analysis, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, at (202) 325-0001 or [ContinuingEducation@cbp.dhs.gov](mailto:ContinuingEducation@cbp.dhs.gov), including questions regarding the submission of confidential information.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

Interested persons are invited to participate in this potential rulemaking by submitting written data, views, or arguments on all aspects of this advance notice of proposed rulemaking (ANPRM). U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this ANPRM. *See ADDRESSES* above for information on how to submit comments. The most useful comments would be those that address the specific questions outlined in section III below.

If you wish to submit any protected information in your comments, you must submit your comment by mail to the address listed under **ADDRESSES**. Protected information includes confidential business or commercial information that is not normally released to the public. Please be sure to indicate whether the entire submission constitutes protected information, or if only portions of the submission need to be protected. If the latter, please identify those portions which constitute protected information clearly within your submission. If you are submitting confidential business information, please explain, within your submission, how this information is normally treated within your company or organization.

## **II. Background**

### **A. Authority and Potential Framework for Continuing Education Requirements**

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker's license and permit to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker licenses and permits; provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties; and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license.

Section 641 authorizes the Secretary of the Treasury<sup>1</sup> to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the

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<sup>1</sup> The Homeland Security Act of 2002 generally transferred the functions of the U.S. Customs Service from the Department of the Treasury to the Secretary of the Department of Homeland Security (DHS). See Pub. L. 107-296, 116 Stat. 2142. The Act provides that the Secretary of the Treasury retains customs revenue functions unless delegated to the Secretary of DHS. Treasury did not retain the subject matter relating to the regulation of customs brokers (19 U.S.C. 1641) as that subject is not listed in paragraph 1(a)(i) of the Treasury Department Order No. 100-16. See appendix to 19 CFR part 0.

revenue of the United States and to carry out the provisions of section 641. DHS believes that this statute provides the authority to regulate customs brokers by imposing continuing education requirements.

CBP is considering the promulgation of regulations to create a framework of continuing education requirements in order to maintain a high standard of professionalism in the customs broker industry. CBP's goal with the publication of this ANPRM is to gather information and data from the broker industry in order to analyze and identify information that would help CBP in considering whether, and if so what type of, mandatory requirements would be beneficial for the trade community and CBP. CBP believes that requiring customs brokers to take continuing education courses would enhance the credibility and value of a customs broker's license and improve a broker's skills, performance, and productivity. CBP also believes that this would increase client service and compliance with the customs laws, which would protect the revenue of the United States and the trade community.

#### **B. Customs Broker's Statutory Duties, Customs Broker Exam, and Licensing**

Under 19 U.S.C. 1641(b)(4), a customs broker has the statutory duty to exercise responsible supervision and control over the customs business that he or she conducts. Maintaining current knowledge and competence is an inherent part of the statutory duty of the customs broker. A customs broker reasonably can be expected to uphold such responsible supervision over his or her employees and control over his or her customs business only by acquiring and maintaining the knowledge of customs and related laws. Requiring a customs broker to fulfill a continuing education requirement during the course of his or her work is a way to ensure that the customs broker keeps up with an ever-changing customs practice following the passing of the broker exam and subsequent receipt of the license.

CBP is responsible for administering the licensing for customs brokers. *See* Title 19 part 111, subpart B of the Code of Federal Regulations (19 CFR part 111, subpart B). A prospective customs broker must pass a broker exam prepared by CBP, which is designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters.

After passing the customs broker exam, CBP will investigate whether an applicant is qualified for a broker's license, taking into account information provided by the applicant and other aspects pertaining to the applicant, such as his or her business integrity. If CBP finds that the applicant is qualified and has paid all applicable fees, CBP will issue a broker's license. Following the issuance of a license, a customs broker administratively maintains a license primarily through the payment of fees required in 19 CFR 111.96, and the reports and notifications to CBP set forth in 19 CFR 111.30.

While the broker exam provides a good initial indication of an individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters, the broker exam is, by necessity, limited in scope. The broker exam only captures a state of customs and related laws at a certain point in time and a person's knowledge of such laws at a single point in time. The broker exam also does not test for any of the requirements of the approximately 50 Partner Government Agencies (PGAs) involved in regulating imports and exports. The complex nature of trade and the ever-changing and expanding requirements to comply with U.S. and international law require that a customs broker maintain a high level of functional and accessible knowledge to stay efficient and compliant over time.

### **C. A Broker's Responsibilities in a Dynamic Trade Environment**

Recent developments have demonstrated the need for key parties involved in importing and exporting to keep up-to-date on training and continuously build and maintain their knowledge of current requirements. For example, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114-125, 130 Stat. 122, February 24, 2016) required the issuance of new rules to protect domestic industry from dumping by foreign competitors (19 CFR part 165) and to modernize the processes surrounding duty refunds through the drawback program (19 CFR part 190). Both of these rules are complicated and detailed, requiring entities in the trade—particularly customs brokers serving as the fiduciary agents of the affected importers and exporters—to learn entirely new legal and technical processes. In addition to understanding the implementation of new regulations, a customs broker also needs to know how to research answers to complex questions. For example, determining the country of origin of imported merchandise is much less straightforward than it was in the past, as traders source inputs from various countries and may assemble those inputs in yet another country, before a final product results.

The past several years, in particular, have posed challenges for both CBP and the trade alike, requiring quick adaption to new requirements that compelled changes to operational processes. Low-value shipments, which have exploded with the online shopping revolution, have created multiple levels of issues for international trade that touch security, health and safety, information collection, timely clearance, duty evasion, and facility capacity. The recent implementation of the Agreement Between the United States of America, the United Mexican States and Canada (the USMCA), which replaced the North American Free Trade Agreement (NAFTA), requires a new body of knowledge to successfully implement and maintain

compliance. The COVID-19 pandemic has created an unprecedented impact on supply chains and trade processing, both in the import and export environments. The customs broker is at the heart of these challenges as the agent of the importer/exporter to work with CBP to resolve problems and facilitate the safe and secure movement of legitimate cargo.

CBP believes that the vigorous pace and expanding scope of international trade require a more stringent continuing education framework for those individuals involved in the international trade process. Regular continuing education is a professional requirement for many dynamic professions, such as the accounting, legal, and medical industries. CBP believes that maintaining a high level of professionalism of the licensed customs broker is essential for safety, security, efficiency, and trade compliance.

It is in CBP's and the PGAs' interests to have a well-educated customs broker community. A customs broker's involvement in a trade transaction eases the burden of the government—the customs broker takes on the role of educating importers and exporters in the technical requirements of filing in the Automated Broker Interface (ABI) and informing them of regulatory requirements. While there are some self-filers, the vast majority of entry filings are completed under the purview of customs brokers; and, thus, CBP has a smaller group of individuals to train and inform when it comes to revised or new filing requirements. Without a well-educated customs broker community, CBP would need many more resources to assist in ABI transmissions and generally support the trade community with navigating the complex import and export requirements; thus, CBP and the PGAs would have to change their approach to trade compliance, which would divert limited resources away from other critical aspects of the trade mission.

The trade community also benefits from well-educated customs brokers who are aware of current requirements in the dynamic environment of international trade. When an importer or exporter enlists the services of a customs broker, that customs broker is perceived to be knowledgeable of customs laws, regulations, and operational processes; however, an importer does not know if the customs broker is in fact aware and knowledgeable of all newly emerging requirements. A continuing education requirement would provide the trade community greater assurance that their agents are knowledgeable in the field of customs laws and regulations, familiar with operational processes, and are properly exercising their fiduciary responsibilities. However, mandating continuing education is just one approach to maintaining integrity and professionalism in the broker industry; CBP is open to considering other approaches provided by the public.

CBP generally seeks to ensure that all parties in the customs broker industry are operating under the current best practices. CBP considers customs brokers to be licensed professionals, and as such, CBP seeks comment regarding potential professional standards for brokers' continuing education, comparable to other licensed professionals. This would help maintain a measure of consistency across all customs brokers.

#### **D. Recommendations Regarding Continuing Education for Customs Brokers**

In June 2018, the World Customs Organization (WCO) published the *WCO Customs Brokers Guidelines* (available at <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/wco-customs-brokers-guidelines.aspx>). While the WCO cannot mandate that customs authorities worldwide follow all protocols or require that certain actions be taken by countries, it nevertheless provided the following recommendations in this guidance (page 28):

Customs broker services need to evolve in order to keep pace with changing commercial and regulatory environments in the international supply chain. Like any other professional service, Customs brokers are required to provide added value for their customers, whilst supporting Customs/governments in enhancing overall compliance with regulatory requirements, making supply chains transparent and secure.

Passing an examination is not a guarantee of continued expertise in the long term. To support quality Customs work, those who provide Customs broker services either to their employer or clients should be required to continue their education and strive to evolve professionally. In some jurisdictions, Customs brokers are required to participate in regular information sessions or advanced training on Customs-focused issues, such as valuation or rules of origin and trade agreements.

Customs administrations, on their own or in partnership with private sector bodies, brokers associations and academia, should consider providing training support for Customs brokers. They can play a significant role in enhancing professional standards of Customs brokers by providing training that challenges their acquired knowledge and skills (*e.g.*, electronic filing of declarations), while also teaching them new relevant knowledge/skills.

In September 2019, CBP formed the Requirements for Customs Broker Continuing Education Task Force (Task Force), and this Task Force was placed within the Commercial Customs Operations Advisory Committee (COAC) under the Rapid Response Subcommittee. This Task Force is comprised of representatives throughout CBP and licensed customs brokers from around the country with decades of experience with the trade community. Through this Task Force, members provided valuable input, advice, and operational perspective. This ANPRM represents the outcomes of the deliberations of the Task Force in 2019 and 2020, including the potential benefits and challenges of, and alternatives to, a continuing education requirement. Prior to the formation of this particular Task Force, in 2013, COAC also provided a recommendation that DHS issue a regulation requiring that brokers complete a minimum of 40 hours of continuing education during a triennial reporting cycle, pursuant to CBP's authority under 19 U.S.C. 1641(f), with the proviso that there be no accreditation requirements for such continuing education (*see* summary of Recommendation 13010 on CBP's website, at

[https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/\\_COAC%20Recommendations%20To%20Date%2010001%20-%2010412.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/_COAC%20Recommendations%20To%20Date%2010001%20-%2010412.pdf), on page 9).

### **III. Discussion of a Potential Framework for Continuing Education for Licensed Customs Brokers**

This ANPRM describes a potential framework for mandatory continuing education for licensed customs brokers. In the sections below, CBP has laid out a series of propositions on various topics, which are followed by questions as to which CBP is seeking more information. The comments received in response to this ANPRM will be used, potentially, to draft a Notice of Proposed Rulemaking (NPRM), which would provide for proposed regulations to implement mandatory continuing education requirements for licensed customs brokers. All comments are welcome, and the most useful comments are those that answer not only the specific questions posed in this document, but also provide reasons and data in support of any views provided by the commenter, describe individual brokers' current practices of updating their knowledge, and address how a mandatory continuing education requirement would affect them, their company, and their clientele (both in terms of the commitment of time and money). CBP is also very interested in receiving comments that describe what individual brokers believe would be the impact of a continuing education requirement on trade facilitation and compliance. For all numerical and quantitative responses, please provide CBP with sufficient information to recreate those calculations. Finally, in your comments, please refer to the specific question number(s) that you are addressing within the various portions of your submission.

#### **A. How Many Hours of Continuing Education Would Be Required?**

In this ANPRM, CBP is considering the establishment of a framework for individual license holders to require the completion of 40 hours of continuing education over the course of

3 years. CBP believes that substantially more could be too burdensome for the broker industry, particularly brokers operating as or working for small businesses. However, CBP is concerned that anything less would not be meaningful enough for customs brokers to keep up with a dynamic trade environment full of changing requirements.<sup>2</sup>

***Question 1.** Is 40 hours over 3 years an appropriate level of continuing education directly related to the import and export of goods into and out of the United States? Why or why not? If you disagree, please indicate in your answer what would be a preferred level and your rationale.*

### **B. What Types of Activities Should Be Considered Appropriate to Qualify as Continuing Education?**

CBP believes that a wide variety of activities should qualify as continuing education opportunities to fulfill a mandated requirement. Credit could be given to established corporate training, courses offered by customs brokers associations, and CBP online webinars. Other U.S. government agencies (such as the U.S. Department of Agriculture, U.S. Food and Drug Administration, U.S. Environmental Protection Agency, and U.S. Consumer Product Safety Commission) routinely offer training relevant to customs business, which could be used to fulfill the requirement. CBP also hosts the annual CBP Trade Symposium, other conferences and national customs brokers association meetings, and periodic meetings with the brokers locally at the port level. Activities other than those mentioned above, would potentially need accreditation before being considered to be approved coursework. For specific questions related to the accreditation process, see section I below.

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<sup>2</sup> Corporate, association, and partnership licenses would not have an additional education component tied to them. Training at the company level is already considered in the regulations as part of the definition of “responsible supervision and control” (19 CFR 111.1). The qualifier for a corporate, association, or partnership license (an individual license holder) would be covered by the new education requirement.

CBP currently conducts hundreds of hours of online webinars annually, covering a wide variety of topics—for example on the implementation of new regulations, intellectual property rights (IPR), specific commodities, valuation, free trade agreements, trade remedies, and Automated Commercial Environment (ACE) functionality. These webinars are interactive when broadcast (participants ask questions and receive live answers) and are recorded and available for download later at any time. These webinars are free and available to anyone.<sup>3</sup> CBP believes that through government-provided, online education opportunities alone, an individual license holder can obtain 40 hours of continuing education over 3 years.

***Question 1.*** *In addition to the opportunities offered by CBP and other government agencies as mentioned above, are you aware of other training or coursework that would likely qualify for a continuing education requirement? Please describe those opportunities in detail.*

***Question 1.*** *Are you part of a brokerage or a company that employs licensed customs brokers? Please provide or describe any training materials or training policies that the company has that would likely qualify as continuing education for a licensed customs broker. If you do provide any training materials or training policies and deem any of the content to be confidential commercial information under 6 CFR 5.7, please submit your materials only as a written/paper submission as listed in the ADDRESSES section above. Please estimate the costs of providing this training on an annual basis.*

***Question 1.*** *Are you a broker in a small business or do you live/work in a remote area of the country? Would you be able to avail yourself of internet-based training, webinars, or*

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<sup>3</sup> For Office of Trade (OT) webinar postings, see <https://www.cbp.gov/trade/stakeholder-engagement/webinars>; for ACE training videos, see <https://www.cbp.gov/trade/ace/training-and-reference-guides>.

*in-person trainings offered by a third party in order to meet a mandatory training requirement?*

**Question 1.** *Do you believe you would already meet the possible continuing education requirement (40 hours over 3 years) based on the activities you may be already engaged in that you believe would qualify as continuing education?*

**C. Does All Continuing Education Have to Relate to International Trade?**

Customs regulations and laws covering the import and export of goods are changing constantly all over the world. Given that a licensed customs broker is responsible for knowing these rules and regulations and ensuring that they are followed, CBP believes that the majority of continuing education should focus on laws authorizing CBP operations and processes, as well as CBP regulations and programs. The majority (75 percent, or 30 of the 40 hours) would focus on customs business and CBP operational and process requirements, whereas the remainder (25 percent, or 10 of the 40 hours) would be available for education that could focus on other areas related to international trade that are not CBP-specific (such as other government agency requirements).

**Question 1.** *If a continuing education requirement is established, should there be different categories, and if so, how should those be weighted? For example, should continuing education be categorized as “CBP procedures and requirements”, “other government agency requirements”, and “specific areas related to international trade”, and should there be a certain number of courses within each category that must be taken?*

#### **D. Do All Brokers Need to Comply with Continuing Education Requirements?**

CBP believes that continuing education requirements should apply to all licensed customs brokers, regardless of -

- The length of time a broker has held a license;
- Whether or not a broker is filing entries or otherwise conducting customs business; or
- Whether or not a broker is a sole proprietor, an employee of a brokerage, or an employee of a company engaged in international trade.

With limited exceptions, the requirements of 19 CFR part 111 apply to all licensed customs brokers regardless of their individual situations or practices. CBP is not intending to deviate from current regulations with this ANPRM. The only differentiation among license holders being considered in this ANPRM is whether: 1) the continuing education requirement is tied to an individual license holder, not a corporate license; and 2) brokers who voluntarily suspend their broker license would have adjusted requirements (more detail is provided in subsequent sections below).

***Question 1.** Are there any categories of individuals holding licenses whom you feel CBP should exempt from the continuing education requirement?*

#### **E. How Should Continuing Education Be Tracked?**

In accordance with 19 CFR 111.30(d)(1), licensed customs brokers are required to file a report by February 1 of every third year, in no particular form or format. The objective of this triennial report is to provide CBP an update regarding the active engagement in transacting customs business for each individual or corporate license holder (*see* 19 CFR 111.30(d)(2) and (3)). After submission, the triennial report is reviewed by Broker Management Branch officials at CBP Headquarters, the ports, and the Centers.

To ensure consistency with the existing regulations and the process for providing CBP the triennial report, CBP is not proposing any specific format or method for an individual customs broker to track continuing education hours. Many companies use software that allows their employees to track their training and education and which summarizes their training, as needed. Other customs brokers may choose to use a simple spreadsheet. As long as the customs broker maintains documentation that a customs broker's required continuing education has been completed and a customs broker can provide more detail upon CBP's request, then brokers would be able to track their education as preferred.

***Question 8.** If a continuing education requirement were put in place, license holders would need to track their hours. Should CBP require a certain method for tracking the educational requirements and what kind of documentation should CBP require from license holders for purposes of verification?*

#### **F. How Should Completed Education Be Reported to CBP?**

CBP is contemplating that an individual customs broker report any education over the past 3 years in ACE, concurrently with the submission of the triennial report. CBP would then conduct compliance activities that would randomly select a certain percentage of customs brokers, who would then be asked to provide the full tracking of their education. During the 2018 reporting cycle, approximately 85 percent of customs brokers submitted their triennial status reports to CBP through Pay.gov, when paying the required fees; approximately 15 percent of customs brokers submitted their reports to the ports directly. CBP anticipates the potential implementation of new ACE technology to enable a customs broker to simply check a box in ACE certifying that the 3-year continuing education requirement had been successfully completed.

As an example of compliance activities, CBP could determine that for a particular reporting cycle, a random sample of 10 percent of customs brokers must provide additional documentation to validate that sufficient continuing education took place over the past 3 years. The customs brokers would then provide CBP with a spreadsheet, a report from employee training software, or other documentation available that would support the broker's self-certification that the education had been completed. As noted above, CBP does not anticipate a specific format for tracking continuing education; the only requirement would be that it is adequately supportive of the education that the customs broker completed and that it could be produced for CBP review upon request.

***Question 9.** Is self-certification in ACE, while concurrently filing the triennial report, the most efficient way for customs brokers to report their compliance to CBP with the possible continuing education requirement or is there another method for reporting preferred? Would enforcement of the continuing education requirement by requesting additional documentation from a random sample of customs brokers be an appropriate method? Why or why not? Are there any other ways of enforcing broker compliance that are preferred? If so, why?*

#### **G. What Happens if Continuing Education Is Not Reported to CBP?**

CBP is envisioning that the reporting of the continuing education occur at the same time as the submission of the customs brokers' triennial reports. CBP is considering two options but would like to receive other ideas, as well as comments on the two options presented below.

*Option 1.* The first option is a path of progressive discipline: using increasingly severe measures when a customs broker is given reasonable time and opportunity to correct the lack of reporting, but does not comply. After the initial failure to report, the customs broker would

receive a warning letter. If the customs broker does not comply with the warning letter, then a suspension of the license would be issued, and with continued lack of reporting and compliance, the license would be revoked. CBP is considering that a customs broker's license would be suspended for a maximum of 120 days, allowing a broker to certify and demonstrate that he or she has completed the required 40 hours of continuing education. After the 120 days, the failure to correct the deficiency would result in the customs broker's license being revoked by operation of law without prejudice. The notice of the revocation would be published in the *Federal Register* and the *Customs Bulletin*, consistent with CBP's current practice with respect to revocations.

*Option 2.* The second option would be the application of the process currently outlined in 19 CFR 111.30(d)(4) (failure to submit a triennial status report) to the reporting of the continuing education requirement. Pursuant to that regulation, if a customs broker fails to file the report required under 19 CFR 111.30(d)(1) by March 1 of the reporting year, then the customs broker's license is suspended by operation of law on that date. By March 31 of the reporting year, CBP must transmit written notice of the suspension to the customs broker by certified mail, return receipt requested, at the address reflected in CBP records. If the customs broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, then the license will be reinstated. If the customs broker does not file the required report within that 60-day period, then the license is revoked by operation of law without prejudice to the filing of an application for a new license. In this scenario, the failure to self-certify the completion of the continuing education requirement in ACE would have the same impact on an individual customs broker's license as the failure to submit the triennial report. Just as with the failure to submit the triennial report, the customs broker would receive notice by

March 31 of the reporting year, with 60 days to rectify the issue, and failure to correct the deficiency would result in the customs broker's license being revoked by operation of law.

Whether CBP implements option 1, option 2, or another option (perhaps one suggested by a commenter), CBP could request additional documentation from a customs broker during a review of triennial reporting to assure that the customs broker had met the continuing education requirement. If a customs broker could not produce any documentation and the evidence showed that the self-certification in ACE was false or misleading with respect to any material fact, that would be considered a violation of 19 U.S.C. 1641(d)(1)(A). The violation could result in a penalty assessment or suspension or revocation of a customs broker's license or permit. Unlike the situations where a customs broker failed to report or failed to complete the continuing education, when the customs broker fails to provide the required supporting documentation in response to a request from CBP, the customs broker's license would not be revoked by operation of law. CBP would have to take additional action to revoke the customs broker's license as provided for in subpart D of 19 CFR part 111 (Cancellation, Suspension or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation).

Under either option above, or any other suggested option, CBP would work with individuals who have temporary or extenuating circumstances surrounding their ability to obtain the required education. This is current CBP practice with regard to the triennial status report filing, and CBP would seek to continue that approach.

***Question 10.*** *What do you think is an appropriate disciplinary action for failing to complete a continuing education requirement?*

***Question 11.** Is linking the reporting of the continuing education requirement to the individual license triennial report the most efficient way to communicate compliance without placing undue burden on customs brokers? If not, what alternative means would you recommend and why?*

***Question 12.** Is 120 days to take corrective action to obtain the necessary continuing education credits a reasonable period of time? Please explain in your response why you believe the time period should be shorter or longer.*

***Question 13.** What do you think is an appropriate disciplinary action for failing to report a customs broker's compliance with a continuing education requirement?*

#### **H. Should Continuing Education Requirements Apply During Voluntary Suspension?**

Under the current regulations, the Executive Assistant Commissioner, Office of Trade, may accept a customs broker's written voluntary offer of suspension of the customs broker's license or permit for a specific period of time under any terms and conditions to which the parties may agree (19 CFR 111.52). The most common reasons for voluntarily suspending a license are joining the Federal Government or the military, moving out of the country for an extended period of time, or making a lifestyle change, where a customs broker's license is no longer required but may be useful again in the future. During the period of voluntary suspension, a customs broker may forgo paying applicable fees and providing the triennial status report.

To parallel existing regulations, CBP is considering that while a license is in voluntary suspension, the license holder does not need to meet the continuing education requirements. If and when the customs broker contacts CBP to reactivate the suspended license, CBP would notify the customs broker of the continuing education requirements and would provide the timeline and due date for the next round of educating and reporting. CBP does not believe that

any continuing education requirements must be fulfilled prior to the license becoming re-activated. However, CBP is considering adding a requirement for the first year after being re-activated for the customs broker to complete a certain number of credits to refresh the knowledge and skill set, especially if the customs broker's license was inactive for several years.

***Question 14.** Should customs brokers with their licenses in voluntary suspension be required to meet the continuing education mandate while their licenses are in suspension?*

***Question 15.** Should customs brokers with their licenses in voluntary suspension be required to meet the continuing education mandate before their licenses can be reactivated?*

***Question 16.** Should customs brokers, who have been voluntarily suspended, be required to complete a certain number of continuing education credits the first year after re-activation, and if so, how many?*

***Question 17.** Should CBP differentiate the reactivation requirements based on the nature of the suspension, i.e., a voluntary suspension versus involuntary suspension? If so, how, and why?*

## **I. What Could the Accreditation Process Look Like?**

CBP is contemplating a framework for providing continuing education where all Federal Government-provided content directly relevant to customs business, import, and export (training limited to requirements that CBP administers and/or enforces) would automatically be deemed appropriate and acceptable towards meeting the 3-year requirement. Due to resource constraints, CBP is not currently in a position to accredit education opportunities offered by private-sector entities. Those education opportunities could be provided by an accredited entity. This potential

accreditation process would ensure that quality training is provided and accounted for, and provide a structure where a set of objective standards is applied equally across those entities that would like to offer education opportunities to customs brokers. Notwithstanding the above suggestion for an accreditation process, CBP is open to receiving comments whether it should allow for more flexibility and not place any restrictions or requirements on the accreditation of continuing education.

***Question 18.*** *Should informational content that CBP currently provides (webinars, local and national events, industry trade days, etc.) automatically be considered eligible for credit toward a mandatory education requirement?*

***Question 19.*** *Should CBP require accreditation? Why or why not? If yes, should CBP create a framework to accredit education provided by non-government entities?*

***Question 20.*** *Would an established accreditation process help control the quality of the content of the various activities that would be eligible for continued education credit?*

CBP would likely approach selecting accreditors through a Request for Information (RFI) in the manner it currently conducts procurement activities, using the System for Award Management (SAM, <https://sam.gov/SAM/>). SAM is a U.S. government website and there is no cost for any entity to use the system. Through SAM, any entity can register to do business with the U.S. government, update or renew an entity's registration, check the status of an entity registration, and search for any entity registration and exclusion records.

In addition to issuing an RFI, CBP would publish a notice in the *Federal Register* detailing the application process. Unlike a CBP acquisition, a monetary contract would not be awarded; rather, the contract would be an agreement between CBP and the selected accreditor to

provide specific services over a designated period of time. The accreditor would be able to charge third parties for its services, to the extent allowed by law, to recoup its expenses to review and approve/deny course credit for proposed content submitted to the accreditor for consideration. CBP is contemplating a 3-year approval cycle for accreditors of continuing education. In advance of the next 3-year period, CBP would conduct another notice and selection activity to choose the next cycle of approved accreditors. CBP believes the contemplated approach would lead to the following benefits:

- 1) More than one approved accreditor, which would allow for competition and keep costs at market level without creating a monopoly;
- 2) An open and transparent application process; and,
- 3) An opportunity for small businesses and non-profit organizations to become approved accreditors.

***Question 21.*** *Should CBP pursue a formal accreditation program with a third-party accreditor, or should CBP be the accrediting party?*

Based on conversations with industry experts, CBP believes that 5-10 entities would apply to CBP to become approved accreditors for continuing education. At this time, CBP is not proposing a floor or a ceiling to the number of accreditors it intends to approve. Any such limits, were they deemed necessary at a later date, would be announced in the *Federal Register* notice detailing the application process, as described above.

***Question 22.*** *How many entities should be approved to accredit content for a continuing education requirement (providing a range is acceptable)? Please provide details on your perspective.*

The precise criteria for how applicants would be evaluated could be added in a regulation. Application instructions would be provided in a *Federal Register* notice. In general, CBP is suggesting that criteria for the entity submitting an application be similar to other government procurements, such as:

- At least one key official in the entity must have a customs broker's license;
- A demonstrated knowledge of international trade laws, regulations, and customs business for goods both imported into and exported from the United States;
- A demonstrated knowledge of other government agencies that are involved in transactions of international trade;
- A list of professional references;
- Resumes for the key personnel who would be involved in accrediting course work;
- A description of the process for how someone would submit his or her activity proposed for credit to the accreditor, including electronic and online methods for submitting materials for consideration;
- A description of the criteria the accreditor would use to approve/deny activities and courses for continuing education credit;
- A description of how the accreditor would avoid conflicts of interest;
- A description of how the accreditor would track accreditation activity for CBP review;
- A description of how customers can provide feedback to the accreditor and CBP on the approval process;
- An estimate of the "turn around" time for approving/denying activities under consideration for accreditation;

- An estimate of the charge, if any, for approving/denying an activity under consideration for accreditation.

***Question 23.** Is the above list of criteria to become an approved accreditor of continuing education reasonable? Should additional criteria be added?*

***Question 24.** If your company or organization is interested in becoming an approved accreditor, can you estimate the time it would take to put together an application based on the above criteria? If you or your organization deem this information business sensitive, please submit your materials only as a written/paper submission as listed in the ADDRESSES section above.*

To avoid any perceived conflicts of interest, CBP is contemplating that any entity that is approved by CBP to provide continuing education should not be allowed to self-approve its own course content and activities. The entity would have to submit the proposed activity to one of the other accreditors for approval or denial of that activity. CBP believes this potential process provides the fairest approach for both content creators and accreditors.

***Question 25.** Should accreditors be able to self-approve their own activities and course content?*

At this time, CBP is not proposing that applicants to become accreditors submit an application fee. If CBP determines that an application fee is necessary to re-coup the costs of proposal review, then CBP would propose the relevant regulations in a future NPRM and provide a justification for the fee to be charged.

***Question 26.** Should CBP charge a fee to entities who wish to apply to become approved accreditors?*

Each accreditor would make clear on its website and in other materials the process for submitting content for accreditation consideration (note that this is one of the criteria that must be met to receive CBP approval to be an accrediting body). CBP is requiring that an accreditor provide an electronic means for a content provider to submit the details of the activity under consideration. The accreditor must also make clear on its website the average or typical timeframe the content provider can expect before receiving an approval or a rejection.

CBP is not proposing to set the cost of what an accreditor would charge to review and approve/deny activities for continuing education. The accreditor would have to make any charge explicit and clear during the application for course approval.

***Question 27.** Should CBP set a limit on the amount an accreditor can charge for course/activity approval?*

Once an accreditor has been approved under a 3-year agreement, it may become necessary over the course of time to reconsider the suitability of an accreditor to provide services. The terms of the agreement would be written in a way that both CBP and the accreditor independently have the ability to end the agreement with a 30-day notice. This approach parallels the process for CBP monetary contracts.

Any individual or organization would be able apply to become an approved accreditor during the application process that CBP considers opening on a 3-year cycle. Any additional accreditors outside of the 3-year cycle would not be considered.

***Question 28.** Given all the considerations raised above and the various questions posed regarding a potential framework for continuing education, CBP would like comments on whether continuing education should be required at all, and whether there are other*

*measures that CBP could take to ensure a high level of integrity and expertise in the broker community.*

#### **IV. Economic Impacts of Mandating Continuing Education for Licensed Customs Brokers**

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This ANPRM is not a “significant regulatory action,” under section 3(f) of Executive Order 12866, and has not been reviewed by the Office of Management and Budget (OMB) under that order.

A future regulatory framework to implement continuing education requirements would affect those customs brokers maintaining active licenses so that they may transact customs business, as well as any brokers re-activating their licenses after a period of voluntary suspension. In addition to attendance at trainings, customs brokers would need to track continuing education credits. Providers of customs-related trainings would also be affected, as they would likely see a rise in demand for training and would need to have their offerings accredited by an acceptable organization.

There are currently several accreditors for customs-related trainings, although those organizations operate entirely independently from CBP and have neither sought, nor received, CBP approval. Should continuing education become mandatory, more entities would likely seek to become accreditors. Both existing and new accreditors would need to go through the CBP accreditor application process, described above, in order to provide accreditation and accredited

training products. Employers of licensed customs brokers likely would either provide accredited training by going through the accreditation process for in-house trainings, or provide employees with the time and resources to fulfill training requirements on their own. Finally, CBP would need to provide a process by which organizations may become accreditors and track broker reporting to ensure continuing education requirements are being met.

As of January 2020, there are approximately 10,000 individually licensed customs brokers. Details are provided in Table 1 below.

Table 1: Employment Type for Individually Licensed Customs Brokers

<b>Individual Broker Type</b>	<b>Number</b>
<b>Individually Licensed Brokers</b>	<b>10,089</b>
Not transacting customs business	5,447
Employee	3,695
Proprietor (individual or organization)	561
Transact customs business, not as an employee or Proprietor	386

Source: Triennial report data as filed in ACE; data current as of January 2020.

#### **A. Costs and Benefits of a Future Rule**

The addition of continuing education to the requirements for maintaining a customs broker license may produce new costs for some brokers, particularly smaller brokerages.

However, many customs brokers already pursue additional training and continuing education and

may already be meeting the potential requirements. To determine the net cost or benefit of mandatory continuing education, CBP seeks comments on the following areas:

**Question 29.** *To what extent do you as a customs broker or employer of brokers already satisfy the potential requirements (40 hours over 3 years) voluntarily or via company policy? Do you believe this is representative of the customs broker industry as a whole? Why or why not? Please provide examples of how you already fulfill the potential requirements.*

**Question 30.** *What is the number of hours currently spent on training in total by you as a customs broker or by customs brokers employed by you in an average year?*

**Question 31.** *Of the existing training options for customs brokers, how many hours are supplied in-house by employers of customs brokers, externally by Federal Government agencies, and by third-party providers, in an average year? What types of training options are you as a customs broker taking advantage of?*

**Question 32.** *Is the training for customs brokers that you provide or consume general, specific to a particular topic, or does it vary depending on the current work environment?*

**Question 33.** *Are the trainings for customs brokers that are currently provided accredited by some organization? If so, please provide the names of the organizations that accredit the trainings.*

**Question 34.** *Do employers and employees find these trainings for customs brokers to be beneficial? If yes, can you provide any examples of when training may have prevented or mitigated a negative outcome in a trade process? If no, can you explain how you as a customs broker or employer of customs brokers currently keep abreast of the ever-*

*changing and expanding requirements to comply with U.S. and international law and other knowledge to stay efficient and compliant over time?*

**Question 35.** *If you are an employer of customs brokers, and the continuing education requirement were to be put in place, would you continue your current approach to education or make changes? If you would change, please explain the changes you might make and if you would increase or decrease the use of in-house, third-party, or Federal Government-produced sources of training?*

**Question 36.** *How often do you as a customs broker or employer of customs brokers currently attend events requiring travel, and how would a possible continuing education requirement affect the amount of travel, for you or your company?*

**Question 37.** *Can you provide information on the benefits and efficacy of mandatory continuing education for customs brokers and free trainings provided by CBP and other PGAs?*

**Question 38.** *In general, how often do you as a customs broker or your customs broker employees take advantage of these government-provided training resources?*

**Question 39.** *If you are considered a small business, what would the impacts be to your company of the potential continuing education framework for customs brokers?*

**Question 40.** *Should small businesses that struggle to meet continuing education requirements for customs brokers, due to new costs, receive accommodations in the form of discounts or exemptions?*

**Question 41.** *What types of costs do you or your company incur to maintain records of the completion of employee trainings? How high are these costs? If you or your*

*company does not currently maintain training records, what types of costs would you incur to do so?*

***Question 42.** If you are an individually-licensed customs broker, what would you consider reasonable costs per hour of continuing education, if you had to pay out of your own pocket? Would you take more trainings if the cost were discounted for small businesses?*

### **B. Potential Costs of a Future Rule**

With continuing education requirements in place, customs brokers would face new costs. Those customs brokers already taking part in a continuing education program may see increased costs if they must increase the amount of training they participate in, or if they must switch to different, more expensive training opportunities because their current programs are not accredited. Customs brokers (or their employers) would need to pay tuition and fees, and spend time registering and preparing for, as well as attending trainings. Depending on the type of training, customs brokers (or their employers) may pay expenses related to travel and overnight trips including hotels, rental cars, and meals. To meet requirements, customs brokers would need to track and report completed trainings, which may require new systems or software, though most customs brokers would likely use existing spreadsheet or database applications. Employers may also choose to satisfy requirements by paying to produce training in-house, which would need to be accredited by a CBP-approved organization.

Accrediting organizations would need to go through some type of application process to receive CBP approval to accredit trainings. That application would require time to prepare and submit. CBP would face the costs of creating and providing the accreditor-approval process. CBP may also need to increase the number of trainings it offers (though as noted above, this is not likely), which would result in increased costs. Finally, CBP would face increased costs of

enforcement, likely in the form of more frequent or more thorough audits of customs brokers' records.

*Question 43. Are there any additional qualitative costs, monetary costs, or time expenditures of continuing education for customs brokers that you would like to provide?*

### **C. Potential Benefits of a Future Rule**

The addition of mandatory continuing education to the requirements for maintaining an individual customs broker license would have several benefits. A better educated and more informed workforce would be more prepared for the dynamic and complex trade environment. The customs broker industry as a whole would likely see improvements in professionalism and reputation. Customs brokers would likely need to spend less time asking questions of CBP and would commit fewer unintentional errors and violations. CBP would benefit as well, with fewer errors, issues, and violations to address. Importers, exporters, and other members of the international trade community would experience greater professionalism from their customs brokers, need to handle fewer mistakes, and likely see increases in efficiency. Accreditors would likely see benefits in the form of increased demand for their services and the profits thereof.

*Question 44. Are there any additional qualitative benefits, monetary cost savings, or time savings of continuing education for customs brokers that you would like to provide, in addition to the benefits described in the Background section above?*

### **IV. Signature**

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, has delegated the authority to electronically sign this document to Chad

R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS,  
for purposes of publication in the *Federal Register*.

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Chad R. Mizelle,  
Senior Official Performing the Duties of the General Counsel  
Department of Homeland Security.

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