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VIA Federal Rulemaking Portal

https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202010-1651-013

Office of Information and Regulatory Affairs
725 17th Street NW,
Washington, DC 20503.
Telephone: 202-395-5897

**Re: Agency Information Collection Activities; Proposals, Submissions, and Approvals: Customs Regulations Pertaining to Customhouse Brokers
USCBP-2007-0095-0015**

To Whomsoever It May Concern:

This comment is written on behalf of our client, O.T.S. Astracon, LLC ("OTS"). OTS submits this comment to the Office of Information and Regulatory Affairs ("OIRA") in response to U.S. Customs and Border Protection's ("CBP") information collection request in accordance with the Paperwork Reduction Act of 1995 ("PRA"). OIRA requested public comment on how best to achieve meaningful paperwork burden reduction under the PRA with regard to CBP regulations pertaining to customhouse brokers.

OTS commends CBP on its efforts at modernizing its customs broker regulations as announced in its [proposed rule](#) published on the Federal Register on June 5, 2020. OTS believes that CBP's proposed rule aligns with its commitment to modernizing U.S. Customs procedures as outlined in its [21st Century Customs Framework](#). OTS submits this comment to offer recommendations for CBP's efforts at modernizing its customs broker regulations. This comment is submitted timely as the deadline for submissions is November 30, 2020.

The Federal Register Notice specified that OIRA seeks public comment on how existing agency requirements affecting the customhouse brokerage industry can be modified to efficiently, effectively and accurately collect necessary information while minimizing the burden of collection on those who are to respond. OTS offers concrete recommendations not yet addressed

in its proposed June 5, 2020 rules to assist CBP in its efforts at modernizing its customs broker regulations. These recommendations are described below. OTS is an interested party as it is a member of the customhouse brokerage industry.

OTS BACKGROUND

Since opening in 1997, OTS has been committed to providing exceptional customer service in all areas of the supply chain. OTS prides itself in being able to offer innovative & customized logistics solutions to its customers. With a vast worldwide network, OTS Astracon offers all types of international transportation services including airfreight, seafreight, warehousing, distribution, origin and destination trucking services as well as customized IT systems. OTS is a full-service logistics provider that is committed to meeting the needs of its customers and giving them the personal attention they deserve. Over the course of OTS' 23 years in operation, OTS has expanded to operate in over 100 countries and employs over 500 people worldwide. OTS is a member of Customs-Trade Partnership Against Terrorism ("CTPAT"), the National Customs Brokers & Forwarders Association of America ("NCBFAA"), and the International Air Transport Association ("IATA").

OTS' RECOMMENDATIONS TO CUSTOMS

This comment responds directly to one out of the four questions issued in the Federal Register notice:

Suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OTS appreciates that CBP has collaborated over the past ten years with the customs brokerage community to arrive at regulations that reflect the modern commercial reality that customs brokers are confronting in the rapidly evolving trade framework. OTS believes that CBP's proposed rules reflect CBP's commitment to modernizing U.S. Customs procedures as outlined in its 21st Century Customs Framework. Due to the critical role customs brokers play in ensuring the accurate entry of goods as parties licensed to transact customs business, the proposed regulations will have an all-encompassing and profound impact on the daily processing of international trade from the standpoint of both the private and public sector.

OTS offers the following recommendations to CBP in its efforts to modernize its custom broker application and permitting process:

ADDRESS CORPORATE LICENSE HOLDER CHALLENGES

- **Sufficiently address the unique challenges faced by corporations.** Although CBP's proposed rules provide information on brokerage licensing and the brokerage permit application process for individual broker applicants, the proposed rules do not sufficiently address the unique challenges faced by corporations. For example, the process of **corporate mergers and acquisitions** among corporations presents significant

uncertainty, complex regulations, and the fear of not being able to operate during the transition. If CBP authorized corporate permits for related entities and multiple license holders, this would enable brokers to manage and organize their operations regionally and/or vertically as they see fit to exercise responsible supervision and control. OTS recommends that a section be added to CBP's proposed rules which specifically address the unique position of corporate brokerages to make the merging and acquisition process for corporations seamless.

- **We recommend the broker license application include a question asking if the applicant simultaneously requests a national permit**, and if so, to provide the additional information listed in 111.19).
- **Allow Customs Brokers to be the “Qualifying Individual” for more than one corporate entity.** To help ensure a seamless transition from when acquiring a corporate licensee holding a national permit, we recommend CBP allow Customs Brokers to be the “Qualifying Individual” for more than one corporate entity, especially during a corporate transition. Maintaining multiple national permits and license holders as appropriate for their corporate business models will help assure business continuity. OTS underscores a point already submitted by the NCBFAA¹:

CBP could alleviate many of the preoccupations, as well as potential legal challenges, associated with the national permit in the short as well as long term if it recognizes that customs brokers may hold multiple national permits if they maintain separate, although related, business entities and allow for more than one licensed broker to qualify for the permit. In fact, the courts have recognized that CBP cannot disrupt a customs broker's business or livelihood without regulatory standards and procedures.
- **Confirm that the submission of a corporate broker license application via CBP Form 3124 (per 111.12) will result in a national permit** (and update the CBP Form 3124 as appropriate to check a box to indicate that the corporate applicant simultaneously requests a national permit).
- **Create either an online portal or an electronic mailbox (dedicated email for receiving and responding to) all electronic submissions.** CBP's June 5, 2020 proposed rule provides the following language be added to Part 111.19: “An application for a national permit under this paragraph must be in the form of a letter or CBP-approved electronic submission to the director of the designated Center.” OTS commends CBP for modernizing the permit application process by approving electronic (paperless) transmission of national broker permit applications and notes that this can be achieved by either the creation of either an online portal or an electronic mailbox to receive and respond to all electronic submissions.

¹ See Modernization of the Customs Brokers Regulations, USCBP-2020-0009, Comment Submitted by Megan Montgomery, NCBFAA, available at <https://beta.regulations.gov/comment/USCBP-2020-0009-0015> (last visited Nov. 25, 2020).

- If CBP utilizes a portal, within it should be a dedicated CBP Form for National Permit applications and the ability to accept attachments. Otherwise, we recommend CBP create a standardized form for the national permit application, with a procedure to accept paperless applications and attachments via an electronic mailbox.
- **Establish time limitations on how long CBP has to review new broker license and permit applications.** OTS believes that the proposed rule should be amended to include a time limitation on the review period for new broker applications. OTS recommends that CBP's proposed rules should contain a 60 calendar day time limitation on when a license and/or permit applicant receives a CBP determination after an application has been filed. This is especially helpful for corporate applicants to provide certainty during a corporate mergers and acquisition process.
- **We recommend CBP strictly post corporate applications electronically and forego its practice of posting applications at the local customhouses and update 111.12(b) to: “(b) *Posting notice of application.* Following receipt of the application, the [port director](#) will post a notice that the application has been filed. The notice will be posted conspicuously for at least 2 consecutive weeks ~~in the customhouse at the [port](#) and similarly at any other [port](#) where the applicant also proposes to maintain an office.~~ The notice also will be posted [at cbp.gov] ~~by appropriate electronic means.~~ The notice will give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, will state the names of all members or [officers](#) who are licensed as brokers. The notice will invite written comments or information regarding the issuance of the license.”**

CONCLUSION

OTS commends CBP on its proposed rules announced on June 5, 2020 modernizing customs brokers regulations. In this comment, OTS has offered CBP concrete recommendations for how to better serve the corporate customhouse brokerage industry. OTS believes that its recommendations will have a positive economic impact on the customhouse brokerage industry and the wide array of industries customhouse brokers serve. We look forward to assisting OIRA in further identifying, clarifying, and resolving issues.

Very truly yours,



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CC: Seth Renkema
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