



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 111

[Docket No. USCBP-2021-0030]

RIN 1651-AB03

Continuing Education for Licensed Customs Brokers

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to require continuing education for individual customs broker license holders (individual brokers) and to create a framework for administering this requirement. By requiring individual brokers to remain knowledgeable about recent developments in customs and related laws as well as international trade and supply chains, CBP's proposed framework would enhance professionalism and competency within the customs broker community. CBP has determined that the proposed framework would contribute to increased trade compliance and better protection of the revenue of the United States.

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 number, by one of the following methods:

- Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP 2021-0030.
- Mail: Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. 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 <https://www.regulations.gov>. Due to the relevant COVID-19-related restrictions, CBP has temporarily suspended its on-site public inspections of the public comments.

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 Broker.Continuing.Education@cbp.dhs.gov; and, Melba Hubbard, Chief, Broker Management Branch, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, at (202) 325-6986, melba.hubbard@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rulemaking. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rulemaking, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

II. Executive Summary

This notice of proposed rulemaking (NPRM) proposes to amend the U.S. Customs and Border Protection (CBP) regulations to require individual customs broker license holders

(individual brokers) to participate in continuing education activities (hereinafter, referred to as the “continuing broker education requirement”) and to create a framework for administering this requirement. This section provides a brief summary of the proposed framework. A more detailed description of the proposed framework is contained in section IV of this NPRM.

This NPRM proposes to require individual brokers to complete at least 36 continuing education credits per triennial period, with limited exceptions. Individual brokers reentering the profession following a period of voluntary suspension would be subject to a prorated requirement of one continuing education credit for each complete remaining month until the end of the triennial period. The proposed framework also exempts two groups of individual brokers from the continuing broker education requirement—namely, individual brokers who have voluntarily suspended their license in accordance with § 111.52 of title 19 of the Code of Federal Regulations (19 CFR 111.52), and individual brokers who have not held their license for an entire triennial period at the time of the submission of the status report as required under 19 CFR 111.30(d).

Under the proposed framework, individual brokers could earn continuing education credits for a variety of training or educational activities, whether in-person or online, including the completion of coursework, seminars, workshops, symposia, or conventions, and, subject to certain limitations and requirements, the preparation and presentation of subject matter as an instructor, discussion leader, or speaker. Individual brokers would report and certify their compliance with the continuing broker education requirement upon the submission of the status report required under 19 CFR 111.30(d), which is due on a triennial basis.

In order to ensure compliance with the continuing broker education requirement, this NPRM also proposes regulatory provisions authorizing CBP to take disciplinary actions, if an individual broker submits a triennial report but fails to report and certify his or her compliance with the continuing broker education requirement on the triennial report. The proposed

framework also includes provisions addressing other aspects of the administration of the continuing broker education requirement, such as accreditation and the selection of accreditors.

III. Background

A. Authority for Continuing Broker Education Requirement

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 customs 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 U.S. Department of the Treasury (Treasury) to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the other provisions of section 641. *See* 19 U.S.C. 1641(f). That authority was transferred to the Secretary of the U.S. Department of Homeland Security (DHS) as a result of the enactment of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2142). The Homeland Security Act of 2002 generally transferred the functions of the former U.S. Customs Service from the Secretary of the Treasury to the Secretary of DHS, and provided that the Secretary of the Treasury retains authority over customs revenue functions, unless specifically delegated to the Secretary of DHS. *See* 6 U.S.C. 212(a)(1). Paragraph 1(a)(i) of Treasury Department Order No. 100-16 contains a list of subject matters over which the Secretary of the Treasury retained authority. *See* appendix to 19 CFR part 0. The other functions of the former U.S. Customs Service not expressly listed in paragraph 1(a)(i) of Treasury Department Order No. 100-16 were transferred from the Secretary of the Treasury to the Secretary of DHS. As paragraph 1(a)(i) of Treasury Department Order No. 100-16 does not list the regulation of customs brokers, the Secretary of the Treasury did not retain

authority over this subject matter. Accordingly, the Secretary of DHS is authorized to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the other provisions of section 641. *See* 19 U.S.C. 1641(f).

19 U.S.C. 1641(b)(4) imposes upon customs brokers the duty to exercise responsible supervision and control over the broker's employees and control over the customs business that is conducted. The statute also permits the Secretary of DHS to test persons for their knowledge of customs and related laws prior to issuing a license. Furthermore, based upon 19 U.S.C. 1641, CBP has promulgated regulations setting forth additional obligations of customs brokers pertinent to the conduct of their customs business. CBP believes that maintaining current knowledge of customs laws and procedures is essential for customs brokers to meet their legal duties. CBP proposes that requiring a customs broker to fulfill a continuing education requirement is the most effective means to ensure that the customs broker keeps up with an ever-changing customs practice after passing the broker exam and subsequent receipt of the license. CBP believes that 19 U.S.C. 1641 provides authority to require, by regulation, continuing education for individual brokers.

To enhance professionalism and competency within the customs broker community, CBP proposes to promulgate regulations to require continuing education for individual brokers and to create a framework for administering this requirement. CBP believes that requiring individual brokers to participate in continuing education activities would enhance the credibility and value of a customs broker's license and improve a broker's skills, performance, and productivity. This in turn would increase client service and compliance with customs laws, which would better protect the revenue of the United States.

B. Overview of Licensing Requirements for Individual Customs Brokers

CBP is responsible for administering the licensing requirements for customs brokers. *See* 19 CFR part 111, subpart B. A prospective customs broker must pass a broker exam

administered 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 the broker's clientele.

After an applicant passes the customs broker exam, CBP will investigate whether the 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, then 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 filing of reports and notifications to CBP as set forth in 19 CFR 111.30. Pursuant to 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. *See also* 19 CFR 111.1 and 111.28(a). A customs broker also has other legal obligations, to CBP and to the broker's clientele, including, but not limited to, the exercising of due diligence in making financial settlements, answering correspondence, and preparing paperwork or filings related to customs business. *See* 19 CFR 111.29(a).

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 (hereinafter, referred to as "customs matters"), the broker exam is, by necessity, limited in scope. The broker exam only assesses a person's knowledge of the state of the customs and related laws at a certain point in time. The broker exam does not test for knowledge of any of the requirements of the more than 40 Partner Government Agencies (PGAs)¹ involved in regulating imports. The complex nature of trade and the ever-changing and expanding requirements to comply with U.S. and international law requires that a customs broker

¹ CBP enforces over 400 laws on behalf of over 40 other U.S. Government agencies, which are commonly referred to as Partner Government Agencies (PGAs).

maintain a high level of functional and accessible knowledge to ensure that a broker's clients remain compliant with the applicable laws over time. CBP proposes that requiring a customs broker to fulfill a continuing education requirement is the most effective way to ensure that individual customs brokers keep abreast of changes in customs and related laws, which is especially important because of the constant evolution of international trade and supply chains. CBP is proposing that, once individuals become licensed customs brokers, they must maintain sufficient knowledge of customs and related laws necessary to render valuable service to importers and drawback claimants through the completion of continuing education. CBP believes this will result in more competent licensed customs brokers who are well educated in customs law, regulations, and critical subject matter. A more competent customs broker community will prevent costly errors for their clients, potentially saving importers and drawback claimants from unwanted problems and relieving CBP from expending valuable examination and collection resources. The proposed regulations will create a framework for continuing broker education that would contribute to increased trade compliance and better protection of the revenue of the United States.

C. Assessment of Compliance Risks Managed by Customs Brokers in the Complex and Evolving Realm of International Trade

Recent developments have demonstrated the need for key parties involved in importing and claiming drawback 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 involved in international trade—particularly, customs brokers serving as the fiduciary agents of the affected importers and drawback claimants—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 is fully manufactured or produced.

The past several years, in particular, have posed challenges for both CBP and entities involved in international trade, requiring quick adaption to new requirements that compelled changes to operational processes. Low-value shipments (19 U.S.C. 1321(a)(2)(C)), the volume of which has exploded with the increase in the *de minimis* limit from \$200 to \$800 as a result of section 901(c) of TFTEA and the online shopping revolution, have created multiple levels of issues for international trade that implicate security, health, safety, information collection, timely clearance, and duty evasion. The 2020 statutory 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. *See* United States – Mexico – Canada Agreement Implementation Act, Pub. L. 116-113, 134 Stat. 11 (19 U.S.C. Chapter 29). The ongoing COVID-19 pandemic created an unprecedented impact on supply chains and international trade processes.

The customs broker is at the heart of the aforementioned challenges, as the agent of the importer/drawback claimant who works with CBP to resolve problems and facilitate the safe and secure movement of legitimate cargo. CBP believes that the complex and evolving nature of international trade requires a mandatory continuing education framework for individual brokers involved in these trade processes. Simply relying on self-initiated efforts to maintain current knowledge is insufficient to ensure compliance with the wide array of applicable and evolving laws that is necessary to protect the revenue of the United States. Brokers who were assessed penalties by CBP between 2017 and 2020 have held their individual broker license for, on

average, 37 years. In contrast, the average individual customs broker license has been held for just 24 years. This suggests that as more time passes since the passing of the customs broker exam, more errors are made. Additionally, as addressed in greater detail in section V.A. of this NPRM, which pertains to the requirements of Executive Orders 13563 and 12866, CBP has seen a recent increase in penalties while data indicates that companies employing individual brokers who voluntarily pursue continuing education in the form of industry certifications generally commit fewer errors.

Regular continuing education is a professional requirement for many dynamic professions, such as in the accounting, legal, and medical industries. The Internal Revenue Service (IRS), for example, has regulations covering tax professionals that include both an examination and a continuing education requirement. *See* 31 CFR part 10. These regulations were based, in part, on the Return Preparer Review report (January 4, 2010), which recommended continuing education for tax preparers to “better leverage the tax return preparer community with the twin goals of increasing taxpayer compliance and ensuring uniform and high ethical standards of conduct for tax preparers.”² The IRS serves as the primary revenue collector of the U.S. Government and has a responsibility for protecting the revenue of the United States. Similarly, CBP is the second largest collector of revenue in the federal government, in the form of duties, taxes, and fees for imported merchandise, and likewise has a responsibility for protecting the revenue of the United States.

As CBP licenses customs brokers to conduct customs business, it is in the best interests of CBP and the PGAs to have a well-educated customs broker community. A customs broker’s involvement in import and/or drawback transactions eases the burden of the government; the customs broker takes on a large part of the role of educating importers and drawback claimants

² Internal Revenue Service, U.S. Department of the Treasury, *Return Preparer Review*, IRS Publication No. 4832 (January 4, 2010), available at <https://www.irs.gov/pub/irs-news/fs-10-01.pdf>.

on the technical requirements of filing in the Automated Broker Interface (ABI)³ and informing them of regulatory requirements for the customs transactions in which they are involved. While there are some self-filers, the vast majority of entries of imported merchandise are filed by customs brokers on behalf of the importers of record. This dynamic generally allows CBP to target a smaller group of individuals when managing trade compliance for revised or new filing requirements. Thus, a customs broker community that continues to stay abreast of changes in the customs practice helps support CBP's crucial work. As the quality of such brokerage services suffers, this would cause CBP to expend additional resources to assist entities involved in international trade with navigating complex import and drawback requirements, which diverts limited resources away from other critical aspects of CBP's trade mission. To ameliorate that consequence, CBP proposes to require customs brokers to maintain their knowledge and skills through the completion of continuing customs broker education.

Importers and drawback claimants also benefit from well-educated customs brokers who are aware of current requirements in the complex and evolving realm of international trade. When an importer or drawback claimant 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 or drawback claimant does not know with certainty that the customs broker is in fact knowledgeable of all newly emerging requirements. The continuing broker education requirement would provide importers and drawback claimants with greater assurance that their agents are knowledgeable of customs laws and regulations, familiar with operational processes, and can properly exercise a broker's fiduciary duties.

In recent years, the need for continuing broker education has also attracted the attention of international intergovernmental organizations, such as the World Customs Organization (WCO). In 2018, the WCO published the *WCO Customs Brokers Guidelines*, which is a

³ The Automated Broker Interface (ABI) is an electronic data interchange that allows brokers and entry filers (self-filers) to transmit immediate delivery, entry, and entry summary data electronically to, and receive electronic messaging from, CBP in the Automated Commercial Environment (ACE). See 19 CFR 143.1 and 143.32(a).

guidance document wherein the WCO recognizes the need for mandatory continuing education for customs brokers.⁴ In the guidance document, the WCO notes that the passing of an initial broker exam does not ensure that customs brokers stay abreast of changes in customs and related laws and recommends that, on their own or in partnership with other governmental, private, or non-profit organizations, customs administrations should take on an active role in educating the customs broker community about changes in customs and related laws and reinforcing existing knowledge.⁵ Additionally, in the guidance document, the WCO notes that some countries already require customs brokers to complete continuing education.⁶ Accordingly, in proposing to require individual brokers to complete continuing education, this NPRM is generally in line with the WCO's recommendations on best practices for customs administrations.

D. Development of the Proposed Continuing Broker Education Requirement

In recent years, the importance of continuing broker education has received attention on a domestic level. In 2013, the predecessor to the Commercial Customs Operations Advisory Committee (COAC)⁷ recommended that DHS issue regulations requiring customs brokers to 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), on the condition that there be no accreditation requirements for such continuing education.⁸

In September 2019, CBP formed the Requirements for Customs Broker Continuing Education Task Force (Task Force), which was placed within COAC under the Rapid Response Subcommittee. The objective was to develop a proposed framework for continuing education for

⁴ World Customs Organization, *WCO Customs Brokers Guidelines*, at 28 (June 2018), available at <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/wco-customs-brokers-guidelines.aspx>.

⁵ *Id.*

⁶ *Id.*

⁷ COAC is jointly appointed by the Secretary of the Treasury and the Secretary of DHS and advises the Secretary of the Treasury and the Secretary of Homeland Security on all matters involving the commercial operations of CBP. Meetings of COAC are presided over jointly by the Deputy Assistant Secretary for Tax, Trade, and Tariff Policy of the Department of Treasury and Commissioner of CBP. See section 109 of TFTEA.

⁸ For a list of COAC recommendations that were considered open as of April 27, 2016, see Commercial Customs Operations Advisory Committee, *Term to Date Recommendations: Trade Modernization Subcommittee, Recommendation Nos. 10046 -10047* (April 27, 2016), available at https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/_COAC%20Recommendations%20To%20Date%2010001%20-%2010412.pdf.

individual brokers. This Task Force was comprised of representatives throughout CBP and licensed customs brokers from around the country with decades of experience with international trade. Through this Task Force, members provided valuable input, advice, and operational perspectives.

In conjunction with the work of the Task Force and a previous COAC recommendation,⁹ CBP published an advance notice of proposed rulemaking (ANPRM) in the *Federal Register* (85 FR 68260) on October 28, 2020. The ANPRM announced that CBP was considering the adoption of a continuing education requirement for licensed customs brokers. The ANPRM solicited comments on the tentative framework developed by the Task Force for purposes of gathering further information and data from the broader customs broker community. This request for information and data assisted CBP in considering whether, and if so what type of, requirements would contribute to increased trade compliance. The ANPRM solicited comments on the following issues:

- The number of hours of continuing education that customs brokers should be required to complete;
- The customs broker license holders who should be required to complete continuing education (including license holders who should be exempt from the requirement or required to complete fewer hours of continuing education);
- The types of training, coursework, or other educational activities that should qualify for continuing education credit;
- The manner in which qualifying continuing broker education should be provided (online or in-person);
- Whether subject-matter-specific education requirements should be imposed;
- How compliance with the continuing broker education requirement should be

⁹ *See id.*

reported to CBP;

- What recordkeeping obligations should exist for the purpose of the continuing broker education requirement;
- What disciplinary actions should be taken if customs brokers fail to report their compliance with the continuing broker education requirement to CBP, or, in the alternative, fail to satisfy the continuing broker education requirement;
- What disciplinary actions should result from the submission of false or misleading information in association with the continuing broker education requirement;
- Whether disciplinary actions should be taken immediately upon a customs broker's failure to report compliance with the continuing broker education requirement, or whether customs brokers should be provided with an opportunity to take corrective actions, including the length of such period;
- Whether there should be an accreditation process to control the quality of the content of the various educational activities (including how such an accreditation process should be administered, how accreditors should be selected, and whether educational activities offered through certain content providers should automatically qualify for continuing education credit);
- The types of training, coursework, or educational activities that customs brokers already complete on a regular basis;
- How often customs brokers currently participate in continuing education;
- The costs customs brokers would anticipate to incur as a result of the implementation of a continuing broker education requirement; and
- The benefits customs brokers would anticipate as a result of the implementation of a continuing broker education requirement.

The ANPRM provided for a 60-day public comment period, which closed on December 28, 2020. During the 60-day public comment period, CBP received 29 comments.¹⁰ Of the 29 submissions, 23 submissions were generally supportive of the implementation of a continuing education requirement and 5 submissions were not supportive of the adoption of a continuing education requirement. One submission consisted of a question, and, thus, neither expressed the commenter's support of or opposition to a continuing education requirement.

In developing this NPRM, CBP carefully considered all public comments submitted in response to the ANPRM. Below are summaries of comments on topics that received the most attention and short descriptions of how they affected the formulation of the framework proposed in this NPRM. CBP will provide more detailed descriptions of the comments and responses to the issues raised therein when responding to the comments received for this NPRM.

1. Required Number of Hours of Continuing Education

Seven commenters recommended that CBP require customs brokers to complete, at a maximum, 36 hours of continuing broker education every three years, rather than the 40 hours of continuing broker education per triennial period that was considered in the ANPRM. CBP believes that requiring individual brokers to complete on average one hour of continuing education per month will make it easier for individual brokers to plan their continuing education. Continuing education requirements of one hour of continuing education per month have been adopted for many other professions.¹¹ CBP also believes that requiring more than 36 hours of continuing broker education per triennial period could be burdensome for the customs broker

¹⁰ The public comments can be viewed in their entirety on the public docket for the ANPRM, Docket No. USCBP 2020-0042, which can be accessed through <https://www.regulations.gov>.

¹¹ See, e.g., Ala. R. Mand. Cont. Legal Ed. Rule 3, *available at* <https://www.alabar.org/assets/2019/02/MCLE-RULE-BOOK-2017-updated-01-17-2017.pdf> (accessed on July 16, 2021); Ark. R. Minimum Con't Legal Educ. Rule 4, *available at* https://rules.arcourts.gov/w/ark/rules-for-minimum-continuing-legal-education#!fragment/zoupio-_Toc44590166/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgBYOBWATgAYAjADZhASgA0ybKUIQAiokK4AntADk6iRDi5sAG30BhJGmgBCZNsJhcCRcrWbrthAGU8pAEJqASgFEAGX8ANQBBADkjfwlSMAAjaFJ2MTEgA (accessed on July 16, 2021); Conn. Practice Book § 2-27A, *available at* <https://www.jud.ct.gov/Publications/PracticeBook/PB.pdf> (accessed on July 16, 2021); Cal Bus & Prof Code § 1275, *available at* https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1275&lawCode=BPC (accessed on July 16, 2021).

community (especially individual brokers operating as or working for small businesses) and a lower requirement would be insufficient to ensure that individual brokers keep abreast of changes in customs and related laws. Accordingly, CBP has adopted the commenters' suggestion in this NPRM and is proposing to require that individual brokers complete 36 hours of continuing broker education per triennial period.

2. *Qualifying Continuing Education*

Seven commenters suggested that corporate, in-house training should be eligible for continuing education credit. CBP agrees that corporate, in-house training can serve as an appropriate continuing education activity, as it is routinely given to employees to provide them with knowledge specifically tailored to their job functions and experience levels. As such, CBP's proposal would allow customs brokers to satisfy the continuing education requirement through corporate, in-house training if the training receives the approval of an accreditor. CBP believes that requiring corporate, in-house training to be approved by an accreditor will ensure that it meets the objectives of the continuing education framework proposed in this NPRM.

Three commenters also suggested that any training or educational activity provided by CBP, or offered by any other U.S. Government agency that routinely offers training relevant to customs business, should automatically qualify for continuing education credit, without the need for accreditation. CBP agrees and believes that these types of activities should automatically qualify for continuing education credit, thus limiting the administrative burden and overall costs associated with the implementation of the proposed rule. Additionally, CBP's trainings are designed to educate the public about important and timely issues facing entities involved in international trade, and, thus, by virtue of their design, meet the objectives of continuing broker education—that is, to assist individual brokers in maintaining a sufficient knowledge of customs matters. Accordingly, CBP adopted the commenters' suggestion in this NPRM.

3. *Specific Subject Matter Content Requirements*

Five commenters raised concerns pertaining to CBP's proposal to require customs brokers to complete a specific number of hours of continuing education on specific subject matter areas (content requirements). In the ANPRM, CBP solicited public comments on the adoption of a continuing broker education framework that would have required the majority (75 percent) of the required continuing education credits to pertain to laws authorizing CBP operations and processes, as well as CBP regulations and programs. Under the proposal considered in the ANPRM, only the remainder (25 percent) would have been available for education focusing on other areas related to international trade (such as other U.S. Government agency requirements).

All commenters that addressed specific subject matter areas raised concerns about the adoption of the ANPRM's stringent content requirement. These commenters noted that such a content requirement would discourage individual brokers from participating in continuing education specifically tailored to their job functions and their experience levels, and, therefore, would inhibit professionalism and competency within the customs broker community. In light of the commenters' concerns, CBP is not proposing to require individual brokers to complete a specific number of hours of continuing education on laws authorizing CBP operations and processes, and CBP regulations and programs. CBP recognizes that the educational needs of individual brokers differ greatly based on each individual broker's position, experience level, and type of employment, and, thus, render content requirements impractical. Additionally, CBP believes that, as CBP and the PGAs offer a sufficient number of free, online-based trainings for an individual broker to meet the required number of continued education credits, there is little risk that an individual broker would opt to complete the same training or educational activity multiple times solely for the purpose of earning the required minimum number of continuing education credits.

4. Recordkeeping Requirements

Four commenters agreed with CBP's suggestion that although individual brokers should maintain records documenting their compliance with the continuing broker education requirement (including specific information), they should not be required to maintain records in any specific format (*i.e.*, electronically or in paper). Although the commenters agreed with this suggestion, several of the commenters requested that a form be developed in the Automated Commercial Environment (ACE) where customs brokers could record their credits as they are earned and accrued. In accordance with the commenters' suggestions, this NPRM does not propose requiring customs brokers to maintain records documenting their compliance with the continuing broker education requirement in any specific form, although the proposed regulations require such records to include certain information and documentation, which are discussed in further detail in section IV.C.4. of this NPRM. CBP appreciates the commenters' suggestion and will consider developing such a tool in ACE. If developed, customs brokers would not be required to use the ACE tool, but it would serve as an option for individuals to track their credits earned. However, this ACE tool would not be a substitute for maintaining records documenting compliance with the continuing broker education requirement.

5. *Economic Impact*

Four commenters raised concerns about the costs of requiring continuing education and the potential impact of a continuing broker education requirement on small businesses. CBP appreciates these comments and has developed the proposed framework for continuing broker education with this concern in mind. In addition to lowering the originally proposed number of required hours of continuing education, CBP is also committed to providing free, online content that will satisfy the continuing broker education requirement. CBP already provides at least 36 hours of training or informational webinars on an *annual* basis, which would allow individual brokers to fully satisfy the continuing broker education requirement through free, CBP-provided content. As described in more detail below, CBP is also proposing that, once accreditation has been obtained for training or educational activities, the vast majority of continuing education

currently obtained at a broker's expense for various certificate programs offered by the private sector would qualify for continuing education credit.

6. *Effectiveness of Continuing Education*

Five commenters were opposed to the introduction of a continuing education requirement for customs brokers, arguing that this would not affect compliance and that customs brokers demonstrate their knowledge of customs business on a transactional basis with their clients. A number of the commenters also requested that customs brokers who do not actively file entries should be exempt from the requirement. CBP disagrees and is proposing that all individual brokers, regardless of filing status, earn continuing education credit, with the exception of those individual brokers who have voluntarily suspended their licenses in accordance with 19 CFR 111.52. Furthermore, CBP continues to believe that the complex and evolving realm of international trade warrants a continuing education framework for individual brokers.

IV. Discussion of Proposed Framework for Continuing Education for Licensed Customs Brokers

CBP is proposing amendments to 19 CFR part 111 to require continuing education for individual customs broker license holders. CBP's proposal includes the addition of a new subpart F to 19 CFR part 111, consisting of §§ 111.101 through 111.104, which will set forth the continuing broker education requirement and the framework for administering this requirement. Proposed § 111.101 sets forth the scope of proposed subpart F, proposed § 111.102 sets forth the obligations that individual customs brokers would have in conjunction with the continuing broker education requirement, proposed § 111.103 contains the requirements that educational activities would be required to meet in order to satisfy the continuing broker education requirement and sets forth an accreditation process for certain training or educational activities, and proposed § 111.104 sets forth the disciplinary proceedings for the failure to comply with the continuing broker education requirement.

CBP is also proposing to amend several existing provisions in 19 CFR part 111. CBP is proposing to require individual brokers to certify and report their compliance with the continuing broker education requirement as part of the submission of the status report, which is due on a triennial basis (hereinafter, referred to as “status report” or “triennial report”) by amending § 111.30(d). Additionally, CBP is proposing to amend § 111.0, which sets forth the scope of part 111, in order to reflect the addition of proposed subpart F, and amend § 111.1, which is a definitional provision, in order to define certain terms as they are used in the context of the continuing broker education requirement. Finally, CBP is proposing to reserve §§ 111.97 through 111.100 for future use. The proposed changes are described in detail below.

A. Modifications to the Scope of 19 CFR Part 111

Section 111.0 sets forth the scope of the provisions contained in 19 CFR part 111, which currently include the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, the duties and responsibilities of customs brokers, and the grounds for disciplining customs brokers. CBP is proposing to revise the second sentence of § 111.0 to reflect the proposed addition of regulatory provisions requiring individual brokers to satisfy a continuing education requirement.

B. Definitions for the Proposed Continuing Broker Education Framework

Section 111.1 provides definitions for terms as they appear in 19 CFR part 111. For purposes of the creation of a continuing education requirement for individual brokers, CBP is proposing the addition of definitions of four terms—“continuing broker education requirement”, “continuing education credit”, “qualifying continuing broker education”, and “triennial period”. Although amended § 111.1 would continue to list definitions in alphabetical order, this section discusses the proposed definitions in logical order, for explanatory purposes.

The term “qualifying continuing broker education” defines any training or educational activity that is eligible or, if required, has been approved for continuing education credit, in accordance with proposed § 111.103. This definition indicates that a wide range of training or

educational activities will meet an individual broker's obligation to complete continuing education, which must satisfy the requirements set forth in proposed § 111.103.

The term "continuing education credit" defines the unit of measurement used for meeting the continuing broker education requirement. The smallest recognized unit is one continuing education credit, which requires 60 minutes of continuous participation in a qualifying continuing broker education program, as defined in proposed § 111.103(a). For qualifying continuing broker education lasting more than 60 minutes, one continuing education credit may be claimed for the first 60 minutes of continuous participation, and half of one continuing education credit may be claimed for every full 30 minutes of continuous participation thereafter. For example, for a qualifying continuing broker education program lasting more than 60 minutes but less than 90 minutes, only one continuing education credit may be claimed. In contrast, for a qualifying continuing broker education program lasting 90 minutes, 1.5 continuing education credits may be claimed.

The term "continuing broker education requirement" defines an individual customs broker license holder's obligation to complete a certain number of continuing education credits of qualifying continuing broker education, as set forth in proposed subpart F of part 111, in order to maintain sufficient knowledge of customs and related laws, regulations, and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and drawback claimants.

The term "triennial period" defines a period of three years commencing on February 1, 1985, or on February 1 in any third year thereafter.¹² As explained in further detail below, CBP is proposing to require individual brokers to report and certify compliance with the continuing broker education requirement on the triennial report. Thus, for purposes of clarification, CBP is

¹² February 1, 1985, was the first due date for the triennial reporting requirement, and, thus, February 1 in any third year thereafter is the date on which the triennial report becomes due. *See* 19 CFR 111.30(d)(1).

proposing a definition for the 3-year period between the due dates of two consecutive status reports.

C. Continuing Education Requirements for Customs Brokers

In addition to requiring individual brokers to participate in continuing education activities, the proposed framework includes provisions imposing additional related duties upon individual brokers, such as reporting and recordkeeping requirements, that promote compliance and allow for the enforcement of the continuing education requirement. For these reasons, the proposed framework also contains provisions authorizing disciplinary actions upon a broker's failure to comply with these requirements. These requirements are contained in proposed §§ 111.102 and 111.104, which are discussed in detail below.

1. Customs Broker License Holders Subject to Continuing Broker Education Requirement

Proposed § 111.102(a) sets forth the customs broker license holders who will be subject to the continuing broker education requirement. Specifically, proposed § 111.102(a) provides that only individual customs broker license holders (individual brokers) will be required to complete qualifying continuing broker education. Proposed § 111.102(a) also exempts two groups of individual brokers from this requirement—namely, individual brokers who have voluntarily suspended their license in accordance with § 111.52, and individual customs broker license holders who have not held their license for an entire triennial period at the time of the submission of the status report as required under § 111.30(d). CBP does not believe that it is necessary to require continuing education for individual brokers who have not held their license for an entire triennial period at the time that their first triennial report is due, because these individual brokers have recently demonstrated a sufficient baseline knowledge of customs matters by passing the customs broker examination.

CBP is proposing to exempt individual brokers who have voluntarily suspended their license from the continuing broker education requirement because customs brokers may choose

to voluntarily suspend their licenses for many reasons, including changes in a broker's personal life or the entry into federal service (which prohibits the customs broker from concurrently serving as a customs broker to transact customs business on behalf of clients in dealings with the federal government). As some of these reasons may prevent a broker from participating in or attending qualifying continuing broker education programs, CBP believes that requiring individual brokers to comply with the continuing broker education requirement during a period of voluntary suspension would be overly burdensome.

At this time, CBP is not proposing to impose a similar obligation onto corporation, partnership, or association brokers (hereinafter, collectively referred to as "corporate brokers"), because knowledge is held at the individual level. The reason is because corporate brokers are comprised of one or more individual brokers and the individual brokers will be subject to the continuing education requirement. Furthermore, the training required of the employees of a customs broker is already taken into consideration when determining whether the license holder exercises responsible supervision and control. Pursuant to 19 CFR 111.28(a), every licensed member or officer of a corporate broker that is an individual broker, as well as every individual broker operating as a sole proprietor, is obligated to exercise responsible supervision and control over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation.¹³ Therefore, individual brokers who serve as members or officials of a corporate broker, as well as individual brokers who operate as sole proprietorships with employees, are already incentivized to ensure that the employees of the sole proprietorship, partnership, association, or corporation complete continuing education. Accordingly, CBP does not believe that it is necessary to impose a similar obligation on corporate brokers at the organizational level.

¹³ Section 111.1 defines the phrase "responsible supervision and control" and provides, in relevant part, that one of the factors that CBP will consider in determining whether the customs broker exercises responsible supervision and control is the training required of the employees of the broker. However, the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance. *See* 19 CFR 111.1.

2. *Required Minimum Number of Continuing Education Credits*

Proposed § 111.102(b) sets forth the number of continuing education credits that individual brokers, who, pursuant to proposed § 111.102(a), are subject to the continuing broker education requirement, must complete. Specifically, proposed § 111.102(b) provides that these individual brokers are required to complete at least 36 continuing education credits per triennial period, except upon the reinstatement of a license following a period of voluntary suspension as described in § 111.52. Upon consideration of the public comments received on the ANPRM, CBP is no longer proposing to require 40 continuing education credits per triennial period, as this will simplify the proration of continuing education credits for the purposes discussed below.

When a broker chooses to reactivate his or her license following a period of voluntary suspension, the broker generally contacts CBP to begin the reinstatement process. This process determines the precise date on which the license will be reinstated, which may occur at any time during the triennial period. Thus, after a period of voluntary suspension, the completion of the full 36 continuing education credits within the remainder of the current triennial period could impose an undue burden upon the individual broker, depending on when during the triennial period the reinstatement occurs. To address this, proposed § 111.102(b) provides that, following the reinstatement of a license after a period of voluntary suspension, the number of continuing education credits required for the triennial period (that is, the triennial period during which the reinstatement of the license occurs) is calculated on a prorated basis, of one continuing education credit for each complete remaining month until the end of the triennial period.

For example, if, following a period of voluntary suspension, an individual broker's license were to be reinstated on March 21, 2028, the individual broker would only be required to complete 22 continuing education credits during the triennial period (February 1, 2027, to February 1, 2030) in which the license was reinstated. Effectively, the amount of continuing education credits required is prorated for the number of full months remaining in the triennial period (April 1, 2028, to February 1, 2030). As another example, if the individual broker's

license were to be reinstated on February 1, 2027, the individual broker would be required to complete all 36 continuing education credits during the triennial period. When, following a period of voluntary suspension, the individual broker contacts CBP to request the reinstatement of the license, CBP will assist the broker in determining the prorated number of continuing education credits that he or she will be required to complete during the current triennial period.

3. *Reporting of Compliance with the Continuing Broker Education Requirement*

Proposed § 111.102(c) provides that individual brokers, who are required to comply with the continuing broker education requirement, will be subject to an additional reporting obligation. Specifically, CBP is proposing to require individual brokers to report and certify their compliance with the continuing broker education requirement upon the submission of the status report required under existing § 111.30(d).

Current § 111.30(d)(1) requires both individual and corporate brokers to file a status report with CBP. The status report is due on February 1 of each third year after 1985, and will be considered timely filed as long as the report is received during the month of February. As part of the submission of the triennial report, customs brokers are required to pay a fee, which is prescribed in paragraph (d) of § 111.96. Status reports must be addressed to the director of the port through which the license was delivered to the licensee (*see* § 111.15), or, since the February 2021 triennial period, can be filed in the eCBP portal (available at <https://e.cbp.dhs.gov/ecbp/#/main>). The information that must be included in a status report submitted by an individual broker is set forth in current § 111.30(d)(2).

As proposed § 111.102(c) would impose upon individual brokers the obligation to report and certify their compliance with the continuing broker education requirement upon the submission of the status report, CBP is also proposing to amend current § 111.30(d)(2) to reflect this obligation by adding a new paragraph (d)(2)(iv) to reflect that individual customs brokers must report and certify their compliance with the continuing broker education requirement. CBP

is also proposing minor grammatical changes to existing paragraphs (d)(2)(ii) and (iii) of § 111.30 in order to allow for the addition of proposed paragraph (d)(2)(iv); however, these changes are not substantive. Individual brokers who file paper-based triennial reports with CBP would report and certify compliance by including a written statement in the triennial report that reports and certifies their compliance with the continuing broker education requirement.

CBP is proposing to require individual brokers to report and certify compliance on the triennial report for two reasons. First, as the status report has been an integral part of maintaining a customs broker license since 1985, this mechanism is familiar to customs brokers and will minimize any additional burden that the new reporting obligation would place upon individual brokers. As individual brokers are already accustomed to the submission of status reports, individual brokers would not need to familiarize themselves with a new type of information collection. Second, aligning the timeframe for continuing education with the three-year filing timeframe for the status report will give individual brokers a number of years to earn the required number of continuing education credits. This will provide them with flexibility and the opportunity to select qualifying continuing broker education programs that best meet their individual educational needs.

4. Recordkeeping Requirements for Individual Customs Brokers

In conjunction with the continuing education requirement, CBP is proposing to require individual brokers to maintain records documenting their completion of the required number of continuing education credits. This requirement is set forth in proposed § 111.102(d), and is intended to enable CBP to verify an individual broker's compliance with the requirements set forth in paragraphs (a) and (b) of proposed § 111.102.

Proposed § 111.102(d)(1) provides that, for a period of three years following the submission of the status report required under § 111.30(d), an individual broker must retain certain information and documentation pertaining to the qualifying continuing broker education completed during the triennial period. Proposed § 111.102(d)(1) contains a list of the type of

information and documentation that must be retained, consisting of: (1) the title of the qualifying continuing broker education attended; (2) the name of the provider or host of the qualifying continuing broker education; (3) the date(s) attended; (4) the number of continuing education credits accrued; (5) the location of the training or educational activity, if the training or educational activity is offered in person; and (6) any documentation received from the provider or host of the qualifying continuing broker education that evidences the individual broker's registration for, attendance at, completion of, or other activity bearing upon the individual broker's participation in and completion of the qualifying continuing broker education. The last item would include receipts or confirmations documenting the individual broker's intention to attend the qualifying continuing broker education program, written or electronic materials provided as part of the attendance of the training or educational activity, or certificates of completion or attendance. An individual broker would only be required to retain such documentation, if such documentation is made available by the provider or host of the qualifying continuing broker education to attendees of the training or educational activity. Unlike the general broker record retention requirement in current 19 CFR 111.23(b), the recordkeeping requirement in proposed § 111.102(d)(1) only requires the records to be retained for a period of three years following the submission of the triennial report (rather than for a five-year period).

Upon consideration of the comments received in response to the ANPRM, CBP is not proposing to require individual brokers to maintain the records in a specific format (*i.e.*, electronically or in paper). For example, if the individual broker received paper documents in the mail or in person from an education provider, the individual broker could retain the information in that form, or could scan and retain it in electronic form. Based on several public comments to the ANPRM, CBP will explore building a tool in ACE that would serve as a place to record and track continuing education credits, but this would not be a substitute for document retention by the individual broker. Individual brokers would not be required to access or use this

tool; rather, it would provide a means to record continuing education credits earned over time if convenient for the individual broker.

Proposed § 111.102(d)(2) provides CBP with authority to request the information and documentation for a period of three years following the submission of the status report required under § 111.30(d)(2). CBP can request the information and documentation be made available for in-person inspection, or be delivered to CBP by either hard-copy or electronic means, or any combination thereof. Proposed § 111.102(d) is intended to enable CBP to verify an individual broker's compliance with the requirements set forth in paragraphs (a) and (b) of this proposed section—that is, the completion of the required number of continuing education credits during the triennial period.

5. *Disciplinary Actions*

Proposed § 111.104 authorizes CBP to take disciplinary actions, if an individual broker, who is required to complete qualifying continuing broker education, submits a triennial report but fails to report and certify his or her compliance with the continuing broker education requirement on the triennial report. These actions take a path of “progressive discipline” by imposing increasingly serious measures following a reasonable time and opportunity to take corrective actions. This approach is rooted in CBP's goal to ensure that all individual brokers participate in continuing education activities, but not to take disciplinary actions against brokers for mere clerical errors, such as the failure to report compliance with the continuing broker education requirement due to a mere oversight.

Proposed § 111.104(a) provides that, if an individual broker, who is required to complete qualifying continuing broker education, submits a triennial report but fails to report and certify his or her compliance with the continuing broker education requirement on the triennial report, CBP will notify the individual broker of his or her noncompliance. Pursuant to proposed § 111.104(a), CBP would send the notification to the address reflected in CBP's records or transmit it electronically pursuant to any electronic means authorized by CBP for that purpose.

This language would authorize CBP to send such notification to the mailing address that the individual broker listed on the status report or via email (if the individual broker's email address is on file with CBP).

Proposed § 111.104(b) requires the noncompliant individual broker to take appropriate corrective actions within 30 calendar days upon the issuance of such notification. During this period, the individual broker would be provided with an opportunity to take corrective actions without being subjected to any disciplinary consequences for his or her noncompliance. As reflected in paragraphs (b)(1) and (2) of proposed § 111.104, the nature of the required corrective actions is determined by the reason for the individual broker's failure to report and certify compliance on the triennial report. If the individual broker completed the required number of continuing education credits, but failed to report and certify his or her compliance with the continuing broker education requirement on the triennial report, the broker would merely be required to submit a corrected triennial report that reflects the broker's compliance. If the individual broker did not report and certify compliance on the triennial report because the broker did not complete the required number of continuing education credits, the broker would be required to complete the required number of continuing education credits and then submit a corrected triennial report.

Proposed § 111.104(c) provides that, if the noncompliant individual broker fails to take the required corrective actions within 30 calendar days upon the issuance of the aforementioned notification, CBP will take actions to suspend the broker's individual license. Upon the suspension of the individual broker's license and the issuance of the order of suspension, the individual broker would be provided with an additional opportunity to take the required corrective actions before CBP would take more serious disciplinary measures. Specifically, in paragraph (d), proposed § 111.104 provides that, if following the suspension of the license the noncompliant individual fails to take the required corrective actions within 120 calendar days upon the issuance of the order of suspension, CBP will take actions to revoke the individual

broker's license without prejudice to the filing of an application for a new license. As proposed § 111.104(d) provides that the individual broker's license would be revoked without prejudice to the filing of an application for a new license, the individual broker would not be prevented from seeking a new individual customs broker license at a later point in time.

Existing § 111.53(c) provides the relevant basis for the suspension and/or revocation of a customs broker's license when an individual broker fails to submit a status report reporting and certifying his or her compliance with the continuing broker education requirement. Section 111.53(c), which authorizes CBP to initiate proceedings for the suspension, for a specific period of time, or revocation of the license or permit of any broker for any violation of a statutory provision enforced by CBP or any rule or regulation issued by CBP, implements 19 U.S.C. 1641(d)(1)(C). Consequently, pursuant to 19 U.S.C. 1641(d)(2)(B), as implemented by subpart D of part 111 (19 CFR part 111, subpart D), CBP would be required to comply with certain formal procedural requirements in suspending or revoking the individual broker's license, which would conclude with the issuance of an order of suspension or revocation. This is reflected in paragraphs (c) and (d) of proposed § 111.104 through the cross-references to subpart D of part 111. As such, CBP is not adopting either of the proposals considered in the ANPRM—that is, to suspend or revoke an individual broker's license by operation of law.

The provisions of proposed § 111.104 would only apply to cases in which an individual broker, who is required to complete qualifying continuing broker education, submits a triennial report but fails to report and certify his or her compliance with the continuing broker education requirement on the triennial report. CBP believes that any other type of misconduct could be sufficiently addressed through existing regulatory provisions. For example, if an individual broker were to fail to timely submit a triennial report, or to submit no triennial report at all, CBP would continue to seek the suspension and/or revocation of the individual broker's license in accordance with the provisions of current § 111.30(d)(4). Additionally, current § 111.53(a), which implements 19 U.S.C. 1641(d)(1)(A), authorizes CBP to initiate proceedings for the

suspension, for a specific period of time, or revocation of the license or permit of a customs broker, if the broker has, among others, made in any report filed with CBP any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any report any material fact which was required.

In the context of the proposed framework, CBP foresees that violations of § 111.53(a) could arise from the following misconduct. First, a violation of § 111.53(a) would occur, if an individual broker were to falsely report and certify compliance with the continuing broker education requirement on the triennial report when, at the time of the submission of the triennial report, the individual broker had not completed the required number of continuing education credits. This would include cases in which an individual broker, who has not yet completed the required number of continuing education credits, submits a triennial report on which the broker reports and certifies compliance, but later completes the required number of continuing education credits. Second, a violation of § 111.53(a) would occur, if, in accordance with proposed § 111.102(d)(2), CBP were to request additional documentation from an individual broker to verify the broker's compliance with the continuing broker education requirement, and the documentation submitted by the broker were to contain any statement which, at the time and in light of the circumstances under which it was made, is false or misleading with respect to any material fact, or omitted a material fact. This would include the submission of falsified documentation, documentation containing false or misleading statements of material fact, or documentation omitting any material fact (such as the title or provider of a continuing education program, if the training or educational activity did not meet the requirements for qualifying continuing broker education). Third, a violation of § 111.53(a) would occur, if, in accordance with proposed § 111.102(d)(2), CBP were to request additional documentation from an individual broker to verify the broker's compliance with the continuing broker education

requirement, and the individual broker were to be unable to submit any documentation in response to CBP's request.

D. Training and Educational Activities that Qualify as Continuing Broker Education

Although amended § 111.1 contains a proposed definition of the term “qualifying continuing broker education”, this definition also provides that, in order to constitute qualifying continuing broker education, a training or educational activity must meet certain additional requirements. These requirements are set forth in paragraphs (a) and (b) of proposed § 111.103. Specifically, paragraph (a)(1) sets forth requirements for categories of educational providers (including both government and non-government providers), while paragraph (a)(2) lists the types of training or educational activities that are recognized for purposes of the continuing broker education requirement. Paragraph (b) of proposed § 111.103 contains provisions pertaining to continuing education credits that are earned as an instructor, discussion leader, and speaker.

1. Categories of Educational Providers

Proposed § 111.103(a)(1) divides training or educational activities into two categories based on the identity of the content provider offering the training or educational activity. Pursuant to proposed paragraph (a)(1)(i), the first category consists of training or educational activities offered by U.S. Government agencies. Specifically, paragraph (a)(1)(i) provides that qualifying continuing broker education constitutes any training or educational activity offered by CBP, whether online or in-person, and any training or educational activity offered by another U.S. Government agency, whether online or in-person, if the content is relevant to customs business. These types of trainings or educational activities would not require the approval of a CBP-selected accreditor and would qualify for continuing education credit automatically.

CBP is proposing that training or educational activities offered by U.S. Government agencies should automatically qualify for continuing education credit, without the approval by a

CBP-selected accreditor, because quality control of the content is less of a concern with regard to this type of content provider. Training or educational activities offered by CBP are designed to educate the public about important and timely issues faced by entities involved in international trade. Thus, CBP believes that, by virtue of their design, these training or educational activities meet the objectives of the continuing broker education framework—that is, to assist individual brokers in maintaining a sufficient knowledge of customs matters. Additionally, CBP believes that other U.S. Government agencies carefully select educational content based on timeliness and importance, and accurately present the content to members of the public.

CBP believes that allowing training or educational activities offered by CBP, or other U.S. Government agencies, if they provide educational content that is relevant to customs business, to automatically qualify for continuing education credit will limit the administrative burden and costs associated with the implementation of the proposal. CBP's proposal deliberately provides individual brokers with wide latitude when determining whether a training or educational activity offered by an U.S. Government agency other than CBP is relevant to customs business. This discretion empowers individual brokers with the ability to select training or educational activities based on their individual educational needs. CBP also anticipates making a list of recommended U.S. Government agency provided training or educational activities publicly available on the CBP website to allow individual brokers to easily identify activities that are free of cost and automatically qualify for continuing education credit.

Pursuant to proposed paragraph (a)(1)(ii), the second category of educational providers consists of training or educational activities offered by a content provider other than a U.S. Government agency. Any training or educational activity not offered by a U.S. Government agency (such as private-sector entities, non-profit organizations, and foreign government agencies), whether online or in-person, will not be considered qualifying continuing broker education, unless the training or educational activity has been approved for continuing education credit by a CBP-selected accreditor before the training or educational activity is provided. CBP

is proposing to require accreditation for such training or educational activities to ensure that they offer educational content that is high-quality, current, relevant, and accurate, and that it is directly tied to customs business.

As noted previously, CBP is not proposing the adoption of subject-matter-specific content requirements at this time in order to enable individual brokers to participate in educational opportunities that provide them with knowledge directly relevant to their specific position and experience level. Additionally, to encourage the creation of low-cost educational opportunities that satisfy the continuing broker education requirement, CBP's proposal does not differentiate between educational opportunities that are offered online or in-person. CBP intends for this to minimize the costs to small businesses and customs brokers in remote locations so that individual brokers will not be required to travel to attend qualifying continuing broker education programs. CBP believes that the opportunity for individual brokers to earn the required number of continued education credits through free, online-based trainings would further incentivize individual brokers to select training or educational activities based on their educational needs and, thereby, limit the risk that individual brokers complete the same training or educational activities multiple times solely for the purpose of earning the required minimum number of continuing education credits.

Regardless of who provides the training or educational activities, CBP anticipates that providers will issue certificates to customs brokers upon completion. CBP will make certificates of attendance available for all of its training or educational activities to those participants who want them. For online-based training or educational activities, CBP will make certificates of attendance available for download or printing at the conclusion of the presentation. For in-person activities, such as the Trade Symposium, CBP will make paper certificates available to licensed customs brokers to pick up prior to the end of the conference. Additionally, because one of the factors to become a CBP-selected accreditor will be to design and develop certificates for approved education providers to use as needed, certificates of attendance will also be

available for any qualifying continuing broker education offered by private, non-profit, or foreign government entities.¹⁴

CBP will work with its PGAs to make them aware of the new continuing education requirements, if finalized, so that the PGAs can consider making available certificates of attendance or completion, whether in electronic or paper form. However, CBP is unable to require its PGAs to provide certificates of attendance or completion. Proposed § 111.102(d)(1)(iv) thus only requires an individual broker to retain any documentation that the individual broker received from the provider or host of the qualifying continuing broker education that evidences the individual broker's registration for, attendance at, completion of, or other activity bearing upon the individual broker's participation in and completion of the qualifying continuing broker education. Therefore, the language in proposed § 111.102(d)(1)(iv) accounts for the possibility that certificates of attendance or completion may not be issued for all qualifying training or educational activities provided by its PGAs.

2. *Recognized Training or Educational Activities*

CBP is proposing that only certain categories of training or educational activities may be considered qualifying continuing broker education. The list of recognized categories of training or educational activities is contained in paragraphs (a)(2)(i) through (iv) of proposed § 111.103. Paragraph (a)(2)(i) provides that the first category consists of coursework, seminars, or workshops, whether online or in-person, that are conducted by an instructor, discussion leader, or speaker. This category would include most webinars, in-house training, university or college courses, or similar educational programs.

Paragraph (a)(2)(ii) provides that the second category includes symposia and conventions, whether online or in-person. This category would include the annual CBP Trade Symposium and similar educational programs. However, meetings that are conducted in

¹⁴ As part of the RFP process, applicants will be required to provide CBP with information how they plan to handle the post-course certification process for those course providers who apply for accreditation.

accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (FACA), are expressly excluded from this category. As such, individual brokers would not be permitted to claim continuing education credit for their participation in committees, subcommittees, workgroups, and any other group organized under the auspices of the Commercial Customs Operations Advisory Committee (COAC), as well as public COAC meetings. CBP is proposing to exclude FACA meetings because these meetings do not serve an educational purpose. FACA meetings are intended, instead, to solicit advice from advisory committee members and to receive input from the public that may later form the basis for government decisions.

The last two categories of recognized training or educational activities are set forth in paragraphs (a)(2)(iii) and (iv) which will permit individual brokers serving as instructors, discussion leaders, or speakers to receive continuing education credit for the time spent preparing a subject matter for presentation and presenting a subject matter (hereinafter, referred to as “special allowance”). Paragraphs (a)(2)(iii) and (iv) provide that the subject matter must be presented as part of a training or educational activity that falls within one of the first two recognized categories of training or educational activities (that is, the categories described in paragraphs (a)(2)(i) and (ii) of proposed § 111.103), and the special allowance for instructors, discussion leaders, or speakers is subject to the conditions and limitations set forth in proposed § 111.103(b).

While CBP is proposing to carve out a special allowance for certain instructors, discussion leaders, or speakers, CBP is not proposing to permit individual brokers to claim continuing education credit for authoring articles, books, or other publications. CBP believes that the learning involved in the authoring of a publication does not necessarily equate to the knowledge derived from a continuing education program that is current and developed by an individual or organization qualified in the relevant subject matter, as the learning does not necessarily include an interactive component. For this reason, CBP is also not including credit

hours for independently reading articles, books, or other publications or for paid subscriptions to these types of materials. If these materials are part of an accredited course, then the course hours may be eligible for continuing education credit.

3. *Special Allowance for Instructors, Discussion Leaders, and Speakers*

Proposed § 111.103(b) sets forth additional requirements and limitations pertaining to the special allowance for instructors, discussion leaders, and speakers. In proposed paragraph (b)(1), CBP sets forth that, contingent upon the approval by a CBP-selected accreditor, an individual broker may claim one continuing education credit for each full 60 minutes spent presenting subject matter, or preparing subject matter for presentation, as a discussion leader, or speaker at a training or educational activity described in paragraphs (a)(2)(i) and (ii) of this section.

However, the special allowance for instructors, discussion leaders, and speakers is subject to limitations, which are set forth in proposed § 111.103(b)(2) and (3). Specifically, proposed § 111.103(b)(2)(i) provides that, for any session of presentation given at one time, regardless of the duration of that session, an individual broker may claim, at a maximum, one continuing education credit for the time spent preparing subject matter for that presentation pursuant to paragraph (b)(1)(ii). Further, proposed § 111.103(b)(2)(ii) also imposes a limit on the total number of continuing education credits that an individual broker can earn based on his or her activities as an instructor, discussion leader, or speaker. This limit is 12 continuing education credits per triennial period. CBP is proposing these limitations to ensure that individual brokers receive education in a broad variety of subject matters, not just provide instructions, possibly exclusively on the same subject matter.

As specified in proposed § 111.103(b)(3), any instructor, discussion leader, or speaker seeking to claim continuing education credit for the preparation of a subject matter for presentation, or the presentation of a subject matter, at one of a training or educational activity described in paragraph (a)(2)(i) or (ii) of proposed § 111.103, must obtain approval by a CBP-selected accreditor, regardless of whether the training or educational activity is offered by a U.S.

Government agency or another provider. CBP is proposing this requirement in order to ensure that the effort and quality of the educational experience derived from the activities as an instructor, discussion leader, or speaker is commensurate with the award of continuing education credit.

Like content providers, the means by which an individual broker claiming continuing education credits under the special allowance would be notified of an accreditor's approval would vary based on the terms of the accreditor's contractual relationship with CBP, which is discussed in further detail in section IV.E. of this NPRM. Depending on the terms of the accreditor's contractual relationship with CBP, the individual broker would be notified of the accreditor's approval either in writing or electronically, or both. CBP anticipates that, as part of the selection process for the accreditors, it will require each accreditor to (1) provide CBP with a running list of activities that the accreditor approved, and/or (2) publish this list on its website. A failure to observe the requirements and limitations set forth in proposed § 111.103(b) would result in a failure to comply with the continuing broker education requirement for the triennial period. Thus, if an individual broker were to fail to observe the requirements and limitations set forth in proposed § 111.103(b) and to report and certify compliance with the continuing broker education requirement on the triennial report, the individual broker would falsely report and certify compliance on the triennial report. As a result, CBP could impose disciplinary actions pursuant to proposed § 111.104 and existing § 111.53(a).

E. Accreditation of Providers of Continuing Broker Education

CBP believes that it is necessary to implement an accreditation process for training or educational activities not offered by a U.S. Government agency, including the special allowance for instructors, discussion leaders, or speakers, to ensure that such activities meet the objectives of the continuing broker education requirement. Due to resource constraints, CBP is not well positioned to administer the accreditation of training and educational activities. Thus, CBP, through the Office of Trade, is proposing to select accreditors who will review and approve or

deny such training or educational activities for continuing education credit. Below is a description of the selection process, which is outlined in proposed § 111.103(c), and the accreditation process, which is outlined in paragraphs (d) and (e) of proposed § 111.103.

1. Selection of Accreditors

As reflected in proposed § 111.103(c), CBP is proposing to select third-party accreditors using common government contracting procedures, which would include the issuance of a Request for Information (RFI) and a Request for Proposal (RFP). CBP would administer this process through the Office of Trade in accordance with the requirements of the Federal Acquisition Regulation (48 CFR chapter 1) (the FAR). While selected accreditors would administer the accreditation of the training or educational activities as part of their contractual relationship with CBP, selected accreditors would not receive a monetary award from CBP as a result of this contractual relationship. However, selected accreditors would be permitted to charge content providers for their services to recoup their expenses in reviewing and approving or denying training or educational activities for continuing education credit, as long as the fees are clearly displayed on the accreditors' website and materials. The remainder of this section lays out the basic framework that CBP is proposing for the review and approval of potential accreditors. The specific obligations that accreditors under contract with CBP would be required to meet would be provided in more detail in the RFI, and then in even more granular detail, in the RFP.

Because this is a new program for both CBP and the customs broker community, CBP plans to initiate the selection process through the issuance of an RFI. The RFI would be posted in the System for Award Management (available at <https://sam.gov/SAM/>) (SAM).¹⁵ The RFI would lay out the basic criteria that CBP believes a future accreditor must meet in order to

¹⁵ SAM is a U.S. Government website operated by the General Services Administration (GSA), 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.

successfully review activities for continuing education credit. Currently, CBP expects to propose the following criteria:

- At least one key official in the entity must have a customs broker's license;
- A demonstrated knowledge of international trade laws, customs laws and regulations, and general customs practices for imported goods and goods subject to drawback;
- A demonstrated knowledge of other U.S. 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 a training or educational 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 or deny trainings or educational activities 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; and
- An estimate of the charge, if any, for approving/denying an activity under consideration for accreditation.

Based on these criteria, along with other details that would be provided in the RFI, CBP would then hold an "industry day" with interested parties. As CBP-selected accreditors would not receive a monetary award from CBP, CBP anticipates that trade associations and law firms specializing in customs matters will make up the majority of parties interested in becoming CBP-

selected accreditors. However, CBP encourages all interested parties to participate in the RFI process as it will provide interested parties with an opportunity to provide input that will shape the accreditation process. As part of this industry day, CBP would present its needs and expectations for the accreditation process and receive input on its initial proposal from parties that are potentially interested in providing accreditation services. This information would then be used to refine the above-listed criteria and prepare an RFP. CBP would then post the RFP in SAM. Following the publication of the RFP, interested parties would then respond with their proposals of how they would administer the accreditation process based on the criteria set forth in the RFP. A party that participated in the RFI process would be under no obligation to put forth a response to the RFP. Conversely, if a party interested in applying to become an accreditor did not respond to the RFI or participate in the industry day process, that party would not be precluded from responding to the RFP. CBP is not proposing an “application fee” for interested parties to submit a response to the RFP (fees to submit responses to RFPs are not permitted under the FAR).

In addition to the publication of the RFI and RFP in SAM, CBP is proposing to announce the availability of the RFI and RFP through the publication of notices in the *Federal Register* by the Executive Assistant Commissioner, Office of Trade. This would ensure that the requests reach as wide an audience as possible, including parties that do not traditionally contract with the U.S. Government. In accordance with the provisions of proposed § 111.103(c), these *Federal Register* notices would contain information pertaining to the criteria that the Office of Trade will use to select an accreditor and the period during which CBP will accept applications by potential accreditors.

Following the issuance and publication of the RFP, CBP would review the proposals received and rate them based on the factors provided in the relevant section of the RFP. Based on these ratings, CBP would then select the accreditors approved for that cycle. Parties not selected for the cycle would have the opportunity to protest CBP’s decision in accordance with

the procedures set forth in the FAR. Following the selection of the approved accreditors, the Office of Trade will notify the approved accreditors of their award, and the Executive Assistant Commissioner, Office of Trade, will publish a notice in the *Federal Register* to inform the public and the customs broker community of the parties approved to provide accreditation services. In accordance with the provisions of proposed § 111.103(c), this *Federal Register* notice would contain information pertaining to the selected accreditors' period of award.

CBP is not proposing to set a target or a limit on the number of accreditors. Rather, the number will be determined by the strength of the proposals received and CBP's needs at the time of the RFP. CBP is proposing to introduce a period of award of three years, subject to renewal. This will provide CBP-selected accreditors with sufficient time to establish their accreditation programs and to begin with the accreditation of educational content while not creating a long period of time during which new interested parties would have to wait for the next selection cycle. In accordance with the provisions of the FAR, either party to the contract—whether the accreditor or CBP—would be permitted to terminate the contract with 30-days' notice. If an accreditor were to leave the program, the Executive Assistant Commissioner, Office of Trade, would publish a notice in the *Federal Register* announcing the departure.

Once awards have been made for the first cycle of accreditors, CBP envisions working closely with them—as a group and as individual parties—to provide directions and instructions, set expectations, develop due dates and milestones, and create a public outreach campaign to inform the affected customs broker community of the new program and opportunities. Once the program has been fully implemented, the Broker Management Branch within the Office of Trade will meet with the accreditors periodically to identify and exchange best practices, address areas of concern, and develop program metrics that can be shared with COAC and other members of the public as needed. Following the first 3-year cycle, CBP will announce the opening of a new application cycle through posts in SAM, and the Executive Assistant Commissioner, Office of Trade, will publish a notice in the *Federal Register* to the same effect.

CBP believes the approach outlined above will meet the following objectives, which CBP believes to be key to the program's success:

1. Multiple approved accreditors, which will 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, such as law firms that specialize in customs law, and non-profit organizations, such as trade associations, to become approved accreditors.

2. *Accreditation Process*

Proposed § 111.103(d) and (e) pertain to the administration of the accreditation process, including the responsibilities of CBP-selected accreditors. Proposed § 111.103(d) reflects that CBP-selected accreditors will administer the accreditation of training or educational activities offered by an entity other than a U.S. Government agency, including the special allowance for instructors, discussion leaders, and speakers, by reviewing and approving or denying training or educational activities for continuing education credit. The accreditation process may vary slightly among CBP-selected accreditors (*e.g.*, fees, timeframe for the review and issuance of an accreditation decision, address to which paper-based accreditation requests must be submitted, and the documents that must be submitted as part of the accreditation request); however, each accreditor will be required to administer the accreditation process within the bounds of a defined set of parameters. These parameters will be defined as part of the RFP. For example, CBP is expecting that, as a result of this process, CBP-selected accreditors will be required to: (1) provide an electronic means for a content provider to submit the details of an activity under consideration; (2) state the average or typical processing time for an accreditation request; and (3) clearly state any charges for the review and approval or denial of an accreditation request.

Although the accreditation process will be defined in more detail as part of the selection process, paragraphs (d) and (e) of proposed § 111.103 contain two requirements. First, in order

to ensure that qualifying continuing broker education programs present educational content that is current and relevant, proposed § 111.103(d) provides that an accreditor's approval of a training or educational activity for continuing education credit is only valid for one year, but can be renewed through any CBP-selected accreditor. As CBP's proposal does not require individual brokers to complete a specific number of hours of continuing education on specific subject matter areas, CBP has chosen to propose to limit the validity of accreditations to one year. CBP believes that this limitation would ensure that content providers regularly update educational content, and, thereby, ensure that qualifying continuing broker education offers educational content that is current and relevant. Second, while a CBP-selected accreditor could approve a training or educational activity offered by one of its officials or members for continuing education credit, proposed § 111.103(e) provides a CBP-selected accreditor may not approve its own trainings or educational activities for continuing education credit. This will require CBP-selected accreditors who are also content providers to seek another CBP-selected accreditor's approval in order for educational content to be eligible for continuing education credit. CBP is proposing this limitation to curb the risk of conflicts of interest and self-dealings.

In order to promote transparency and the accreditors' compliance with their contractual obligations, CBP also intends to provide content providers and instructors, discussion leaders, and speakers seeking to claim continuing education credits under the special allowance with an opportunity to submit complaints and comments to the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, electronically. CBP intends to publish additional information on how to submit complaints and comments concerning specific CBP-selected accreditors, including the email address to which such electronic correspondences should be submitted, on its website. CBP plans to request that content providers (and instructors, discussion leaders, and speakers seeking to claim continuing education credits under the special allowance) who submit a complaint pertaining to the denial of a specific accreditation adhere to the following procedures. First, the content provider (and

instructors, discussion leaders, and speakers seeking to claim continuing education credits under the special allowance) should contact the CBP-selected accreditor to request a detailed explanation as to the denial of the accreditation request. Second, if following the receipt of the detailed explanation, the content provider (and instructors, discussion leaders, and speakers seeking to claim continuing education credits under the special allowance) continues to believe that the denial was in error, the content provider should submit a complaint to CBP, including (1) a copy of all materials that were submitted to the accreditor for consideration, (2) any materials received from the accreditor that explain why the activity was rejected, and (3) a detailed explanation as to why the content provider believes the denial decision to be erroneous.

In order to ensure the successful implementation of the proposed continuing education requirement, CBP will also welcome any other type of feedback, such as feedback on accreditor performance and customer experience, positive interactions, and areas for improvement. CBP plans to compile and share such feedback during the sessions that CBP intends to hold with the accreditors on a periodic basis.

F. Timeframe for the Implementation of the Proposed Changes

This NPRM provides for a public comment period of 60 days. Upon the review of the comments and further consideration, CBP will prepare a final rule. The final rule will adopt the current proposal as final, with or without changes based on consideration of the public comments, and will provide the date on which the changes will become effective. In addition to the 30-day delayed effective date required under the Administrative Procedure Act (5 U.S.C. 553(c)), CBP anticipates that there will be an additional delay between the publication of the final rule and the effective date to allow for proper implementation of the continuing education framework.

As CBP's proposal requires some training and educational activities to be approved for continuing education credit by a CBP-selected accreditor, a delayed effective date will be needed in order to permit for sufficient time for the selection of qualified accreditors, for CBP-

selected accreditors to set up their processes for reviewing accreditation requests, and for content providers to obtain accreditation for their training or educational activities. CBP will ensure that there will be adequate time for compliance by individual brokers if the proposed rule is adopted. For example, in addition to a delayed effective date, CBP may also select an effective date for the final rule that coincides with the beginning of a new triennial period or prorate the number of continuing education credits individual brokers must complete by the end of the triennial period during which the final rule becomes effective.

V. Statutory and Regulatory Requirements

A. Executive Orders 12866 and 13563

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 proposed rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this regulation. CBP has prepared the following analysis to help inform stakeholders of the impacts of this proposed rule.

1. Purpose of Rule

The proposed rule, if implemented, would require active¹⁶ individual customs broker license holders (brokers) to complete 36 hours of continuing education every three years. A continuing education requirement would increase the knowledge base from which brokers work, educate them on changing customs requirements, regulations, and laws, and reduce the number of errors in filings and resultant penalties. CBP believes that requiring continuing education would enhance the credibility and value of an individual customs broker license and improve a

¹⁶ The term “active” refers to a license that has not been suspended.

broker's skills, performance, and productivity. Furthermore, CBP believes that mandating continuing education would increase the quality of service for brokers' clients and importers' compliance with customs laws, which would protect the revenue of the United States and aid in maintaining a high standard of professionalism in the customs broker community.

2. *Background*

On October 28, 2020, CBP published an ANPRM, entitled "Continuing Education for Licensed Customs Brokers", in the *Federal Register* (85 FR 68260). The ANPRM presented a basic outline for a continuing education requirement for licensed customs brokers and posed questions pertaining to the potential costs and benefits of such a requirement. Some of the public comments that CBP received in response to the ANPRM addressed the questions pertaining to the potential costs and benefits of such a requirement, although very few contained specific information or data. Any information that was provided on these issues was taken into account in formulating this analysis. In this NPRM, CBP is proposing a continuing education requirement for individual brokers.

i. *Customs Brokers*

A customs broker assists clients with the importation of goods into the United States, and also with the filing of drawback claims. Customs brokers can be individuals, partnerships, associations, or corporations and must be licensed by CBP. Brokers are responsible for helping clients to meet all relevant requirements for importing and submitting drawback claims, submitting information and payments to CBP on their client's behalf, and exercising responsible supervision and control over their employees and customs business.¹⁷ Only licensed customs brokers may perform customs business.¹⁸ Brokers may have expertise in any number of trade-

¹⁷ For more details on responsible supervision and control, see 19 U.S.C. 1641(b)(4), as well as 19 CFR 111.1 and 111.28.

¹⁸ Customs business is defined as: those activities involving transactions with U.S. Customs and Border Protection concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by U.S. Customs and Border Protection upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with

related areas, including entry, admissibility, classification, valuation, and duty rates for imported goods. Some brokers specialize in a specific area of customs business, like drawback or valuation, while others are more general practitioners. As of 2021, there are 13,822 active individual brokers in the United States.¹⁹

To become a licensed customs broker, an eligible individual²⁰ must pass the Customs Broker License Examination, submit a broker license application and appropriate fees to CBP, and be approved by CBP.²¹ Once applicants have passed the broker exam, they may apply for an individual, corporate, partnership, or association license. To maintain the license, the individual broker or the licensed entity (for corporations, partnership, or associations) must submit a triennial report and requisite fees. The triennial report and fees are due on February 28, every three years, since 1985.²² Once an individual has been approved as a licensed customs broker, the primary ongoing requirement for maintaining the license under current regulations is the submission of the triennial report and appropriate fee in 3-year cycles. Given the established 3-year cycle of triennial reporting, CBP employs a 6-year period of analysis to calculate costs and benefits that result from this proposed rule, accounting for two triennial cycles.

A broker license may be suspended or revoked, or a monetary penalty assessed, for several violations ranging from falsifying information on the license application to willfully and intentionally deceiving, misleading, or threatening a client.²³ CBP generally assesses monetary

U.S. Customs and Border Protection in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to CBP. *See* 19 U.S.C. 1641(a)(2).

¹⁹ A customs broker may voluntarily suspend his or her license for a number of reasons and may re-activate the license at a later time. A broker's license may also be suspended as part of a penalty. For more information, see 19 CFR 111.52.

²⁰ To be eligible, an individual must be a United States citizen at least 21 years of age, in possession of good moral character, and not be an employee of the U.S. Government. For more information, see U.S. Customs and Border Protection, *Becoming a Customs Broker* (Dec. 12, 2018), available at <https://www.cbp.gov/trade/programs-administration/customs-brokers/becoming-customs-broker>.

²¹ To be approved, a broker who has passed the broker exam must also pass an investigation of his or her relevant background. *See* section III.B. of this NPRM.

²² 19 CFR 111.30(d). For more information on the triennial report, see U.S. Customs and Border Protection, *2021 Customs Broker Triennial Status Report FAQs* (Feb. 26, 2021), available at https://help.cbp.gov/s/article/Article-1711?language=en_US.

²³ *See, e.g.*, 19 U.S.C. 1641(d)(1) and (g)(2).

penalties for less serious infractions, such as the incorrect filing of entry forms or the misclassification of goods. However, the majority of civil monetary penalties assessed against brokers for violations of 19 U.S.C. 1641 involve egregious violations or the failure to take satisfactory corrective actions following written notice and a reasonable opportunity to remedy the deficiency as the penalties process provides noncompliant brokers with several opportunities to avoid or mitigate penalty liability.²⁴ Monetary penalties may not exceed \$30,000 per violation and averaged \$22,697 from 2017-2020.²⁵

In the fiscal years from 2017 to 2020, CBP assessed an average of 66 penalties to brokers per year.²⁶ However, in FY 2017 and FY 2018, CBP assessed 20 and 21 penalties, respectively, while in FY 2019 and FY 2020, CBP assessed over 100 penalties each year (see Table 1). The significant increase in penalties from 2018 to 2019 and into 2020 is likely due to rapid changes in the international trade environment in those years. During that time, CBP began enforcing several significant changes in the realm of international trade, including new antidumping and countervailing duties (AD/CVD) and the tariffs imposed by the Trump Administration under section 201 of the Trade Act of 1974 (19 U.S.C. 2251), as amended, section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended, and sections 301 through 310 of the Trade

²⁴ In the case of non-egregious violations, CBP will first attempt to work with the broker through the informed compliance process of communication and education. See U.S. Customs and Border Protection, *Electronic Invoice Program (EIP) and Remote Location Filing (RLF) Handbook* (May 2013), p. 22, available at https://www.cbp.gov/sites/default/files/assets/documents/2016-Dec/Revised_eip_rlf_handbook_12-15_16.pdf. This is an attempt to improve the broker's performance, and precedes the issuance of a pre-penalty notice, which is a written notice that advises the broker of the allegations or complaints against the broker. See *id.*; 19 CFR 111.92(a). If this process fails to remedy the deficiencies, or in case of egregious violations, CBP will issue a pre-penalty notice to the broker, which, *inter alia*, explains that the broker has the right to respond to the allegations or complaints. See 19 CFR 111.92(a). If the broker files a timely response to the pre-penalty notice, CBP will either cancel the case, issue a penalty notice in an amount lower than that provided in the pre-penalty notice, or issue a penalty notice in the same amount as the pre-penalty notice. See 19 CFR 111.92(b). Upon the issuance of the penalty notice, the broker is afforded the opportunity to file a petition for relief in accordance with the provisions of 19 CFR part 171, which may result in the cancellation or mitigation of the penalty, and subsequently a supplemental petition for relief. See 19 CFR 111.93 and 111.95.

²⁵ 19 U.S.C. 1641(d)(2)(B). Penalty information comes from CBP's Seized Currency and Asset Tracking System (SEACATS). Although the average value of assessed penalty is \$22,697, CBP allows brokers to mitigate penalties, such that the amount collected is often significantly less, averaging \$2,664 from 2017-2020.

²⁶ SEACATS.

Act of 1974 (19 U.S.C. 2411 *et seq.*), as amended.²⁷ These changes affected a significant number of imported goods. CBP provided many opportunities for individual brokers to learn about the changes, including webinars, Question and Answer sessions, public forums, and *Federal Register* notices. External organizations, like regional broker associations, also provided information regarding these changes to the customs laws, which would have led to greater understanding for individual brokers.

Although CBP sought information in the ANPRM on the number of companies employing brokers who already complete continuing education, CBP did not receive enough specific information to estimate the proportion of companies already providing ongoing training. However, based on information gathered via self-reporting by individual brokers, CBP is aware of about 300 companies that employ at least one broker who holds an industry certification that requires annual continuing education.²⁸ In the fiscal years from 2017 to 2019, those companies were responsible for 54 percent of the entries but only 10 percent of the penalties.²⁹ Overall, these 300 companies filed 73,906,967 of 136,466,361 filed entries between 2017 and 2020, but only account for 26 of 267 total penalties assessed in that period.³⁰ For companies outside of this group, CBP does not know how much continuing education is currently taken.

Table 1. Annual Penalties Assessed by CBP

| FY | Number of Penalties |
|-----------|----------------------------|
| 2017 | 20 |
| 2018 | 21 |
| 2019 | 119 |
| 2020 | 106 |

²⁷ Trade remedies implemented by CBP include Section 201 trade remedies on solar cells and panels, and washing machines and parts; Section 232 trade remedies on aluminum and steel; Section 232 trade remedies on derivatives; Section 301 trade remedies to be assessed on certain goods from China; and Section 301 trade remedies to enforce U.S. rights in the large civil aircraft dispute before the World Trade Organization. See U.S. Customs and Border Protection, *Trade Remedies*, available at <https://www.cbp.gov/trade/programs-administration/trade-remedies> (last visited on May 11, 2021).

²⁸ Information was provided by the National Customs Broker and Forwarders Association of America (NCBFAA). Nine companies employ at least 48 brokers certified by programs provided by the NCBFAA's Education Institute (NEI), and often employ more. An additional 292 companies employing at least one broker with an NEI certification were identified via a survey of NEI's students.

²⁹ Significant at the 99 percent confidence level.

³⁰ Entry data was pulled from ACE, and penalty data from SEACATS.

ii. Continuing Education

Continuing education refers to the training and learning pursued by professionals outside of the formal education system, usually as part of career development. Many licensed professions have some sort of continuing education requirement for license-holders, including accountants, medical professionals, and teachers.³¹ Continuing education is particularly important for professions characterized by continuously changing rules, standards, and norms. Customs and international trade is one such profession. Since 2000, the United States has added two new preferential trade programs and several new free trade agreements, the most recent being the USMCA, which replaced the NAFTA.³² Additionally, the logistical aspects of customs have changed significantly over time. For example, CBP introduced the single window, enabling most CBP forms to be submitted electronically through the Automated Commercial Environment (ACE), which was fully implemented in 2016, with added functionalities being deployed on an ongoing basis.

There have been several other significant changes to the customs environment, including the implementation of TFTEA, changes in duty rates and tariffs, and the modernization of the drawback requirements.³³ Customs brokers must maintain awareness of and adapt to these changes to provide quality service to clients. However, aside from the broker exam at the beginning of their careers, brokers do not currently have any requirements ensuring they maintain up-to-date knowledge of customs rules, regulations, and practices. As stated above, CBP believes that the vigorous pace and expanding scope of international trade require a more

³¹ The number of hours of continuing education required for many professions varies by state as the state is the licensing authority.

³² In October 2000, the United States implemented the Caribbean Basin Trade Partnership Act, which will expire in 2030 (<https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/caribbean-basin-initiative/cbtpa>). The African Growth and Opportunity Act was also enacted in 2000 (<https://ustr.gov/issue-areas/trade-development/preference-programs/african-growth-and-opportunity-act-agoa>). *See* <https://www.state.gov/trade-agreements/outcomes-of-current-u-s-trade-agreements/> for a list of free trade agreements currently in force.

³³ *See* section III.C. of this NPRM.

stringent continuing education framework for individual brokers who provide guidance to importers and drawback claimants.

The effects of continuing education programs are not easily measured and not often the subject of research.³⁴ Some studies show that various licensed professions do see a mild increase in positive perception of their industry, performance, and professionalism after the implementation of continuing education requirements.³⁵ Studies have also demonstrated a positive link between continuing education for teachers and student outcomes as well as between continuing medical education and patient outcomes.³⁶ Additionally, one study found that continuing professional education was correlated to an improvement in financial outcomes for accounting firms, particularly large firms.³⁷ Finally, a study of IRS-certified tax preparers found that mandatory continuing education was potentially linked to reduced civil penalties, a decrease in non-compliance, and increased accuracy of tax returns.³⁸

Under the terms of the proposed rule, individual brokers would be required to complete 36 hours of accredited continuing education over each 3-year reporting period. Qualifying activities would include attending or presenting at events, such as courses, seminars, symposia, and conventions.³⁹ Brokers would be required to self-attest to the completion of the required continuing education on each triennial report and maintain records consisting of certain

³⁴ “Evaluation of Current Customs Broker Continuing Education Practices and Literature Review of Continuing Education in Other Professions.” Report for CBP prepared by International Economics, Inc. (IEC) on June 30, 2014. This document is included in the docket for this NPRM, which is posted on Regulations.gov.

³⁵ See Bradley, S., Drapeau, M. and DeStefano, J. (2012), The relationship between continuing education and perceived competence, professional support, and professional value among clinical psychologists. *J. Contin. Educ. Health Prof.*, 32: 31-38; O’Leary, P. F., Quinlan, T. J., & Richards, R. L. (2011). Insurance Professionals’ Perceptions of Continuing Education Requirements. *Journal of Insurance Regulation*, 30, 101–117; and Wessels, S. (2007). Accountants’ Perceptions of the Effectiveness of Mandatory Continuing Professional Education. *Accounting Education*, 16(4), 365–378.

³⁶ Darling-Hammond, L., Hyler, M.E., and Gardner, M. (2017). *Effective Teacher Professional Development*. Learning Policy Institute; Cervero, R. M., & Gaines, J.K. (2014). Effectiveness of continuing medical education: updated synthesis of systematic reviews. Accreditation Council for Continuing Medical Education.

³⁷ Chen, Y.-S., Chang, B.-G., & Lee, C.-C. (2008). The association between continuing professional education and financial performance of public accounting firms. *International Journal of Human Resource Management*, 19(9), 1720–1737.

³⁸ Diehl, K. A. (2015). Does Requiring Registration, Testing, and Continuing Professional Education for Paid Tax Preparers Improve the Compliance and Accuracy of Tax Returns? - US Results. *Journal of Business & Accounting*, 8(1), 138–147.

³⁹ See proposed 19 CFR 111.103(a).

documentation received from the provider or host of the qualifying continuing broker education, if such documentation was made available to the broker, and containing information pertaining to the dates, titles, providers, credit hours earned, and location (if applicable) for each training.. The records can be in any format (*i.e.*, electronically or on paper), and the proposed regulations provide CBP with authority to conduct a compliance audit and to request such records for a period of three years following the submission of the status report.

iii. Accreditation

To ensure the quality and relevance of continuing education offerings, they are often accredited by a leading body within the field in question. For example, the American Medical Association (AMA) is accredited to provide training by the Accreditation Council for Continuing Medical Education.⁴⁰ An accreditor is responsible for reviewing course content and determining the number of credits or hours to be granted for each course.

Under the proposed rule, after an application process (using the RFP, as described above), CBP would designate entities outside of CBP to act as accreditors for customs broker continuing education. Every three years, CBP would release an RFP soliciting applications to become an accreditor for the customs broker continuing education program. Every three years following the first cycle, existing accreditors would also apply for renewal. To apply, potential and existing accreditors would submit an application to CBP detailing their standards for accreditation, quality control practices, application process, and other information. A panel of CBP experts would convene to review and approve or deny applications. Once approved, accreditors could begin accepting submissions from courses or companies seeking accreditation. Note that training or educational activities offered by U.S. Government agencies, including CBP,

⁴⁰ See American Medical Association, *About the AMA's CME Accreditation*, available at <https://edhub.ama-assn.org/pages/ama-cme> (last accessed on May 11, 2021).

automatically qualify for continuing education credit, without the approval by a CBP-selected accreditor.⁴¹

iv. Performance Improvement

Once brokers have passed the broker exam, thereby proving their basic knowledge and competency to perform the duties of a licensed customs broker at the time of the exam, they are free to practice in perpetuity unless the license is suspended or revoked. Statute dictates that while practicing under the auspices of his or her broker license, a customs broker must maintain responsible supervision and control.⁴² CBP's regulations likewise place additional legal obligations upon customs brokers, including, but not limited to, the requirement for exercising due diligence in making financial settlements, answering correspondence, and preparing or assisting in the preparation and filing of information relating to customs business.⁴³ Staying current on developments in customs law is needed for customs brokers to comply with their legal obligations, but presently there are no standards for how much continuing education is needed.

Under baseline conditions, meaning the world as it is now, CBP does not require brokers to complete any additional training or prove their ongoing knowledge. The broker exam only attests knowledge of customs and related laws that are in place at the time of the exam. While the exam ensures that brokers have a solid base level of knowledge when they begin practicing, there is no requirement that they keep up the knowledge, and evidence suggests that as more time passes since brokers took their exam, the more errors they make. Brokers who were assessed penalties by CBP between 2017 and 2020 have held their individual broker license for, on average, 37 years. In contrast, the average individual broker license is 24 years old. This suggests that as more time passes since the passing of the customs broker exam, more errors are made. Furthermore, the exam does not test for any of the requirements of the more than 40

⁴¹ Per proposed § 111.103(a)(1)(i), a training or educational activity offered by a U.S. Government agency other than CBP must be relevant to customs business.

⁴² See 19 U.S.C. 1641(b)(4).

⁴³ See 19 CFR 111.29(a), and 19 CFR part 111 generally for additional obligations.

PGAs involved in regulating imports. Depending on the brokers' needs, CBP believes that continuing education should also include courses relating to the PGAs' international trade requirements, although there is no minimum requirement for certain subject matters in this proposed rule.

Given the often fast-paced and evolving nature of the international trade environment, CBP believes that a continuing education requirement would help to ensure that brokers remain current with their understanding of international trade laws and continue to expand their knowledge of customs regulations and practices. A more competent and educated customs broker community would also prevent costly errors, potentially saving brokers' clients time and money, as well as relieving CBP from expending valuable audit and penalty assessment and collection resources.

3. Overview of Assessment

The proposed rule would result in costs and benefits for customs brokers, accreditors, providers of continuing education, and CBP. Many of the costs for brokers come in the form of time spent researching, registering for, attending, and reporting trainings. Brokers would also experience some opportunity cost as they forgo time spent on other tasks in favor of fulfilling a continuing education requirement. Accreditors must apply to CBP. Though CBP would not charge a fee, the accreditors would need to spend time in creating their applications. Similarly, providers of continuing education must apply to accreditors to have their coursework certified. Finally, CBP must designate accreditors, and, following the full implementation of the proposed framework, CBP may audit individual brokers for compliance.

The benefits from the proposed rule would be largely qualitative. A continuing education requirement would help to professionalize and improve the reputation of the customs broker community, as well as to improve customer service and outcomes. Quantitatively, continuing education would likely lead to a reduction in errors in documentation and associated penalties assessed by CBP for some infractions and violations. Not only would individual brokers not

need to pay the associated penalties, but CBP would save the time of identifying, assessing, and collecting such penalties. Similarly, CBP would likely see a reduction in regulatory audits of individual brokers.

4. *Historical and Projected Populations Affected by the Rule*

The proposed rule applies to any individual holding an active customs broker license.⁴⁴ Brokers who have voluntarily suspended their licenses are not required to complete continuing education until they elect to reactivate their license, at which point the requirements are pro-rated depending upon the timing within the triennial reporting cycle. Brokers who have not held their license for an entire triennial period at the time their first triennial report is due are also exempted from completing training and reporting in their first triennial report, though are bound by the terms of the proposed rule in the following years. As of 2021, there are 13,822 active, individual broker licenses.⁴⁵ Because 2021 is a reporting year and triennial reports are due in February, those brokers who receive their licenses in 2021, 2022, and 2023 will only be required to complete continuing education beginning on February 1, 2024, the next reporting year.⁴⁶ Similarly, brokers who receive licenses in 2024, 2025, and 2026 would not need to pursue continuing education until after their first report is due in 2027.

CBP approves approximately 600 new licenses per year, although the number of licenses added annually has been decreasing since 2015. *See* Table 2 for a summary of licensing history for the previous six years.

Table 2. Licensing History from 2015-2020

⁴⁴ Entities holding corporate, association, or partnership licenses must employ at least one individual broker, who would be required to comply with the rule. *See* 19 CFR 111.11(a) and (b).

⁴⁵ 2021 is triennial reporting year. The CBP Broker Management Branch anticipates that the number of active, individual customs brokers could decrease by approximately 600-1,000 in May-July of 2021 as brokers choose not to renew or to voluntarily suspend their licenses. This number would be partially offset by new, individual customs brokers applying for licenses after passing the broker exam, which is held bi-annually.

⁴⁶ Triennial reports are due in February. Therefore, all those brokers who receive licenses in 2021, 2022, and 2023 will submit their first triennial reports in February of 2024 and would then need to complete 36 hours of training before the triennial report is due in February of 2027.

| Year | Total Licenses ⁴⁷ | Corporate Licenses | Individual Licenses |
|--------------------|------------------------------|--------------------|---------------------|
| 2015 | 770 | 16 | 754 |
| 2016 | 653 | 21 | 632 |
| 2017 | 580 | 16 | 564 |
| 2018 | 558 | 27 | 531 |
| 2019 | 464 | 15 | 449 |
| 2020 ⁴⁸ | 187 | 7 | 180 |
| Total | 3,212 | 102 | 3,110 |

Based on an average rate of decline of 12 percent in the number of individual licenses issued, CBP would likely issue 1,754 new individual licenses over a 6-year period of analysis from 2021-2026 (see Table 3), though not all of those license holders would be required to complete continuing education during the 6-year period of analysis. Each of these new individual license holders would need to comply with the terms of the proposed rule once it is in effect and they have completed their first triennial report. All 13,822 individual brokers active at the time the rule is implemented would be required to complete continuing education from February 1, 2021 – February 1, 2024.⁴⁹ In 2024, the 1,045 individual brokers who CBP projects would receive licenses from 2021-2023 would need to begin complying with the terms of the proposed rule. Brokers who receive licenses in 2024-2026 would not need to comply with the proposed rule until after their first triennial reporting cycle, which would fall outside of the period of analysis. In total, therefore, CBP estimates that 14,867 brokers would be required to abide by the rule in the six years from 2021 to 2026.

Table 3. Projected Licenses Issued from 2021-2026

| Year | Total Licenses Issued | Corporate Licenses | Individual Licenses | New Licenses Affected by the Rule |
|------|-----------------------|--------------------|---------------------|-----------------------------------|
| 2021 | 408 | 13 | 394 | 0 |
| 2022 | 358 | 12 | 346 | 0 |

⁴⁷ CBP sometimes issues licenses that are later suspended or terminated (either voluntarily or as a penalty). This table includes all licenses issued in these years that remain active as of 2021, as only holders of an active license would need to abide by the terms of the rule.

⁴⁸ The number of licenses applied for and issued in 2020 was significantly lower than in previous years due to the effects of the COVID-19 pandemic and related closures and delays. CBP excluded this year from calculations of growth rates due to its anomalous nature. 2021 may also be affected similarly, but CBP cannot predict to what extent.

⁴⁹ The exact timing of the requirement will vary depending on when the final rule goes into effect, and the requirement will be prorated based on the time left until the triennial report is due. For the purposes of this analysis, we estimate the costs for the hypothetical period from 2021-2027.

| | | | | |
|--------------|--------------|-----------|--------------|--------------|
| 2023 | 315 | 10 | 304 | 0 |
| 2024 | 276 | 9 | 267 | 1,045 |
| 2025 | 243 | 8 | 235 | 0 |
| 2026 | 213 | 7 | 206 | 0 |
| Total | 1,812 | 59 | 1,754 | 1,045 |

*Totals may not sum due to rounding.

Although the majority of active individual brokers would be required to complete continuing education under the proposed rule, feedback from the broker community indicates that many brokers already complete the amount of continuing education that would satisfy this requirement.⁵⁰ Many companies that employ brokers provide and require in-house training and continuing education. Both independent brokers and brokers employed by brokerages often attend government-sponsored webinars, as well as trade conferences and symposia, which would qualify as continuing education under the terms of the proposed rule. Many brokers also pursue professional certifications like the National Customs Brokers and Freight Forwarders Association of America’s (NCBFAA) Certified Customs Specialist (CCS) and Certified Export Specialist (CES).⁵¹ Under the baseline, or the world as it is now, these brokers likely would be in compliance with the proposed rule and, assuming similar activities if a continuing education requirement is imposed, would not incur new costs under the new requirements, except for new reporting costs.

Overall, CBP estimates that approximately 60 percent of individual brokers already pursue continuing education and would be in compliance with the rule.⁵² CBP bases this estimation on several factors. First, the NCBFAA estimates that approximately 4,456 brokers

⁵⁰ Feedback was provided in the form of public comments on the ANPRM. Additional feedback was provided in various meetings and discussions between CBP personnel and customs brokers, as well as at trade conferences and meetings of the Task Force for Continuing Education for Licensed Customs Brokers, a part of the COAC. See I.E. Development of the Proposed Continuing Broker Education Requirement, above.

⁵¹ We included both brokers qualifying as CCS and CES in our analysis as the coursework for both has significant overlap and is relevant to customs business.

⁵² CBP requested information about the proportion of individual brokers already complying with the rule in the ANPRM. Although CBP did not receive specific information in the public comments, several commenters said they would be compliant and believed that significant numbers of other brokers would be as well. Many also noted that their companies require their broker employees to complete continuing education.

hold a CCS or CES in 2020, representing 29 percent of total individual brokers.⁵³ In order to maintain these professional certifications, these brokers are required to earn 20 continuing education credits per year.⁵⁴ Additionally, public comments in response to the ANPRM, as well as discussions between CBP and various broker organizations, indicate that most large businesses employing brokers already provide, and often mandate, internal training and continuing education. Based on data from the U.S. Census Bureau, approximately 61 percent of those employed within the Freight Transportation Arrangement Industry (North American Industry Classification System (NAICS) code 448510) are not employed by small businesses. A small business within the Freight Transportation Arrangement Industry is defined as one whose annual receipts are less than \$16.5 million, regardless of the number of employees.⁵⁵ Table 4 shows the receipts per firm, in millions of dollars, for firms employing each number of employees.⁵⁶ The average firm within Categories 7 and 9 has annual receipts of greater than \$16.5 million and is considered a large business. These firms employ 161,463 people, or approximately 61 percent of the total employees in the industry.

Table 4. Small Businesses in the Freight Transportation Arrangement Industry

| Employment Size⁵⁷ | Number of Employees | Preliminary Receipts (all firms, \$1,000s)⁵⁸ | Receipts Per Firm (\$) | Small Business? |
|-------------------------------------|----------------------------|--|-------------------------------|------------------------|
| 01: Total | 265,192 | \$67,276,572 | \$4,454,222 | - |
| 02: <5 | 15,939 | \$6,315,166 | \$708,614 | Yes |
| 03: 5-9 | 18,025 | \$5,392,992 | \$1,974,732 | Yes |

⁵³ Discussion with officials at the NCBFAA on April 5, 2021. This includes brokers renewing their certification in 2020, as well as those becoming certified for the first time. The CCS certification program requires enough hours of continuing education to comply with the terms of the proposed rule and the NCBFAA has expressed interest in becoming an accredited provider.

⁵⁴ See National Customs Brokers & Forwarders Association of America, Inc., *CES FAQs*, available at https://www.ncbfaa.org/Scripts/4Disapi.dll/4DCGI/cms/review.html?Action=CMS_Document&DocID=13806&MenuKey=education (last accessed on July 2, 2021); National Customs Brokers & Forwarders Association of America, Inc., *CCS FAQs*, available at https://www.ncbfaa.org/Scripts/4Disapi.dll/4DCGI/cms/review.html?Action=CMS_Document&DocID=13803&MenuKey=education (last accessed on July 2, 2021).

⁵⁵ Small business size standards are defined in 13 CFR 121.

⁵⁶ United States Census Bureau, “2017 County Business Patterns and 2017 Economic Census,” Released March 6, 2020, <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>. Accessed March 15, 2021.

⁵⁷ Note that some of the categories are sums of other categories. For example, Category 8, <500, is a sum of Categories 2, 3, 4, 6, and 7. Thus, Categories 7 and 9 are not consecutive, but represent all firms employing 100 or more people.

⁵⁸ The Survey of U.S. Businesses (SUSB) from which this data is taken is conducted in years ending in 2 and 7. Note that finalized results from the 2017 survey are scheduled for release in May of 2021.

| | | | | |
|-------------|---------|--------------|---------------|-----|
| 04: 10-19 | 20,288 | \$5,870,163 | \$3,851,813 | Yes |
| 05: <20 | 54,252 | \$17,578,321 | \$1,335,029 | Yes |
| 06: 20-99 | 49,477 | \$13,973,780 | \$10,397,158 | Yes |
| 07: 100-499 | 44,715 | \$10,886,028 | \$30,493,076 | No |
| 08: <500 | 148,444 | \$42,438,129 | \$2,854,327 | Yes |
| 09: 500+ | 116,748 | \$24,838,443 | \$105,247,640 | No |

Given the proportion of brokers working for larger businesses, the feedback on the ANPRM indicating high rates of compliance, the proportion of brokers pursuing certifications, and input from CBP subject matter experts who frequently interact with the broker community, CBP estimates that approximately 60 percent of individual brokers are already in compliance with the requirements of the proposed rule and would not face new costs, assuming a continuing level of similar activity, aside from recordkeeping and reporting, as a result of the rule’s implementation. Based on the likely proportion of brokers already in compliance, CBP estimates that 5,947 affected brokers, or approximately 40 percent, would need to come into compliance with the proposed rule over a 6-year period of analysis (see Table 5). We request comment on our assumption that 60 percent of brokers already spend at least 36 hours per 3-year period on continuing education and that the remaining 40 percent of brokers would need to increase their training by the full 36 hours triennially to meet the proposed requirement.

Table 5. Projection of Brokers Affected by the Proposed Rule

| Year | Total Licenses | Proportion in Compliance | Total Licensed Brokers Affected |
|--------------|----------------|--------------------------|---------------------------------|
| 2021 | 13,822 | 60% | 5,529 |
| 2022 | 13,822 | 60% | 5,529 |
| 2023 | 13,822 | 60% | 5,529 |
| 2024 | 14,867 | 60% | 5,947 |
| 2025 | 14,867 | 60% | 5,947 |
| 2026 | 14,867 | 60% | 5,947 |
| Total | 14,867 | - | 5,947 |

Although individual brokers are the primary party affected by the terms of the proposed rule, the rule would also have an impact on CBP, providers of continuing education, and the bodies who accredit continuing education. Each party would see both costs and benefits under the proposed rule.

5. *Costs of the Rule*

i. To Brokers

The primary cost to individual brokers upon implementation of the rule would be those costs associated with finding and attending 36 hours of continuing education over a 3-year period. These costs include time spent researching reputable and relevant trainings, travel and incidental expenses to attend in-person events like conferences, and the tuition or fees for the courses themselves. Many brokers might satisfy the continuing education requirement with training supplied by their employers. Other brokers, particularly those self-employed or employed by small businesses, would need to seek external training. For external training, brokers may attend free webinars, seminars, and trade events sponsored by CBP, other government agencies, and various related organizations like local freight forwarder and broker associations.⁵⁹ Alternatively, brokers might choose paid trainings, conferences, or symposia, or seek certifications offered by trade organizations or educational institutions.

CBP does not know exactly which option each individual broker is likely to choose. Many brokers already hold certifications, attend webinars, and fulfill internal training requirements, though they may need to increase the number of hours completed to comply with the proposed rule. Therefore, CBP has estimated a range of costs. Some brokers would fulfill their proposed continuing education requirements with only free trainings. Others would follow a medium-cost path by opting for a mix of free, lower-cost, and internal trainings. CBP further assumes that brokers electing the medium-cost path would travel to attend one major conference or symposium in-person per year. Finally, some would meet requirements by completing only paid courses representing the highest-cost offerings. CBP assumes that brokers choosing the higher-cost option would travel to attend an average of two conferences per year.

⁵⁹ For example, the Florida Customs Broker and Forwarders Association offers both paid and free events. Information on CBP-hosted webinars can be found at <https://www.cbp.gov/trade/stakeholder-engagement/webinars>. Many other government agencies also provide webinars on trade-related topics. For example, in 2020, the Food and Drug Administration (FDA) hosted a series of webinars on the importation of medical devices in light of the COVID-19 pandemic. See <https://www.fda.gov/medical-devices/workshops-conferences-medical-devices/webinar-series-respirators-and-other-personal-protective-equipment-ppe-health-care-personnel-use>.

There are several organizations that provide continuing education for customs brokers, ranging from regional broker associations to national entities, such as the American Association of Exporters and Importers (AAEI). Continuing education that qualifies under the terms of the proposed rule includes webinars, seminars, and trade conferences. The hourly cost of such trainings (excluding free events provided by government agencies and other organizations) usually ranges from around \$25 to \$70. Fees are often tiered based on membership of the hosting organization. Members of an organization may pay \$25 while non-members pay \$45. CBP cannot predict which organizations would seek accreditation for their events, although all free webinars and trainings hosted by Federal government agencies would be automatically accredited. Therefore, we assume that the average hourly monetary cost would range from \$0.00 (low) to \$30 (medium) to \$50 (high). This assumption is based on current fees charged for various continuing education certifications, webinars, and trade conferences.⁶⁰

In addition to fees, individual brokers would need to spend some time in researching relevant and accredited trainings. CBP assumes that a broker would spend approximately three hours finding and registering for continuing education during every triennial period. Many individual brokers are members of both local and national organizations that provide continuing education opportunities and would likely be notified of opportunities via newsletters or listservs. Other individual brokers would need to spend some time finding and verifying accreditation for qualifying events. All individual brokers would spend some time registering for events. Based on an average fully-loaded wage rate of \$31.27, the process of researching and registering for trainings would cost brokers approximately \$2.61 per credit hour.⁶¹

⁶⁰ CBP does not have information on the cost for an employer to provide training internally, although such information was requested in the ANPRM. CBP believes the cost for internal training would be closer to that of attending external trainings as a member, since member fees are likely much closer to base cost of provision than non-member fees.

⁶¹ Wage rate source: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, “May 2019 National Occupational Employment and Wage Estimates, United States.” Updated March 31, 2020. Available at https://www.bls.gov/oes/2019/may/oes_nat.htm. Accessed June 12, 2020; U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004 – December 2019, “Table 3. Civilian workers, by occupational group: employer costs per hours worked

Many individual brokers also travel to attend trade conferences each year. CBP assumes that those brokers electing the lower-cost options would forgo travel and either attend virtually (paying only the fee) or not attend at all. CBP assumes that brokers in the medium-cost tier would travel to attend one conference each year, while brokers in the high-cost tier would travel to attend two conferences.⁶² Tuition and fees for conferences, broken down into an hourly rate, are already accounted for in the average costs of \$30-\$50 per hour. Traveling to attend a single 3-day conference costs approximately \$245 in airfare, \$288 for lodging, and \$165 for meals and incidentals, for a total of \$698 for one conference or \$1,396 for two conferences (see Table 6).⁶³ Spread across 36 hours of training, travel costs account for an additional \$19.39 per hour (medium) or \$38.78 per hour (high).

Table 6. Travel and Incidental Costs to Attend In-Person Events (2021 U.S. Dollars)

| Cost | General Cost | Low | Medium | High |
|---------------------|--------------|----------|--------------|----------------|
| Transportation | \$245 | 0 | \$245 | \$490 |
| Hotel | \$288 | 0 | \$288 | \$576 |
| Meals & Incidentals | \$165 | 0 | \$165 | \$330 |
| Total | \$698 | 0 | \$698 | \$1,396 |

Overall, as a result of the rule, a single broker would likely incur monetary costs ranging from \$31.27 (low) to \$624 (medium) to \$1,097 (high) per year to complete 36 hours of continuing education in a 3-year period. Over a 6-year period of analysis, these costs sum to \$188 (low), \$3,744 (medium), or \$6,580 (high). See Table 7 for a summary of these costs.

Table 7. Annual Costs for One Broker (2021 U.S. Dollars)

| | Low | Medium | High |
|--|-----|--------|------|
|--|-----|--------|------|

for employee compensation and costs as a percentage of total compensation, 2004-2019.” March 2020. Available at <https://www.bls.gov/web/ecec/ececcqrtn.pdf>. Accessed June 12, 2020. The wages are in 2019 dollars and CBP assumes an annual growth rate of 0 percent.

⁶² Some individual brokers would pay for their travel out of pocket, while other would have their travel expenses covered by their employers.

⁶³ CBP bases these costs off the average price of a domestic flight in 2019 (flight prices in 2020 were not used due to the disruptions caused by COVID-19 cancellations), and the General Services Administration’s per diem cost for lodging and meals and incidentals. Source for flight costs: The Bureau of Transportation Statistics, “Average Domestic Airline Itinerary Fares,” <https://www.transtats.bts.gov/AverageFare/>. Accessed April 13, 2021. Source for per diem costs: U.S. General Services Administration, “Per Diem Rates,” <https://www.gsa.gov/travel/plan-book/per-diem-rates>. Accessed April 13, 2021.

| Year | Hours ⁶⁴ | Costs ⁶⁵ | Total | Costs | Total | Costs | Total |
|--------------|---------------------|---------------------|--------------|--------------|----------------|--------------|----------------|
| 2021 | 12 | \$2.61 | \$31.27 | \$52 | \$624 | \$91 | \$1,097 |
| 2022 | 12 | \$2.61 | \$31.27 | \$52 | \$624 | \$91 | \$1,097 |
| 2023 | 12 | \$2.61 | \$31.27 | \$52 | \$624 | \$91 | \$1,097 |
| 2024 | 12 | \$2.61 | \$31.27 | \$52 | \$624 | \$91 | \$1,097 |
| 2025 | 12 | \$2.61 | \$31.27 | \$52 | \$624 | \$91 | \$1,097 |
| 2026 | 12 | \$2.61 | \$31.27 | \$52 | \$624 | \$91 | \$1,097 |
| Total | 72 | \$15.64 | \$188 | \$312 | \$3,744 | \$548 | \$6,580 |

*Totals may not sum due to rounding.

There were 13,822 active individual brokers in 2021. CBP estimates that a total of 5,947 would be required to begin to complete continuing education under the terms of the rule in the 6-year period of analysis, based on a current estimated compliance rate of 60 percent (see Historical and Projected Populations Affected by the Rule, above). Therefore, CBP estimates that brokers would incur costs related to searching for training, fees, travel, and incidentals, ranging from \$1,076,537 (low) to \$21,480,353 (medium) to \$37,752,913 (high) over the 6-year period of analysis. See Table 8.

⁶⁴ Individual brokers may complete whatever number of hours they prefer during each year, so long as it totals 36 hours in 3 years. CBP designates 12 hours per year both for ease of presentation and to account for pro-rating for individual brokers who re-activate their licenses within the triennial period.

⁶⁵ Costs include tuition/fees, travel costs, and research time costs for each level.

Table 8. Annual Training Costs for Individual Broker License Holders (2021 U.S. Dollars)

| Year | Brokers ⁶⁶ | Low | | Medium | | High | |
|--------------|-----------------------|--------------|--------------------|----------------|---------------------|----------------|---------------------|
| | | Cost | Total | Cost | Total | Cost | Total |
| 2021 | 5,529 | \$31.27 | \$172,886 | \$624 | \$3,449,621 | \$1,097 | \$6,062,901 |
| 2022 | 5,529 | \$31.27 | \$172,886 | \$624 | \$3,449,621 | \$1,097 | \$6,062,901 |
| 2023 | 5,529 | \$31.27 | \$172,886 | \$624 | \$3,449,621 | \$1,097 | \$6,062,901 |
| 2024 | 5,947 | \$31.27 | \$185,960 | \$624 | \$3,710,497 | \$1,097 | \$6,521,404 |
| 2025 | 5,947 | \$31.27 | \$185,960 | \$624 | \$3,710,497 | \$1,097 | \$6,521,404 |
| 2026 | 5,947 | \$31.27 | \$185,960 | \$624 | \$3,710,497 | \$1,097 | \$6,521,404 |
| Total | 5,947 | \$188 | \$1,076,537 | \$3,744 | \$21,480,353 | \$6,580 | \$37,752,913 |

*Totals may not sum due to rounding.

To create a primary estimate, CBP assumes that approximately one third of individual brokers would elect the lowest cost path, one third would elect the medium-cost path, and one third would elect the highest cost path once the rule is in place. Under these conditions, brokers who begin pursuing continuing education as a result of the rule would face \$20,103,267 in costs related to searching for training, fees, travel, and incidentals over the 6-year period of analysis.

See Table 9.

Table 9. Primary Estimate of Costs for Brokers (2021 U.S. Dollars)

| Year | Total Brokers | Brokers Choosing Each Path | Total Cost |
|--------------|---------------|----------------------------|---------------------|
| 2021 | 5,529 | 1,843 | \$3,228,469 |
| 2022 | 5,529 | 1,843 | \$3,228,469 |
| 2023 | 5,529 | 1,843 | \$3,228,469 |
| 2024 | 5,947 | 1,982 | \$3,472,620 |
| 2025 | 5,947 | 1,982 | \$3,472,620 |
| 2026 | 5,947 | 1,982 | \$3,472,620 |
| Total | 5,947 | 1,982 | \$20,103,267 |

*Totals may not sum due to rounding.

All individual brokers, including those who already complete continuing education and would not face new costs for research, tuition, and travel, would also be required to store records of their completed continuing education and report their compliance to CBP.⁶⁷ Record storage

⁶⁶ Only the 40 percent of brokers who do not already complete continuing education would face these costs. The total number of brokers affected in the final year of analysis (2026) is the same as the number of brokers overall because each year represents the same population with a small amount of growth.

⁶⁷ Some brokers would likely face additional time-costs should they fail to complete and/or report their required continuing education and need to take corrective action or reapply for their licenses following revocation (see proposed § 111.104(d) for details). However, CBP only reports the costs affected populations would face to maintain compliance with the proposed rule.

would require maintaining either paper or digital copies of any documentation received from the provider or host of the qualifying continuing broker education and a document of some kind listing the date, title, provider, number of credit hours, and location (if applicable) for each training. To report and certify compliance, individual brokers who file paper-based triennial reports with CBP would include a written statement in the triennial report, and individual brokers who file their triennial reports electronically through the eCBP portal would check a box in the eCBP portal while filing their triennial report electronically. Brokers would further be required to produce their records of compliance if requested by CBP, though CBP would only require brokers to maintain their records for the three years following the submission of the triennial report.⁶⁸ CBP estimates that recordkeeping and reporting would take each broker 30 minutes (0.5 hours) per year. After the first triennial reporting period in which brokers self-attest to completing their training, 10 percent of brokers each year would incur the cost of producing records to submit to CBP for a compliance audit, which CBP estimates will take 15 minutes (0.25 hours).⁶⁹ Therefore, brokers would see \$1,380,538 in new reporting and recordkeeping costs over the 6-year period of analysis. *See* Table 10.

⁶⁸ Note that many other records must be maintained for five years. The 3-year standard applies only to records of continuing education.

⁶⁹ CBP would randomly select 10 percent of individual brokers to audit for compliance each year.

Table 10. Reporting Costs for All Brokers (2021 U.S. Dollars)

| Year | Brokers | Time (hours) ⁷⁰ | Wage | Total |
|--------------|---------------|----------------------------|----------|--------------------|
| 2021 | 13,822 | 0.5 | \$31.27 | \$216,107 |
| 2022 | 13,822 | 0.5 | \$31.27 | \$216,107 |
| 2023 | 13,822 | 0.5 | \$31.27 | \$216,107 |
| 2024 | 14,867 | 0.5-0.75 | \$31.27 | \$244,072 |
| 2025 | 14,867 | 0.5-0.75 | \$31.27 | \$244,072 |
| 2026 | 14,867 | 0.5-0.75 | \$31.27 | \$244,072 |
| Total | 14,867 | 3.0-3.75 | - | \$1,380,538 |

*Totals may not sum due to rounding.

To comply with the proposed rule, individual brokers who do not already do so would be required to spend 36 hours over three years completing continuing education in whatever form they choose. Additionally, CBP estimates they would spend three hours per 3-year cycle researching and registering for trainings. Finally, brokers would need to spend about 30-45 minutes (0.5-0.75 hours) on recordkeeping during each cycle. Overall, brokers would need to spend about 40.5 hours over a 3-year period, or 81 hours over a 6-year period of analysis, to comply with the rule.

Some brokers would choose to complete their trainings outside of work hours, while others would complete training as part of their assigned duties. Brokers would also spend time in researching, registering for, and maintaining records of their continuing education, for a total of 12 hours per year of training plus 1.5 to 1.75 hours per year in research and recordkeeping. Based on the average wage rate for brokers of \$31.27, the opportunity cost of researching, registering for, attending, and reporting continuing education is approximately \$14,547,191 over the 6-year period of analysis.⁷¹ See Table 11.

⁷⁰ Note that only 10 percent of individual brokers would spend 45 minutes per year, while the remaining 90 percent would spend 30 minutes per year. Furthermore, CBP would only begin audits after the first triennial period during which the rule is in effect.

⁷¹ U.S. Bureau of Labor Statistics. Occupational Employment Statistics, “May 2019 National Occupational Employment and Wage Estimates, United States.” Updated March 31, 2020. Available at https://www.bls.gov/oes/2019/may/oes_nat.htm. Accessed June 12, 2020; U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004 – December 2019, “Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004-2019.” March 2020. Available at <https://www.bls.gov/web/ecec/ececqrtn.pdf>. Accessed June 12, 2020. The wages are in 2019 dollars and CBP assumes an annual growth rate of 0 percent.

Table 11. Summary of Opportunity Cost for Brokers (2021 U.S. Dollars)

| Year | Brokers | Hours | Wage Rate | Cost |
|--------------|--------------|-----------|-----------------|---------------------|
| 2021 | 5,529 | 13.5 | \$31.27 | \$2,333,955 |
| 2022 | 5,529 | 13.5 | \$31.27 | \$2,333,955 |
| 2023 | 5,529 | 13.5 | \$31.27 | \$2,333,955 |
| 2024 | 5,947 | 13.5 | \$31.27 | \$2,515,108 |
| 2025 | 5,947 | 13.5 | \$31.27 | \$2,515,108 |
| 2026 | 5,947 | 13.5 | \$31.27 | \$2,515,108 |
| Total | 5,947 | 81 | \$187.62 | \$14,547,191 |

*Totals may not sum due to rounding.

Total costs for all individual brokers, including tuition and travel expenses for those who must begin continuing education regimens because of the rule as well as opportunity and reporting costs for all brokers, range from \$16,452,050 to \$53,128,426. The primary estimate, which accounts for one third of brokers choosing each cost tier, comes to \$35,478,781 over the 6-year period of analysis. See Table 12.

Table 12. Total Costs for All Brokers (2021 U.S. Dollars)

| Year | Total Cost: Low Estimate | Total Cost: Medium Estimate | Total Cost: High Estimate | Total Cost: Primary Estimate |
|--------------|-----------------------------|--------------------------------|------------------------------|---------------------------------|
| 2021 | \$2,636,505 | \$5,913,241 | \$8,526,520 | \$5,692,089 |
| 2022 | \$2,636,505 | \$5,913,241 | \$8,526,520 | \$5,692,089 |
| 2023 | \$2,636,505 | \$5,913,241 | \$8,526,520 | \$5,692,089 |
| 2024 | \$2,847,512 | \$6,372,048 | \$9,182,956 | \$6,134,172 |
| 2025 | \$2,847,512 | \$6,372,048 | \$9,182,956 | \$6,134,172 |
| 2026 | \$2,847,512 | \$6,372,048 | \$9,182,956 | \$6,134,172 |
| Total | \$16,452,050 | \$36,855,867 | \$53,128,426 | \$35,478,781 |

*Totals may not sum due to rounding.

ii. To CBP

To implement the requirements of the proposed rule, CBP would need to designate entities or companies as approved accreditors of customs broker continuing education. To do so, CBP would solicit applications from parties interested in becoming accreditors, or (following the first application cycle) accreditors seeking renewal of their status, by publishing a Request for Proposal (RFP).⁷² A panel of CBP experts would evaluate the applications and select the entities approved or renewed as accreditors. CBP estimates that the process of developing and

⁷² See proposed 19 CFR 111.103(c).

submitting the RFP would take two personnel 10 hours. Application evaluation would take a further 40 hours and would require four CBP personnel. The process of designating accreditors would occur before the continuing education requirements went into effect, to allow accreditors to be ready for the rule's implementation and ensure equal footing for all providers.⁷³ However, because of uncertainty over timing of the rule's implementation, we assumed that designation of accreditors would occur in the first year of the period of analysis. Regardless of when the rule goes into effect and the designation process occurs, accreditors and CBP would need to complete the process two times in a 6-year period. Overall, designation of accreditors would require six CBP personnel 180 hours total, twice in a 6-year period of analysis, for a cost to CBP of \$26,640 (see Table 13).

⁷³ See section IV.E.1. of this NPRM.

Table 13. Costs to CBP to Designate Accreditors (2021 U.S. Dollars)

| Year | Personnel for RFP | Personnel for Evaluation | Wage Rate | Hours | Total |
|--------------|-------------------|--------------------------|-----------|-------|-----------------|
| 2021 | 2 | 4 | \$74.00 | 50 | \$13,320 |
| 2022 | 0 | 0 | \$74.00 | 0 | \$0 |
| 2023 | 0 | 0 | \$74.00 | 0 | \$0 |
| 2024 | 2 | 4 | \$74.00 | 50 | \$13,320 |
| 2025 | 0 | 0 | \$74.00 | 0 | \$0 |
| 2026 | 0 | 0 | \$74.00 | 0 | \$0 |
| Total | - | - | - | - | \$26,640 |

*Totals may not sum due to rounding.

CBP’s Broker Management Branch (BMB) would also face the costs of auditing for compliance with the continuing education requirement. Although individual brokers would self-attest to their completion of the continuing education requirement with each triennial report, CBP would occasionally conduct compliance audits by randomly selecting a certain subset of brokers for auditing. To start, CBP would select 10 percent of brokers per year, although the audits would only cover the continuing education reported for the most recently completed triennial cycle. A continuing education compliance audit would involve CBP personnel reviewing the reported coursework of the selected broker and potentially working with brokers to identify gaps or higher quality training opportunities. Such an activity would take approximately one hour, on average; therefore, CBP estimates that each compliance audit would cost CBP approximately \$74.00. For the first three years of the period of analysis, no compliance audit would take place because brokers would not yet have reported their training at the end of the first triennial cycle. Over the next three years, CBP would select 10 percent of active individual brokers to audit.⁷⁴ With about 1,500 compliance audits performed per year, costs to CBP would amount to \$330,054 over the 6-year period of analysis. *See* Table 14.

Table 14. Compliance Auditing Costs for CBP (2021 U.S. Dollars)

| Year | Audits | Cost per Audit | Total |
|------|--------|----------------|-------|
| 2021 | 0 | \$74 | \$0 |
| 2022 | 0 | \$74 | \$0 |

⁷⁴ Those individual brokers who have not yet completed a triennial report since taking their broker exam would be exempt from completing continuing education until after their first triennial report and, therefore, would also be exempt from continuing education audits during that time.

| | | | |
|--------------|--------------|--------------|------------------|
| 2023 | 0 | \$74 | \$0 |
| 2024 | 1,487 | \$74 | \$110,018 |
| 2025 | 1,487 | \$74 | \$110,018 |
| 2026 | 1,487 | \$74 | \$110,018 |
| Total | 4,460 | \$444 | \$330,054 |

*Totals may not sum due to rounding.

iii. To Accreditors

Accrediting bodies interested in becoming designated accreditors for customs brokers continuing education under the terms of proposed rule would need to apply to CBP during an open RFP period and then re-apply to confirm their status every three years. Costs to respond to the RFP include only the preparation of the application. Overall, CBP estimates that the preparation of an application to CBP to become an accreditor would take two employees 40 hours, to be completed two times in a 6-year period. Although the application for accreditor status would likely be completed before the proposed rule is officially in effect, because of uncertainty in the timing, we have used the same period of analysis.⁷⁵ Regardless of when the rule goes into effect, accreditor-applicants would need to apply twice in a 6-year period. Therefore, CBP estimates that CBP-designated accreditors would incur approximately \$11,339 in costs over a 6-year period of analysis. See Table 15.

Table 15. Costs to Accreditors (2021 U.S. Dollars)

| Year | Personnel | Wage Rate | Hours | Total |
|--------------|-----------|-----------|-------|-----------------|
| 2021 | 2 | \$70.87 | 40 | \$5,670 |
| 2022 | 0 | \$70.87 | 0 | \$0 |
| 2023 | 0 | \$70.87 | 0 | \$0 |
| 2024 | 2 | \$70.87 | 40 | \$5,670 |
| 2025 | 0 | \$70.87 | 0 | \$0 |
| 2026 | 0 | \$70.87 | 0 | \$0 |
| Total | - | - | - | \$11,339 |

*Totals may not sum due to rounding.

iv. To Providers

Providers of continuing education would also face new costs under the terms of the proposed rule. Specifically, providers would need to submit applications to accreditors to have

⁷⁵ When the proposed rule is first implemented, CBP would allow accreditor-applicants time to apply before the requirement is officially in place so that they are able to accredit courses as soon as the rule is in effect, allowing providers equal footing and giving brokers the largest pool of potential training.

their coursework or events accredited. Officials at the NCBFAA Education Institute estimate that they currently approve approximately 1,000 courses per year. With the proposed rule in place, CBP believes the number of events submitted for accreditation would increase substantially because companies' internal trainings and external offerings would need to be accredited. Therefore, CBP estimated that about 2,000 courses would require accreditation each year. Providers would likely pay a fee and would need to renew their accreditation annually to ensure their coursework remains up to date. The fee for accreditation is likely to vary based on accreditor, but would likely average \$25.⁷⁶ Overall, CBP estimates that providers of continuing education for customs brokers would face \$300,000 of new costs over a 6-year period of analysis. *See* Table 16.

Table 16. Costs to Providers (2021 U.S. Dollars)

| Year | Courses | Fee | Total |
|--------------|---------|---------|------------------|
| 2021 | 2,000 | \$25.00 | \$50,000 |
| 2022 | 2,000 | \$25.00 | \$50,000 |
| 2023 | 2,000 | \$25.00 | \$50,000 |
| 2024 | 2,000 | \$25.00 | \$50,000 |
| 2025 | 2,000 | \$25.00 | \$50,000 |
| 2026 | 2,000 | \$25.00 | \$50,000 |
| Total | - | - | \$300,000 |

*Totals may not sum due to rounding.

Based on the primary estimate, costs total \$36,146,814 over the 6-year period of analysis. Using a three percent discount rate, the annualized total costs are \$6,012,425. *See* Table 17 for an annual breakdown and Table 18 for discounting.

Table 17. Total Costs to All Parties (2021 U.S. Dollars)

| Year | Costs to Brokers - Primary Estimate | Costs to Accreditors | Costs to Providers | Costs to CBP -Accrediting and Auditing | Total Costs |
|--------------|---|-------------------------|-----------------------|--|---------------------|
| 2021 | \$5,692,089 | \$5,670 | \$50,000 | \$13,320 | \$5,761,078 |
| 2022 | \$5,692,089 | \$0 | \$50,000 | \$0 | \$5,742,089 |
| 2023 | \$5,692,089 | \$0 | \$50,000 | \$0 | \$5,742,089 |
| 2024 | \$6,134,172 | \$5,670 | \$50,000 | \$123,338 | \$6,313,179 |
| 2025 | \$6,134,172 | \$0 | \$50,000 | \$110,018 | \$6,294,190 |
| 2026 | \$6,134,172 | \$0 | \$50,000 | \$110,018 | \$6,294,190 |
| Total | \$35,478,781 | \$11,339 | \$300,000 | \$356,694 | \$36,146,814 |

⁷⁶ This fee is based on that charged by the NCBFAA. Although CBP sought information in the ANPRM on how much accreditors might charge, CBP did not receive specific information.

*Totals may not sum due to rounding.

Table 18. Discounted Total Costs (2021 U.S. Dollars)

| | 3% | | 7% | |
|--------------|--------------|-------------|--------------|-------------|
| | PV | AV | PV | AV |
| Costs | \$32,570,459 | \$6,012,425 | \$28,584,851 | \$5,996,982 |

6. Costs Not Estimated in this Analysis

The parties affected by the proposed rule would also face several, mostly minor costs that CBP is unable to quantify. To provide individual brokers who choose to file their triennial report electronically through the eCBP portal the ability to self-attest to their continuing education completion, CBP would need to include a field within the triennial report, which is submitted via the eCBP portal. The programming to include this field does not add significantly to the application development budget as CBP constantly makes small changes to many aspects of CBP's authorized electronic data interchanges.

Additionally, some potential accreditors may face costs related to protesting CBP's initial decisions regarding their proposals to become accreditors.⁷⁷ Accreditor-applicants would have the right to protest in accordance with procedures set out in the FAR. CBP expects these costs to be minor and protests to be rare. Brokers' clients may see slight price increases for broker services. As broker costs increase, they may pass some of these costs onto their clients in the form of increased prices. However, CBP believes that the per transaction increase in prices would be so small as to be insignificant.

7. Benefits of the Rule

This proposed rule, if finalized, would have many benefits to brokers, CBP, and the general public. We are able to estimate some of the benefits of the proposed rule, but many others are qualitative in nature. Brokers would benefit from improved reputation and a professionalization of the customs broker community while their clients would benefit from better performance and improved compliance. The continuing broker education requirement would provide importers and drawback claimants with greater assurance that their agents are knowledgeable of customs laws and regulations, familiar with operational processes, and can properly exercise a broker's fiduciary duties. The requirements would also help maintain a

⁷⁷ See section IV.E.1. of this NPRM.

measure of consistency across all customs brokers. Providers would benefit from increased prestige due to CBP-approved accreditation. Other benefits of the proposed rule are quantitative.

CBP would benefit from a reduction in regulatory audits of broker compliance. Both CBP and brokers would benefit from fewer errors committed by brokers and fewer penalties assessed by CBP. CBP examined data on broker penalties, regulatory audits, and validation activities between a group of companies who employ one or more individual brokers known to voluntarily hold an industry certification that requires meeting the proposed continuing education requirement and the broader population of brokers (which includes those who voluntarily complete continuing education and those who do not). This group of brokers with continuing education represents about 300 companies, which make up 54 percent of entries filed between 2017 and 2020 and 51 percent of entries filed between 2015 and 2020. CBP found that at the 99 percent confidence level, there is a statistically significant difference between these groups. Those who voluntarily hold this certification and complete continuing education have significantly lower rates of penalties, audits, and validation activities. *See* Table 19.⁷⁸ Brokers who are not known to have continuing education are assessed 11 times as many penalties per entry filing, are audited 8 times as often, and have 5 times as many validation activities performed by CBP to investigate discrepancies when compared to companies that are known to employ brokers who voluntarily take continuing education.

Table 19. Enforcement Action Rate for Different Groups

| Enforcement Action | Total | By All Other Companies | By 300 Companies with Continuing Education | Ratio |
|---------------------------|--------------|-------------------------------|---|--------------|
| Penalty | 267 | 0.00039% | 0.000035% | 11 to 1 |
| Regulatory Audit | 87 | 0.000077% | 0.000011% | 8 to 1 |
| Validation Activity | 311 | 0.00026% | 0.000052% | 5 to 1 |

*Rates are defined as the number of enforcement actions divided by the number of entries filed

⁷⁸ Source of data of companies with at least one individual broker with continuing education: data received from NCBFAA on companies participating in its broker certification program on April 28, 2021. Data on enforcement actions and the number of entries per company was obtained from ACE on April 11, 2021.

Aside from penalties, CBP enforcement often takes the form of a regulatory audit. Regulatory audits usually occur because a CBP Officer or Import Specialist flags unusual or suspicious activity. CBP then performs a regulatory audit of the broker’s activity, investigating the potential infraction, as well as the broker’s overall compliance with regulations, rules, and CBP guidance. These audits may lead to a settlement agreement in which a penalty is assessed, but they more often lead to discussion between the broker and CBP as to how the broker can improve compliance and performance. With continuing education in place, CBP believes that fewer regulatory audits would be necessary. From 2015 to 2020, CBP performed 84 regulatory audits of broker compliance, for an average of 14 per year.⁷⁹ The number of audits holds approximately steady across the 5-year period, so CBP does not believe it likely that the number of audits would grow in the period of analysis. Therefore, CBP projects 84 audits would be performed during the 6-year period of analysis under baseline conditions, or 14 each year. *See* Table 20.

Table 20. Projection of Audits and Broker Surveys under the Baseline

| Year | Audits |
|--------------|---------------|
| 2021 | 14 |
| 2022 | 14 |
| 2023 | 14 |
| 2024 | 14 |
| 2025 | 14 |
| 2026 | 14 |
| Total | 84 |

⁷⁹ Data provided by CBP’s Regulatory Audit and Agency Advisory Services Directorate on April 11, 2021.

CBP estimates that a regulatory audit of broker compliance takes CBP approximately 559 hours, on average. Based on the average wage rate for a CBP Trade and Revenue employee of \$74.00 per hour, we estimate the average broker audit costs \$41,351. Based on a review of outcomes from the audits completed from 2015-2020, approximately 40 percent would likely have been avoided had a continuing education requirement been in place. CBP believes that, had customs brokers been required to complete continuing education on an individual level, and, therefore, stayed current on the rules and regulations governing customs business, they would have made fewer errors and avoided the audits. Over a 6-year period of analysis under the terms of the rule, CBP would avoid 34 audits, for a cost savings of \$1,389,400. *See* Table 21.

Table 21. CBP Cost Savings from Reduced Regulatory Audit Activities (2021 U.S. Dollars)

| Year | Audits Avoided | Cost Savings per Audit | Total Savings |
|--------------|----------------|------------------------|--------------------|
| 2021 | 6 | \$41,351 | \$231,567 |
| 2022 | 6 | \$41,351 | \$231,567 |
| 2023 | 6 | \$41,351 | \$231,567 |
| 2024 | 6 | \$41,351 | \$231,567 |
| 2025 | 6 | \$41,351 | \$231,567 |
| 2026 | 6 | \$41,351 | \$231,567 |
| Total | 34 | \$248,107 | \$1,389,400 |

*Totals may not sum due to rounding.

The number of penalties assessed between 2017 and 2020 grew significantly. In 2017, CBP assessed 20 penalties while in 2020, that number jumped to 119 (see Table 1, above). Between 2017 and 2020, the number of penalties issued increased with a compound annual growth rate (CAGR) of 52 percent. The jump in penalties between 2019 and 2020 is likely attributable to changes in the AD/CVD environment, and CBP does not believe that penalties per year would continue to grow at the same rate. Based on trends before and after the jump, we do not believe that the number of penalties assessed per year would consistently grow at any meaningful rate. Based on a 0 percent growth rate, CBP estimates that over the 6-year period of analysis from 2021 to 2026, CBP would assess 675 penalties. *See* Table 22 for an annual count.

Table 22. Projection of Penalties Assessed from 2021-2026 under the Baseline

| Year | Penalties |
|------|-----------|
|------|-----------|

| | |
|--------------|------------|
| 2021 | 113 |
| 2022 | 113 |
| 2023 | 113 |
| 2024 | 113 |
| 2025 | 113 |
| 2026 | 113 |
| Total | 675 |

When CBP assesses a penalty against a broker for a customs violation, CBP incurs the cost of detecting and investigating the violation, as well as determining the appropriate monetary fine and handling any appeals from the broker. The broker must pay the penalty, which is capped at \$30,000 by statute. CBP also works with brokers against whom a fine has been assessed to mitigate the penalty, resulting in the collection of amounts that are usually significantly lower. From 2017-2020, monetary penalties collected from individual brokers averaged \$2,644. CBP estimates that the entire process of assessing a penalty against a broker, from detection to working through mitigation, costs CBP approximately \$4,440 per penalty.⁸⁰ With the proposed rule implemented, CBP believes that brokers would commit approximately 20 percent fewer penalizable violations.⁸¹ As a result, brokers would save approximately \$359,640 in fines avoided, while CBP would save approximately \$599,400 in processing costs.⁸² See Tables 23 and 24.

Table 23. Penalties Avoided by Brokers (2021 U.S. Dollars)

| Year | Penalties Avoided | Fines Avoided per Penalty | Total |
|------|-------------------|---------------------------|----------|
| 2021 | 23 | \$2,664 | \$59,940 |
| 2022 | 23 | \$2,664 | \$59,940 |
| 2023 | 23 | \$2,664 | \$59,940 |
| 2024 | 23 | \$2,664 | \$59,940 |

⁸⁰ CBP bases this estimate on an average of 60 hours worked per penalty at an average wage of \$74.00 per hour for a CBP Trade and Revenue employee. CBP bases this wage on the FY 2020 salary and benefits of the national average of CBP Trade and Revenue positions, which is equal to a GS-13, Step 5. Source: Email correspondence with CBP's Office of Finance on July 2, 2020.

⁸¹ Approximately 20 percent of the penalties assessed between 2017 and 2020 were for infractions that CBP believes would have been avoided had the broker been required to complete continuing education. The majority of the remaining penalties were for late filing. Penalty data is taken from SEACATS.

⁸² Penalties are a transfer payment from the broker to CBP that do not affect total resources available to society. Accordingly, CBP does not include penalties or penalties avoided in the final accounting of costs and benefits this rule. In addition, penalties are an enforcement tool that are intended to bring a noncompliant party in line with existing requirements. Any costs and benefits that result from compliance with the underlying requirement are included in the analysis, but not the enforcement mechanism. In the same way, if a rule results in the seizure of illegal merchandise, CBP does not include the cost of the lost merchandise to the importers.

| | | | |
|--------------|------------|-----------------|------------------|
| 2025 | 23 | \$2,664 | \$59,940 |
| 2026 | 23 | \$2,664 | \$59,940 |
| Total | 135 | \$15,984 | \$359,640 |

*Totals may not sum due to rounding

Table 24. Costs Avoided by CBP (2021 U.S. Dollars)

| Year | Penalties Avoided | Cost Savings per Penalty | Total |
|--------------|------------------------------|-------------------------------------|------------------|
| 2021 | 23 | \$4,440 | \$99,900 |
| 2022 | 23 | \$4,440 | \$99,900 |
| 2023 | 23 | \$4,440 | \$99,900 |
| 2024 | 23 | \$4,440 | \$99,900 |
| 2025 | 23 | \$4,440 | \$99,900 |
| 2026 | 23 | \$4,440 | \$99,900 |
| Total | 135 | \$26,640 | \$599,400 |

*Totals may not sum due to rounding

8. Net Impact of the Rule

The proposed rule would lead to costs for brokers in the form of tuition, travel expenses, opportunity cost, and time spent researching, registering for, keeping records of, and reporting continuing education. CBP would face the costs of designating accreditors and auditing broker compliance. Accreditors would incur the costs of responding to a CBP-issued RFP, and education providers would incur the costs of drafting applications and fees charged by the accreditors for reviewing their accreditation requests. CBP would also see cost savings (benefits) from avoided penalty assessment and avoided regulatory audits. CBP has found that companies employing one or more brokers who complete continuing education are statistically less likely to face enforcement actions. Over a 6-year period of analysis, the primary estimate of the net costs totals \$34,158,014 (see Table 25). Using a discount rate of three percent, annualized costs total \$5,680,959 (see Table 26).

Table 25. Primary Estimate of Net Costs (2021 U.S. Dollars)

| Year | Benefits | Costs | Net Costs⁸³ |
|--------------|--------------------|---------------------|-------------------------------|
| 2021 | \$331,467 | \$5,761,078 | \$5,429,611 |
| 2022 | \$331,467 | \$5,742,089 | \$5,410,622 |
| 2023 | \$331,467 | \$5,742,089 | \$5,410,622 |
| 2024 | \$331,467 | \$6,313,179 | \$5,981,713 |
| 2025 | \$331,467 | \$6,294,190 | \$5,962,723 |
| 2026 | \$331,467 | \$6,294,190 | \$5,962,723 |
| Total | \$1,988,800 | \$36,146,814 | \$34,158,014 |

⁸³ Note that we only include costs of remaining compliant with the proposed rule in the net costs. Similarly, we do not include penalties avoided in the final accounting of benefits.

Table 26. Primary Estimate of Net Present and Annualized Costs (2021 U.S. Dollars)

| | 3% | | 7% | |
|------------------|---------------------|--------------------|---------------------|--------------------|
| | PV | AV | PV | AV |
| Savings | \$1,795,619 | \$331,467 | \$1,579,949 | \$331,467 |
| Costs | \$32,570,459 | \$6,012,425 | \$28,584,851 | \$5,996,982 |
| Net Costs | \$30,774,841 | \$5,680,959 | \$27,004,902 | \$5,665,515 |

CBP presents four estimates of the net costs depending on the cost of training pursued by each individual broker. The low-cost path assumes the broker would pursue only free trainings and forgo travel. In the medium-cost path, brokers would pursue a mix of free and paid trainings and travel to a single conference or in-person event per year. In the high-cost path, brokers would pursue all paid trainings and travel to two in-person events or conferences per year. The primary estimate assumes that one third of brokers would choose each path. Overall, the quantifiable effects of the proposed rule result in a net, annualized cost ranging from \$2,514,956 to \$8,617,817, using a 3 percent discount rate over the 6-year period of analysis. A summary of net costs under all four estimates presented in the analysis can be found in Table 27.

Table 27. Summary of Net Costs (2021 U.S. Dollars)

| Estimate | Value | 3% | 7% |
|----------------|---------------|---------------------|---------------------|
| Primary | Net PV | \$30,774,841 | \$27,004,902 |
| | Net AV | \$5,680,959 | \$5,665,515 |
| Low | Net PV | \$13,624,000 | \$11,945,324 |
| | Net AV | \$2,514,956 | \$2,506,079 |
| Medium | Net PV | \$32,016,156 | \$28,094,859 |
| | Net AV | \$5,910,102 | \$5,894,183 |
| High | Net PV | \$46,684,367 | \$40,974,522 |
| | Net AV | \$8,617,817 | \$8,596,283 |

As stated before, many benefits of the proposed rule are qualitative. Brokers would benefit from improved reputation and a professionalization of the customs broker community while their clients would benefit from better performance, less non-compliance, and improved outcomes. Providers would benefit from increased prestige due to CBP-approved accreditation. CBP believes that the combination of quantified benefits and unquantified benefits exceed the costs of this rule. We request comment on this conclusion.

9. Analysis of Alternatives

Alternative 1: 72 hours every three years.

Alternative 1 is the same as the chosen alternative except that the continuing education requirement would be raised to 72 hours each triennial cycle instead of 36 hours. This alternative is modeled on the Internal Revenue Service's (IRS) Enrolled Agent program, which requires 72 hours of continuing education every three years.⁸⁴ An enrolled agent is an individual who may represent clients in matters before the IRS and, like a licensed customs broker, must pass a rigorous examination to prove his or her knowledge and competence, making it a reasonable analog to the proposed CBP program. Once the agent has passed the exam, he or she has unlimited practice rights, providing he or she completes the requisite continuing education.

CBP has determined that 72 hours every three years would be inappropriate for individual brokers. Were CBP to mandate 72 hours of continuing education every three years, brokers who already voluntarily pursue continuing education would need to increase the amount of training they complete, often by 100 percent. Costs incurred by both brokers who do not already pursue continuing education and those who do would be much greater. Such a requirement would be too onerous, particularly for small businesses, which make up a significant proportion (approximately 39 percent) of the employers of licensed customs brokers. CBP

⁸⁴ See Internal Revenue Service, Enrolled Agent Information (Apr. 6, 2021), available at <https://www.irs.gov/tax-professionals/enrolled-agents/enrolled-agent-information>.

estimates that such a requirement would cost brokers up to \$113,258,739 over a 6-year period of analysis, or about \$7,618 per broker. See Table 28.

Table 28. Broker Costs under a 72-Hour Continuing Education Requirement (2021 U.S. Dollars)

| Year | Brokers | Low | | Medium | | High | |
|--------------|---------------|--------------|--------------------|----------------|---------------------|-----------------|----------------------|
| | | Cost | Total | Cost | Total | Cost | Total |
| 2021 | 13,822 | \$62.54 | \$518,657 | \$1,248 | \$10,348,863 | \$2,193 | \$18,188,702 |
| 2022 | 13,822 | \$62.54 | \$518,657 | \$1,248 | \$10,348,863 | \$2,193 | \$18,188,702 |
| 2023 | 13,822 | \$62.54 | \$518,657 | \$1,248 | \$10,348,863 | \$2,193 | \$18,188,702 |
| 2024 | 14,867 | \$62.54 | \$557,880 | \$1,248 | \$11,131,490 | \$2,193 | \$19,564,211 |
| 2025 | 14,867 | \$62.54 | \$557,880 | \$1,248 | \$11,131,490 | \$2,193 | \$19,564,211 |
| 2026 | 14,867 | \$62.54 | \$557,880 | \$1,248 | \$11,131,490 | \$2,193 | \$19,564,211 |
| Total | 14,867 | \$375 | \$3,229,610 | \$7,487 | \$64,441,059 | \$13,159 | \$113,258,739 |

*Totals may not sum due to rounding.

Alternative 2: 36 hours every three years.

Alternative 2 is the chosen alternative.

Alternative 3: CBP list of brokers voluntarily meeting continuing education standards.

Under Alternative 3, instead of mandating any kind of continuing education program, CBP would release annually a list of brokerages or companies employing brokers who voluntarily provide continuing education to their broker employees. As with Alternative 1, qualifying events would include internal training, government-sponsored webinars, trade conferences and events, and other activities. CBP would draft this list each year by requesting that companies report whether they provide a continuing education program. CBP might request details from the company to ensure the training provided meets a certain threshold for quality and relevance.

Under baseline conditions, CBP estimates that about 60 percent of brokers already complete continuing education on a voluntary basis. CBP does not believe that publishing a list of brokerages that provide continuing education would induce the remaining 40 percent of brokers to pursue continuing education, though some brokers might do so. Under Alternative 3, those individual brokers who already complete ongoing training would continue to do so, while many of those brokers who do not, would not, absent a mandate, be likely to change. CBP

estimates that an additional five percent of brokers might begin a continuing education program in order to be included on CBP's list, representing about 186 additional companies.⁸⁵ While fewer brokers would face the costs of tuition, travel, and record-keeping, approximately 743 would face these costs of continuing education over the 6-year period of analysis. Additionally, CBP would incur the costs of composing the list each year and companies employing brokers would face the costs of applying to be included on the list. Assuming two CBP personnel spend about 40 hours each, annually to compose the list, that one person from each company spends about 10 hours compiling and submitting information to CBP annually, and that one third of affected brokers choose each cost path, Alternative 3 results in costs of \$5,636,739 over the 6-year period of analysis. *See* Table 29.

⁸⁵ CBP assumes that large companies employing more than 100 people already have a continuing education program. Therefore, those companies that would need to add continuing education in order to be included on CBP's list would likely be small to medium sized businesses, meaning there would be a significant number of them, employing a few brokers each.

Table 29. Total Costs under Alternative 3 (2021 U.S. Dollars)

| Year | CBP Cost | Brokerage Costs | Broker Costs | Total |
|--------------|-----------------|--------------------|--------------------|--------------------|
| 2021 | \$11,840 | \$267,605 | \$293,545 | \$572,990 |
| 2022 | \$11,840 | \$267,605 | \$695,303 | \$974,748 |
| 2023 | \$11,840 | \$267,605 | \$725,822 | \$1,005,267 |
| 2024 | \$11,840 | \$267,605 | \$748,466 | \$1,027,911 |
| 2025 | \$11,840 | \$267,605 | \$748,466 | \$1,027,911 |
| 2026 | \$11,840 | \$267,605 | \$748,466 | \$1,027,911 |
| Total | \$71,040 | \$1,605,631 | \$3,960,068 | \$5,636,739 |

*Totals may not sum due to rounding.

If only 5 percent more brokers elect to begin continuing education under the terms of Alternative 3, fewer non-compliance actions would be avoided. CBP estimates that only an eighth as many penalties and audits would be avoided as compared to Alternative 2. Therefore, CBP and brokers would avoid three penalties and one audit annually, for a total cost savings of \$44,955 per year. However, CBP does not typically include avoided penalties in the overall accounting of costs and benefits of a rule. Therefore, over a 6-year period of analysis, Alternative 3 leads to \$248,600 in cost savings.

Table 30. Total Savings under Alternative 3 (2021 U.S. Dollars)

| Year | Savings for Brokers | Savings for CBP | Total Savings |
|--------------|---------------------|------------------|------------------|
| 2021 | \$7,493 | \$41,433 | \$41,433 |
| 2022 | \$7,493 | \$41,433 | \$41,433 |
| 2023 | \$7,493 | \$41,433 | \$41,433 |
| 2024 | \$7,493 | \$41,433 | \$41,433 |
| 2025 | \$7,493 | \$41,433 | \$41,433 |
| 2026 | \$7,493 | \$41,433 | \$41,433 |
| Total | \$44,955 | \$248,600 | \$248,600 |

*Totals may not sum due to rounding.

One of the primary goals of the proposed rule is to reduce compliance issues, penalties, and regulatory audits, and CBP does not believe that a system based on voluntary reporting would do enough to reach that goal. With only an additional 5 percent of brokers pursuing continuing education, Alternative 3 would not do enough to further professionalize the customs broker community, nor would their clients see an appreciable decline in compliance issues. Additionally, such a system would still result in a net cost of about \$5.4 million over the 6-year period of analysis. Therefore, CBP believes that Alternative 3 is less preferable than the chosen alternative.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business concern per the Small Business Act); a small organization (defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (defined as a locality with fewer than 50,000 people). A small business within the Freight Transportation Arrangement Industry, the industry that employs customs brokers, is defined as one whose annual receipts are less than \$16.5 million, regardless of the number of employees.⁸⁶ Data from the U.S. Census Bureau shows that approximately 96 percent of businesses in the Transportation Arrangement Industry (NAICS Code 448510) are small businesses (see Table 31). All businesses employing brokers under this NAICS Code are affected by this rule. Additionally, some small businesses may elect to become accreditors or training providers. Therefore, CBP concludes that this rule will affect a substantial number of small entities.

⁸⁶ Small business size standards are defined in 13 CFR part 121.

Table 31. Small Businesses in the Freight Transportation Arrangement Industry⁸⁷

| Employment Size⁸⁸ | Number of Employees | Preliminary Receipts (all firms, \$1,000s)⁸⁹ | Receipts Per Firm (\$) | Small Business? |
|-------------------------------------|----------------------------|--|-------------------------------|------------------------|
| 01: Total | 265,192 | \$67,276,572 | \$4,454,222 | - |
| 02: <5 | 15,939 | \$6,315,166 | \$708,614 | Yes |
| 03: 5-9 | 18,025 | \$5,392,992 | \$1,974,732 | Yes |
| 04: 10-19 | 20,288 | \$5,870,163 | \$3,851,813 | Yes |
| 05: <20 | 54,252 | \$17,578,321 | \$1,335,029 | Yes |
| 06: 20-99 | 49,477 | \$13,973,780 | \$10,397,158 | Yes |
| 07: 100-499 | 44,715 | \$10,886,028 | \$30,493,076 | No |
| 08: <500 | 148,444 | \$42,438,129 | \$2,854,327 | Yes |
| 09: 500+ | 116,748 | \$24,838,443 | \$105,247,640 | No |

Some small businesses may choose to apply to CBP to become accreditors. Those businesses would face the costs of applying to CBP, the potential costs of any protests they choose to file should they disagree with CBP’s decision regarding their proposals, and the costs of being an accreditor. Small businesses may also choose to become training providers and to incur the costs of producing and providing trainings. However, CBP believes that those costs would be recouped by tuition and fees. CBP further expects any costs not directly covered by fees to be minor and included in general business expenses.

Individual brokers employed by these companies would be required to attain 36 hours of continuing education every three years under the terms of the proposed rule. They would also face the opportunity cost of attending trainings as well as the costs of recordkeeping, reporting, and participating in any continuing education compliance audit initiated by CBP. Accordingly, the impacts of the rule to individual brokers and affected businesses will depend on if the broker currently meets the proposed training requirements. Based on public comments in response to the ANPRM and discussions between CBP and various broker organizations, CBP estimates most large businesses employing brokers already provide, and often mandate, internal training

⁸⁷ United States Census Bureau, “2017 County Business Patterns and 2017 Economic Census,” Released March 6, 2020, <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>. Accessed March 15, 2021.

⁸⁸ Note that some of the categories are sums of other categories. For example, Category 8, <500, is a sum of Categories 2, 3, 4, 6, and 7. Thus, Categories 7 and 9 are not consecutive, but represent all firms employing 100 or more people.

⁸⁹ The Survey of U.S. Businesses (SUSB) from which this data is taken is conducted in years ending in 2 and 7. Note that finalized results from the 2017 survey are scheduled for release in May of 2021.

and continuing education. CBP estimates that these 60 percent of individual brokers already in compliance would not face new costs aside from recordkeeping and reporting. CBP estimates the remaining 40 percent of brokers, mostly at smaller businesses, would need to come into compliance with the proposed rule. Using the primary estimate under which one third of brokers selects each cost tier, and assuming a discount rate of 3 percent, the annualized cost of the rule to all affected brokers is \$5,903,336. The rule would affect 5,529 customs brokers in the first year, for an average annualized cost of \$1,068 per broker. The average annual receipts for small businesses in the Freight Transportation Arrangement Industry, according to the Census data in Table 28, is \$543,589. The number of brokers employed by each business would vary among the small businesses in question, but assuming an average of four brokers per company,⁹⁰ the cost of continuing education for each firm would be approximately \$4,272 annually, or about 0.79 percent of annual receipts. CBP generally considers effects of less than 1 percent of annual receipts not to be a significant impact. Accordingly, CBP certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information contained in these regulations are provided for by OMB control number 1651-0034 (CBP Regulations Pertaining to Customs Brokers).

The proposed rule would require individual brokers to maintain records of completed continuing education (including, among others, the date, title, provider, location, and credit hours) and certify the completion of the required number of continuing education credits on the triennial report. Based on these changes, CBP estimates a small increase in the burden hours for

⁹⁰ Many brokerages are sole proprietorships and many employ individual brokers who supervise other employees. The average number of employees per firm is seven. CBP assumes the average firm employs 4 individual brokers and 3 other employees, such as human resource managers.

information collection related to customs brokers regulations. CBP would submit to OMB for review the following adjustments to the previously approved Information Collection under OMB control number 1651-0034 to account for this proposed rule's changes. The addition of the self-attestation and submission of records would add about 30-45 minutes (0.5-0.75 hours) per respondent.

CBP Regulations Pertaining Customs Brokers

Estimated Number of Respondents: 13,822

Estimated Number of Responses per Respondent: 1

Estimated Number of Total Annual Responses: 0.333

Estimated Time per Response: 31.5 minutes (0.525 hours)

Estimated Total Annual Burden Hours: 2,418.85 hours

D. Signing Authority

This document is being issued in accordance with 19 CFR 0.1(b)(1), which provides that the Secretary of the Treasury delegated to the Secretary of DHS authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury for when the subject matter is not listed as provided by Treasury Department Order No. 100-16. Accordingly, this proposed rule may be signed by the Secretary of DHS (or his or her delegate).

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, CBP proposes to amend 19 CFR part 111 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. Revise the second sentence of § 111.0 to read as follows:

§ 111.0 Scope.

* * * * * This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the assessment of monetary penalties, the revocation or suspension of licenses and permits, and the obligation for individual customs broker license holders to satisfy a continuing education requirement.

3. In § 111.1, add the definitions “Continuing broker education requirement”, “Continuing education credit”, “Qualifying continuing broker education”, and “Triennial period” in alphabetical order to read as follows:

§ 111.1 Definitions.

* * * * *

Continuing broker education requirement. “Continuing broker education requirement” means an individual customs broker license holder’s obligation to complete a certain number of continuing education credits of qualifying continuing broker education, as set forth in subpart F of this part, in order to maintain sufficient knowledge of customs and related laws, regulations, and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and drawback claimants.

Continuing education credit. “Continuing education credit” means the unit of measurement used for meeting the continuing broker education requirement. The smallest recognized unit is one continuing education credit, which requires 60 minutes of continuous participation in a qualifying continuing broker education program, as defined in § 111.103(a). For qualifying continuing broker education lasting more than 60 minutes, one continuing education credit may be claimed for the first 60 minutes of continuous participation, and half of

one continuing education credit may be claimed for every full 30 minutes of continuous participation thereafter. For example, for qualifying continuing broker education lasting more than 60 minutes but less than 90 minutes, only one continuing education credit may be claimed. In contrast, for qualifying continuing broker education lasting 90 minutes, 1.5 continuing broker education credits may be claimed.

* * * * *

Qualifying continuing broker education. “Qualifying continuing broker education” means any training or educational activity that is eligible or, if required, has been approved for continuing education credit, in accordance with § 111.103.

* * * * *

Triennial period. “Triennial period” means a period of three years commencing on February 1, 1985, or on February 1 in any third year thereafter.

4. In § 111.30, revise paragraphs (d)(2)(ii) and (iii) and add paragraph (d)(2)(iv) to read as follows:

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.

* * * * *

(d) * * *

(2) * * *

(ii) State the name and address of his or her employer if he or she is employed by another broker, unless his or her employer is a partnership, association, or corporation broker for which he or she is a qualifying member or officer for purposes of § 111.11(b) or (c)(2);

(iii) State whether or not he or she still meets the applicable requirements of §§ 111.11 and 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53; and

(iv) Report and certify the broker's compliance with the continuing broker education requirement as set forth in § 111.102.

* * * * *

§§ 111.97 through 111.100 [Added and Reserved]

5. Add reserve §§ 111.97 through 111.100.

6. Add subpart F, consisting of §§ 111.101 through 111.104, to read as follows:

Subpart F – Continuing Education Requirements for Individual Customs Broker License

Holders

Sec.

111.101 Scope.

111.102 Obligations of individual customs brokers in conjunction with continuing broker education requirement.

111.103 Accreditation of qualifying continuing broker education.

111.104 Failure to report and certify compliance with continuing broker education requirement.

§ 111.101 Scope.

This subpart sets forth regulations providing for a continuing education requirement for individual customs broker license holders and the framework for administering the requirements of this subpart. The continuing broker education requirement is for individual brokers, in order to maintain sufficient knowledge of customs and related laws, regulations, and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and drawback claimants.

§ 111.102 Obligations of individual customs brokers in conjunction with continuing broker education requirement.

(a) *Continuing broker education requirement.* All individual customs broker license holders must complete qualifying continuing broker education as defined in § 111.103(a), except:

(1) During a period of voluntary suspension as described in § 111.52; or

(2) When individual customs broker license holders have not held their license for an entire triennial period at the time of the submission of the status report as required under § 111.30(d).

(b) *Required minimum number of continuing education credits.* All individual brokers who are subject to the continuing broker education requirement must complete at least 36 continuing education credits of qualifying continuing broker education each triennial period, except upon the reinstatement of a license following a period of voluntary suspension as described in § 111.52. Upon the reinstatement of a license following a period of voluntary suspension as described in § 111.52, the number of continuing education credits that an individual broker must complete by the end of the triennial period during which the reinstatement of the license occurred will be calculated on a prorated basis of one continuing education credit for each complete remaining month until the end of the triennial period.

(c) *Reporting requirements.* Individual brokers who are subject to the continuing broker education requirement must report and certify their compliance upon submission of the status report required under § 111.30(d).

(d) *Recordkeeping requirements--(1) General.* Individual brokers who are subject to the continuing broker education requirement must retain the following information and documentation pertaining to the qualifying education completed during a triennial period for a period of three years following the submission of the status report required under § 111.30(d):

- (i) The title of the qualifying continuing broker education attended;
- (ii) The name of the provider or host of the qualifying continuing broker education;
- (iii) The date(s) attended;
- (iv) The number of continuing education credits accrued;
- (v) The location of the training or educational activity, if the training or

educational activity is offered in person; and

(vi) Any documentation received from the provider or host of the qualifying continuing broker education that evidences the individual broker's registration for, attendance at, completion of, or other activity bearing upon the individual broker's participation in and completion of the qualifying continuing broker education.

(2) *Availability of records.* In order to ensure that the individual broker has met the continuing broker education requirement, upon CBP's request, the individual broker must make available to CBP the information and documentation described in paragraph (d)(1) of this section. CBP can request the information and documentation be made available for in-person inspection, or be delivered to CBP by either hard-copy or electronic means, or any combination thereof.

§ 111.103 Accreditation of qualifying continuing broker education.

(a) *Qualifying continuing broker education.* In order for a training or educational activity to be considered qualifying continuing broker education, it must meet the following two requirements:

(1) *Providers of qualifying continuing broker education.* The training or educational activity must be offered by one of the following providers:

(i) *Government agencies.* Qualifying continuing broker education constitutes any training or educational activity offered by CBP, whether online or in-person, and training or educational activity offered by another U.S. Government agency, whether online or in-person, but only if the content is relevant to customs business. Accreditation is not required for trainings or educational activities offered by U.S. Government agencies.

(ii) *Other providers requiring accreditation.* Any other training or educational activity not offered by a U.S. Government agency, whether online or in-person, will not be considered a qualifying continuing broker education, unless the training or educational activity has been approved for continuing education credit by a CBP-selected accreditor before

the training or educational activity is provided.

(2) *Recognized trainings or educational activities.* The training or educational activity must constitute one of the following:

(i) Coursework, a seminar, or a workshop, whether online or in-person, that is conducted by an instructor, discussion leader, or speaker;

(ii) A symposium or convention, with the exception of the attendance at a meeting conducted in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), whether online or in-person;

(iii) The preparation of a subject matter for presentation as an instructor, discussion leader, or speaker at a training or educational activity described in paragraphs (a)(2)(i) and (ii) of this section, subject to the requirements set forth in paragraph (b) of this section; and

(iv) The presentation of a subject matter as an instructor, discussion leader, or speaker at a training or educational activity described in paragraph (a)(2)(i) or (ii) of this section, subject to the requirements set forth in paragraph (b) of this section.

(b) *Special allowance for instructors, discussion leaders, and speakers.* (1) Contingent upon the approval by a CBP-selected accreditor, an individual broker may claim one continuing education credit for each full 60 minutes spent:

(i) Presenting subject matter as an instructor, discussion leader, or speaker at a training or educational activity described in paragraph (a)(2)(i) or (ii) of this section; or

(ii) Preparing subject matter for presentation as an instructor, discussion leader, or speaker at a training or educational activity described in paragraph (a)(2)(i) or (ii) of this section.

(2) The special allowance for instructors, discussion leaders, and speakers is subject to the following limitations:

(i) For any session of presentation given at one time, regardless of the duration of that session, an individual broker may claim, at a maximum, one continuing

education credit for the time spent preparing subject matter for that presentation pursuant to paragraph (b)(1)(ii) of this section.

(ii) Per triennial period, an individual broker may claim, at a maximum, a combined total of 12 continuing education credits earned in accordance with paragraphs (b)(1)(i) and (ii) of this section.

(3) Regardless of whether the training or educational activity is offered by a U.S. Government agency or another provider, any instructor, discussion leader, or speaker seeking to claim continuing education credit in accordance with paragraph (b)(1) of this section must obtain the approval of a CBP-selected accreditor.

(c) *Selection of accreditors.* The Office of Trade will select accreditors based on a Request for Information (RFI) and a Request for Proposal (RFP) announced through the System for Award Management (SAM) or any other electronic system for award management approved by the U.S. General Services Administration, in accordance with the Federal Acquisition Regulation (48 CFR chapter 1), for a specific period of award, subject to renewal. The Executive Assistant Commissioner, Office of Trade, will periodically publish notices in the *Federal Register* announcing the criteria that CBP will use to select an accreditor, the period during which CBP will accept applications by potential accreditors, and the period of award for a CBP-selected accreditor.

(d) *Responsibilities of CBP-selected accreditors.* CBP-selected accreditors administer the accreditation of trainings or educational activities other than those described in paragraph (a)(1) of this section for the purpose of the continuing broker education requirement by reviewing and approving or denying such educational content for continuing education credit. A CBP-selected accreditor's approval of a training or educational activity for continuing education credit is valid for one year, and the accreditation may be renewed through any CBP-selected accreditor.

(e) *Prohibition of self-certification by an accreditor.* CBP-selected accreditors may not

approve their own trainings or educational activities for continuing education credit.

§ 111.104 Failure to report and certify compliance with continuing broker education requirement.

(a) *Notification by CBP.* If an individual broker is subject to the continuing broker education requirement pursuant to § 111.102 and submits a status report as required under § 111.30(d)(2), but fails to report and certify compliance with the continuing broker education requirement as part of the submission of the status report, then CBP will notify the individual broker of the broker's failure to report and certify compliance in accordance with § 111.30(d). The notification will be sent to the address reflected in CBP's records, or transmitted electronically pursuant to any electronic means authorized by CBP for that purpose.

(b) *Required response to notice.* Upon the issuance of such notification, the individual broker must within 30 calendar days:

(1) Submit a corrected status report that, in accordance with § 111.30(d), reflects the individual broker's compliance with the continuing broker education requirement, if the individual broker completed the required number of continuing education credits but failed to report and certify compliance with the requirement as part of the submission of the status report; or

(2) Complete the required number of continuing education credits of qualifying continuing broker education and submit a corrected status report that, in accordance with § 111.30(d), reflects the broker's compliance with the continuing broker education requirement, if the individual broker had not completed the required number of continuing education credits at the time the status report was due.

(c) *Suspension of license.* Unless the individual broker takes the corrective actions described in paragraph (b)(1) or (2) of this section within 30 calendar days of the issuance of the notification described in paragraph (a) of this section, CBP will take actions to suspend the individual broker's license in accordance with subpart D of this part.

(d) *Revocation of license.* If the individual broker's license has been suspended pursuant to paragraph (c) of this section and the individual broker fails to take the corrective actions described in paragraph (b)(1) or (2) of this section within 120 calendar days upon the issuance of the order of suspension, CBP will take actions to revoke the individual broker's license without prejudice to the filing of an application for a new license in accordance with subpart D of this part.

Alejandro N. Mayorkas,
Secretary,
Department of Homeland Security.
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