

**Submission of the  
International AntiCounterfeiting Coalition  
to  
U.S. Customs and Border Protection  
Department of Homeland Security**

**Comments on Proposed Rule Re:  
Customs Broker Verification of an Importer's Identity  
84 Fed. Reg. 40302 - 17 (August 14, 2019)**

**Docket Number USCBP-2019-0024**

---

**October 15, 2019**

---



---

727 15<sup>th</sup> Street NW • 9<sup>th</sup> Floor • Washington, DC 20005 • USA • +1(202)223-6667 • iacc@iacc.org • www.iacc.org

October 15, 2019

Robert Altneu  
Branch Director, Trade & Commercial Regulations  
90 K Street NE, 10<sup>th</sup> Floor  
Washington, DC 20229

RE: Comments in Response to Proposed Rule – 19 CFR Part 111: Customs  
Broker Verification of an Importer’s Identity

Dear Mr. Altneu:

The International AntiCounterfeiting Coalition, Inc. (“IACC”) is happy to provide these comments in support of the amendment of 19 CFR Part 111, by U.S. Customs & Border Protection (“CBP”) with the addition of the new §111.43 pertaining to “Customs Broker Verification of an Importer’s Identity.” The IACC has been a longtime advocate for the adoption of such provisions, and welcomed the enactment by Congress of Section 116 of the Trade Facilitation and Trade Enforcement Act (“TFTEA”). We are likewise pleased by the thoughtful approach that CBP has taken to implement Section 116, which we expect should provide significant benefits to intellectual property owners and to the trade community at large.

Overwhelmingly, the counterfeit goods found in the U.S. market are manufactured abroad and shipped either directly to consumers (as is often the case for goods purchased in the e-commerce environment), or imported by third-parties who supply both traditional “brick and mortar” distribution channels or who provide domestic fulfillment outlets for online sellers based overseas. Customs brokers play a vital role in facilitating the importation of goods into the domestic market, and the adoption of a commonsense approach, industry-wide, such as that set forth in the proposed rule will serve to greatly diminish counterfeiters’ abilities to exploit brokers’ legitimate services for nefarious ends. The proposed regulations largely resolve the ongoing, systemic problems related to the disparate approaches taken by customs brokers in investigating and confirming the identity of their importer clients. While the Federal Register Notice rightly pointed out that most customs brokers have already adopted and implemented appropriate procedures for doing so, there remains a small, but significant, percentage of brokers who assert that they have no duty to undertake any meaningful examination into the identity of their importer clients, or of the putative powers of attorney (“POAs”) they receive from such importers. The persistence of these views has materially furthered the smuggling of counterfeit merchandise into the U.S. under a variety of identity theft schemes. Given the pervasiveness of this problem, the adoption of the proposed regulations is a long overdue and necessary fix.

The August 14<sup>th</sup> Federal Register Notice discussed at length an operational deficiency in the U.S. trade enforcement regime – one that intellectual property owners have sought to highlight for a number of years. Current regulations require all customs brokers to have in their possession a valid POA from an importer prior to providing customs brokerage services to that importer. *See* 19 *CFR* §141.46. This requirement is *unequivocal*. The broad majority of customs brokers understand the plain meaning and clear intent of this regulation, and as result have implemented vigorous and effective importer identification procedures and practices. To be clear, the IACC believes that most customs brokers follow this regulation scrupulously and are a great asset to U.S. trade.

Regrettably, a minority of customs brokers have taken the extreme position that because CBP has never promulgated binding regulations (as opposed to informal guidance and advice, through the CBP website, e.g.) requiring specific proactive steps to validate importers' identities or the information provided by importers in POAs, the resulting duty imposed by §141.46 is limited to the customs broker simply receiving a POA form in the name of the importer. Put bluntly, such an interpretation would require nothing more than the customs broker's receipt of a 'paper' in the form of a POA, in the name of the 'importer', executed by a 'person' – irrespective of the validity of the POA or where it was facially inadequate or fraudulent. As noted by CBP this has led to “broker shopping” by smugglers of counterfeit goods to find those customs brokers who are least inclined to make any inquiry, let alone reasonable inquiry, as to the true identity of their importer clients, the validity of the POAs proffered by those clients, and/or the sources from which the POAs originate.<sup>1</sup>

In the experience of IACC members, this “shopping” often targets smaller customs brokers who are chiefly or totally reliant upon referrals from transportation intermediaries. As a practical matter, these upstream transportation intermediaries completely control the interaction between the customs broker and the putative importer contact. The transportation intermediaries usually provide a completed POA to the customs broker, provide all transportation documents (including HBLs, Arrival Notice, commercial invoice and packing list) and often provide a completed ISF. The customs broker is then directed to file entry by the transportation intermediaries, to bill for its customs brokerage services to the transportation intermediaries rather than the importer, and ultimately is paid directly by the transportation intermediaries for the customs brokerage services.

In these types of transactions, the “validation” of an importer's identity by a customs broker is often limited to the broker's receipt of a FEI number from the transportation intermediary, which is checked against the CBP database to confirm that it relates to the identified importer. This review appears to be motivated more by the possibility that the broker might be able to sell a single-entry bond rather than by any desire to conduct a meaningful inquiry as to the identity of the importer or the validity of the POA supplied by the freight forwarder. It is further an empty effort as the identity theft schemes rely upon stealing an importer's identity in a credible manner. This includes utilizing an importer's publicly available FEI number that resolves back to the stolen importer identity in the CBP database.

---

<sup>1</sup> The IACC would note that identity theft schemes are far and away the most prevalent method of importing container loads of counterfeit merchandise into the U.S. The value of identity theft schemes to smugglers of counterfeit merchandise is two-fold. First, by stealing the identity of an established importer, the smuggler is less likely to have a shipment examined by CBP based on the real importer's established importing record. Second, by stealing the identity of a third party, the U.S. based smuggler of the counterfeit merchandise is insulated from the counterfeit merchandise until it is delivered post-CBP clearance. Identity theft schemes are primarily utilized in conjunction with the importation of counterfeit merchandise via sea cargo.

In practice, custom brokers in these scenarios make no investigation of the grantor's true identity (in many cases the POA will be signed in an illegible fashion with no information as to what name is being signed to the documents); the custom broker never meets the grantor or importer in person; never reviews a government-issued ID of the grantor; never compares the grantor's name (if, in fact, it is even known) with the names connected with the importer's state corporate record; never compares the contact information on importer's website with the contact information provided on the POA or related transportation documents; and never phones the importer directly to confirm the POA and/or transportation documents—no matter how suspicious. In defending this conduct, customs brokers routinely state that they cannot meet directly with their prospective importer clients as those importers are often located in different cities or states; or alternatively, the upstream transportation intermediary prohibits/discourages any direct contact so as to protect the transportation intermediary's economic relationship with the importer.

The practice of using identity theft to smuggle counterfeit merchandise into the U.S. is wholly reliant upon customs brokers not engaging in a reasonable inquiry into the identity of their importer clients. As noted in the proposed rulemaking, the most effective time to do such in an inquiry is when the customs broker receives the importer's putative POA. If fully adopted, the proposed rule will effectively eliminate these sorts of identity theft schemes as a method of smuggling in counterfeit merchandise. The benefits to be gained by implementing this rule, as proposed are readily apparent. Whether measured in terms of lost sales to legitimate manufacturers, tax revenues and duties that go unpaid to the government, decreased employment, or diminished investment in capital improvements and research and development; counterfeiting is a significant drain on the U.S. and global economy. Further, the production and distribution of goods produced in an entirely unregulated supply chain, where the makers have every incentive to cut corners by using cheap, substandard components, and no incentive to abide by accepted standards of consumer health and safety, presents a clear threat to the health and well-being of consumers, and to the integrity of our national security infrastructure. The new Section 111.43 will significantly enhance our trade enforcement regime, and in turn, help to abate the range of threats to our economy, our security, and the health and safety of U.S. citizens posed by the illicit trafficking of counterfeit goods. We look forward to working with you to ensure that progress.

For ease of reference, we include below paragraph-by-paragraph comments on the proposed rule below.

### **§111.43 Importer identity verification.**

**(a) Scope. This section sets forth the minimum requirements for importer and nonresident importer clients to provide information and for customs brokers to collect, verify, and maintain information about the identities of their resident and nonresident importer clients. The customs broker must collect certain information from the importer client when the importer client provides the customs broker with a power of attorney and the customs broker must verify all of the information collected before the broker may transact customs business on behalf of that client.**

The IACC supports the adoption of §111.43(a) in its entirety, particularly with regard to its statement that the prescribed information set forth are minimum requirements. As was noted in

the background information set forth in the Federal Register Notice, most customs brokers already collect the required information in the course of their current business practices. Paragraph (a) makes clear that the regulations are intended as a floor, rather than as a ceiling; and that additional information may be required in some circumstances to properly vet and authenticate their clients' identities.

**(b) Definitions.**

**(1) Importer and nonresident importer.** For purposes of this section, “importer” is defined as one of the parties qualifying as an importer of record under 19 U.S.C. 1484(a)(2)(B). “Nonresident importer” is defined as an importer of record that is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; or a partnership, corporation, or other commercial entity that is not organized under the laws of a jurisdiction within the customs territory of the United States (as such term is defined in General Note 2 of the Harmonized Tariff Schedule of the United States) or in the Virgin Islands of the United States.

**(2) Client.** For purposes of this section, the “client” is defined as the importer or nonresident importer of record who is seeking or employing the services of a customs broker to transact customs business on behalf of the importer or nonresident importer of record.

**(3) Grantor.** For purposes of this section, the “grantor” is defined as the individual executing the power of attorney on behalf of the client.

The IACC supports the adoption of §111.43(b) in its entirety, and without further comment.

**(c) Minimum information that the customs broker must collect from the client.** The customs broker must collect, at minimum, the following information, if applicable, from the client to allow the customs broker to verify the client's identity when the customs broker, as required by §141.46 of this chapter, obtains a power of attorney:

- (1) The client's name;**
- (2) For a client who is an individual, the client's date of birth;**
- (3) For a client that is a partnership, corporation, or association, the grantor's date of birth;**
- (4) For a client that is a partnership, corporation, or association, the client's trade or fictitious names;**
- (5) The address of the client's physical location (for a client that is a partnership, corporation, or association, the physical location would be the client's headquarters) and telephone number;**
- (6) The client's email address and business website;**
- (7) A copy of the grantor's unexpired government-issued photo identification;**
- (8) The client's Internal Revenue Service (IRS) number, employer identification number (EIN), or importer of record (IOR) number;**
- (9) The client's publicly available business identification number;**

- (10) A recent credit report;**
- (11) A copy of the client’s business registration and license with state authorities; and**
- (12) The grantor’s authorization to execute power of attorney on behalf of client.**

The IACC concurs with paragraph (c) of §111.43, and believes that the data points enumerated therein provide a sufficient minimum standard on which customs brokers might verify a client’s identity. As discussed in the background information provided in the relevant Federal Register Notice however, some of these data points may not be applicable to all of a broker’s clients. In such instances, additional guidance from CBP may be appropriate to aid brokers in identifying alternative, verifiable data points which might confirm a potential client’s identity. Where an importer fails to provide one or more of the data points enumerated in paragraph (c) the broker should maintain a record of that fact and any efforts made to obtain that data. And, if in the course of verifying the information provided, e.g., through brokers’ review of appropriate websites and databases, a broker should uncover one of the above data points not previously disclosed by the client, or which conflicts with information provided by the client, the broker should likewise document such fact.

***(d) Verification of information by customs broker. Before transacting customs business on behalf of a client, the customs broker must authenticate the client’s identity by verifying all the information collected from the client pursuant to paragraph (c) of this section. The customs broker must verify all the information collected from the client or the inapplicability of the information to that client. The customs broker also must check to determine whether the client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government. The means of verification are at the customs broker’s discretion; however, the broker must use as many of the recommended verification means as necessary to be reasonably certain as to the client’s identity. These means include:***

- (1) A check of the appropriate websites to determine whether the client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government;**
- (2) An in-person review of the grantor’s government-issued photo identification;**
- (3) An in-person client meeting;**
- (4) An in-person visit of the client’s place of business;**
- (5) A review of the client’s Articles of Incorporation;**
- (6) A query of publicly available information, business information and credit reporting entities, Federal, state, and local databases or websites and any other relevant trade or business sources.**

We support the adoption of paragraph (d) in its entirety. In particular, we would underscore the importance of verifying and authenticating the client’s identity *before* a broker begins transacting business on that client’s behalf. Further, we note that the regulation provides a “reasonably certain” standard for the customs broker in its verification activities. This standard, as we interpret it, would require a customs broker who receives inconsistent importer information from the data and

documents collected under paragraph (c), to carry out additional reasonable inquiry to explain the inconsistent information. As an example, if the grantor identified on the POA identifies him- or herself as president of the importer corporation, but a different individual is identified as president by the company's records, the customs broker would then be required to make a direct inquiry to the importer to get confirmation of the identity of the grantor (with an appropriate explanation and/or supporting documentation). As part of this reasonable inquiry, the customs broker would be required to create and maintain documentation of that further investigation.

As pointed out above, most identity theft schemes are channeled to customs brokers through transportation intermediaries and / or logistics companies. We believe that under the "reasonably certain" standard, that verification process provided by paragraph (d) may not be wholly outsourced to a referring company. That is, while the customs broker retains the discretion to choose which method of verification is undertaken to establish the reasonable certainty of the importer's identity, this discretion does not permit the broker to allow a third party to conduct the verification process.

With regard to the enumerated procedures, we believe an in-person review of the grantor's government-issued photo identification, and an in-person meeting with the client, and an in-person visit of the client's place of business are among the most effective means to verification. If in-person meetings are not possible, one of the most cost effective ways to verify the importer's identity is to have the customs broker simply call the importer directly via a phone number published on the importer's website, or in a public database, to confirm the documents or information received, the identity of the grantor, and the importer's knowledge of the POA or shipments at issue. This phone call would take only a few minutes and eliminates the silo effect typical of most identity theft schemes.

Brokers may also wish to make use of any number of free and publicly available tools such as GoogleMaps "Street View" to confirm the existence of a facility at a physical address, to execute a look-up and reverse look-up of a potential client based on the names, addresses, and phone numbers provided. As noted above, independently verifying the business location and phone numbers by calling them and confirming the information (rather than relying solely on the data provided by the client) can aid in validation with minimal additional effort.

Obtaining a current credit report may be extremely helpful, though we would note that the level of detail provided in credit reports can vary greatly. As such, they should not be given dispositive weight. The broker should also obtain such reports directly from the credit reporting agency. In the experience of our members, such documentary evidence, has been found to be among the easiest for bad actors to fake. This same caution should be extended to authenticating articles of incorporation, company bylaws, etc., provided by potential clients; such documents should be closely checked and cross-referenced with relevant databases, transportation documents and information found on the importer's website or other social media.

**(e) *Establishment of policies, procedures and internal controls.* All customs brokers must implement policies, procedures, and internal controls to identify and verify a client's identity before transacting customs business on behalf of that client. The policies, procedures, and internal controls must also fulfill the recordkeeping requirements in paragraph (f) of this section, particularly the requirement for updating information and records, and reverifying the client's identity.**

The IACC supports the adoption of paragraph (e) without further comment.

- (f) Recordkeeping.** All customs brokers must make, retain, and update records containing the required information used to identify and to verify the client's identity.
- (1) Identification records.** At a minimum, customs brokers must retain any information collected pursuant to paragraph (c) of this section, including any identifying information presented to the customs broker, as well as any certifications the client has made.
  - (2) Verification records.** At a minimum, customs brokers must retain descriptions of any documents relied upon, any non-documentary methods relied upon, any results of measures undertaken, and any resolution of discrepancies used to verify the client's identity as required by paragraph (d) of this section. The verification records must indicate which information collected pursuant to paragraph (c) was verified, who performed the verification, and the date the verification was performed.
  - (3) Compliance with other recordkeeping provisions.** All customs brokers must comply with the recordkeeping provisions of this part, part 141 of this chapter, and part 163 of this chapter. The identification and verification records must be retained and made available upon request for CBP examination in accordance with parts 111, 141, and 163 of this chapter. The required retention period for the identification and verification records is the same period as is required for a power of attorney in §§111.23 and 163.4 of this chapter.
  - (4) Updating information.** All customs brokers must implement procedures to update the records required in this section and to reverify the information collected from the client pursuant to the procedures set forth in paragraph (d) annually to ensure that the information is accurate, timely, and complete.

The IACC supports the adoption of the recordkeeping and re-verification requirements set forth in paragraph (f) of §111.43. The retention of such records provides a commonsense mechanism for ensuring appropriate compliance with brokers' obligation to know their customers, and to enable CBP to identify gaps, whether in terms of the type of information required or methods of verification undertaken, which might impede effective enforcement of the nation's trade laws. As set forth in detail in the Federal Register Notice, the adoption of these provisions will not impose an undue burden upon customs brokers' operations. To that point, it should be noted that any financial impact associated with the regulations will undoubtedly be offset, at least in part, by brokers' passing through of costs to their clients.

The IACC would note that in its members' experience, customs brokers involved in identity theft routinely claim that it is because they charge so little for their services that they are not in a financial position to undertake importer identity validation. The information provided by the proposed rulemaking concerning the costs associated with a reasonable inquiry should provide customs brokers with a ready-made monetary figure to pass on to the importers for whom they're providing services. And by mandating these minimum requirements industry-wide, CBP should effectively preclude a "race to the bottom" among brokers competing to provide services, in terms of the level of due diligence undertaken.



**(g) Penalties for noncompliance.** Failure to collect, verify, secure, retain, update, or make available for inspection the information required in this section is grounds for a monetary penalty to be assessed against the customs broker not to exceed \$10,000 per client in accordance with 19 U.S.C. 1641(d)(2)(A), or revocation or suspension of the customs broker's license or permit in accordance with 19 U.S.C. 1641(d)(2)(B).

We believe the penalties set forth in paragraph (g) for noncompliance are sufficient to ensure compliance with the regulation. We would request clarification however that the penalties are not exclusive however, and that a non-compliant broker could be assessed monetary penalties not to exceed \$10,000 per client *and* revocation or suspension of the broker's license or permit.

**(h) Timing of verifications.**

- (1) Prospective clients.** For all prospective clients, customs brokers must verify the information required in this section before the customs broker may begin to transact customs business on behalf of that client. The customs broker must comply with all the requirements in this section for that client including updating all records and information.
- (2) Existing clients.** For existing clients with a power of attorney issued by a partnership, customs brokers must, within two years of the final rule being effective, update and verify the information required in this section. For all other existing clients, customs brokers must, within three years of the final rule being effective, update and verify the information required in this section. By these dates, the customs broker must have complied with all the requirements in this section, including the updating of all records and information, and must continue to comply.
- (3) Reverification.** Reverification must occur annually after the initial verification required by this section.

The IACC supports the adoption of the timelines set forth in the proposed rule, without alteration.

We thank you for your work on these important issues, and for the opportunity to share our members' experiences. If you have any questions or concerns related to the comments provided herein, please contact me at your convenience.

Respectfully submitted,



Travis D. Johnson  
Vice President - Legislative Affairs, Senior Counsel

## About the IACC

The IACC is the world's oldest and largest organization dedicated exclusively to combating trademark counterfeiting and copyright piracy. Founded in 1979, and based in Washington, D.C., the IACC represents approximately 250 corporations, trade associations, and professional firms, spanning a broad cross-section of industries. IACC members include many of the world's best-known brands in the apparel, automotive, electronics, entertainment, luxury goods, pharmaceutical, software, and other consumer product sectors. Central to the IACC's mission is the education of both the general public and policy makers regarding the severity and scope of the harms caused by intellectual property crimes – not only to legitimate manufacturers and retailers, but also to consumers and governments worldwide. The IACC seeks to address these threats by promoting the adoption of legislative and regulatory regimes to effectively protect intellectual property rights, and to encourage the application of resources sufficient to implement and enforce those regimes.