

of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Ingrid Knox, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone: (817) 222-5139; facsimile: (817) 222-5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279-0490. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 7, 2002.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 111

#### RIN 1515-AD14

### Performance of Customs Business by Parent and Subsidiary Corporations

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed amendments to Part 111 of the Customs Regulations to specify that corporate compliance activity engaged in for the purpose of exercising “reasonable care” under 19 U.S.C. 1484 is not customs business and, therefore, such activity is not subject to the customs broker licensing requirements of 19 U.S.C. 1641. The proposed amendments make clear that this corporate compliance activity concept does not extend to document preparation and filing, which is customs business subject to licensing requirements. It is anticipated that the proposed amendments will improve the operational efficiency of the affected corporate entities and, thereby, enhance

their ability to ensure compliance with applicable customs laws and regulations.

**DATES:** Comments must be submitted on or before December 16, 2002.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gina Grier, Office of Regulations and Rulings (202-572-8730).

#### SUPPLEMENTARY INFORMATION:

#### Background

##### *Statutory and Regulatory Framework*

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

The regulations issued under the authority of section 641 are set forth in part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

Section 111.1 of the Customs Regulations (19 CFR 111.1) defines “customs business” as follows for purposes of part 111:

“Customs business” means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. “Customs business” also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, “customs business” does not include the mere electronic transmission of data received for transmission to Customs.

Section 111.1 also defines “person” for purposes of part 111 as including “individuals, partnerships, associations, and corporations.”

Section 111.2 of the Customs Regulations (19 CFR 111.2) sets forth the basic rules regarding when a person must obtain a customs broker license and permit. Paragraph (a)(2) of § 111.2 specifies several exceptions to the license requirement including, in subparagraph (i), an exception for an importer or exporter (and his authorized regular employees or officers acting only for him) transacting customs business solely on his own account and in no sense on behalf of another. Section 111.4 of the Customs Regulations (19 CFR 111.4) provides that any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker’s license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of section 641.

#### *Reasons for Proposed Change*

The amendments made in 1993 by the Customs Modernization Act provisions of the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057) included the requirement to exercise “reasonable care” in connection with the entry requirements set forth in 19 U.S.C. 1484. To foster compliance with the customs laws and regulations under this added statutory responsibility, many importer groups consisting of a parent corporation and one or more subsidiary corporations have chosen to centralize their in-house customs experts into one corporate entity and to make the services of those experts available to the group as a whole. However, when requested to issue an administrative ruling on the issue, Customs has consistently taken the position that many of the activities performed under this type of arrangement would involve

the transaction of "customs business," which would require a broker license under § 111.2(a)(1). See HQ 115248 dated August 26, 2001, and HQ 115278 dated November 13, 2001. In this regard, Customs has considered the fact that (1) the parent corporation and each subsidiary corporation is a separate legal "person" both under longstanding legal precedent and under the definition of "person" in § 111.1, and (2) therefore, the parent or subsidiary corporation in which the customs expertise resides would be transacting customs business not solely on its own account as provided under § 111.2(a)(2)(i) but rather on behalf of another "person."

Members of the trade community have indicated to Customs that the present situation is unsatisfactory because it does not afford importers sufficient opportunity to address multiple related aspects of an individual customs transaction or groups of transactions and thus is an impediment to their ensuring that reasonable care is exercised by all corporate affiliates for purposes of 19 U.S.C. 1484.

An example will illustrate the basis for the trade community concerns: Under the current regulations as interpreted by Customs, if an unlicensed corporation in a parent and subsidiary relationship wished to engage a licensed individual broker as an employee of the corporation to give customs business advice to its related company regarding specific transactions, there would be certain legal limitations. The rendering of advice under the described circumstances would be permissible only if the licensed broker employee were to become a bona fide employee of each of the two involved companies, or if the employing corporation were to obtain a corporate broker license, or if the licensed broker employee were to set up business to operate as a broker during non-work hours.

Accordingly, Customs is proposing for public comment amendments to the Customs Regulations that would expand the permissible use of in-house experts by corporations and their affiliates to include activity that is intended to meet the corporation's "reasonable care" obligations under 19 U.S.C. 1484 and that, as such, does not fall within the definition of "customs business" in 19 U.S.C. 1641. The proposed amendments are discussed below.

#### *Discussion of Proposed Amendments*

Customs believes that the definition concepts in § 111.1 should be amended to recognize corporate compliance activity as falling under the term reasonable care and, as such, as not falling within the term "customs

business." This would allow parent, subsidiary, and sister subsidiary corporations to structure their corporate compliance activities to ensure an effective and efficient exercise of "reasonable care" under 19 U.S.C. 1484. Accordingly, this document proposes to add a definition of the term "corporate compliance activity" to § 111.1 and to amend the existing definition of "customs business" by adding conforming exception language at the end of the last sentence. Under these proposed amendments, the limitations on the activities described in the previously discussed example would no longer apply because those activities would not be considered "customs business." Rather, they would be allowed as a corporate compliance activity under the "reasonable care" standard in 19 U.S.C. 1484.

The new definition limits the corporate compliance activity that the in-house experts may perform to those activities that do not involve the preparation of documents or their electronic equivalents to be filed with Customs and the filing of documents or their electronic equivalents with Customs, because Customs believes that these specialized activities clearly fall within the term "customs business."

Finally, this document proposes to amend § 111.2 by adding a new paragraph (a)(2)(vii) which states that a company performing a corporate compliance activity is not required to be licensed as a broker.

#### **Comments**

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

#### **Executive Order 12866**

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

#### **Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Customs believes that the proposed amendments will have only a minimal impact on overall customs broker operations because they do not authorize the preparation of documents and the filing of documents with Customs, which constitute the bulk of customs business services provided by brokers, and the proposed amendments will provide positive economic and related benefits to other members of the import community. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### **Drafting Information**

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### **List of Subjects in 19 CFR Part 111**

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

#### **Proposed Amendments to the Regulations**

For the reasons stated above, it is proposed to revise Part 111 of the Customs Regulations (19 CFR Part 111) as set forth below.

#### **PART 111—CUSTOMS BROKERS**

1. The authority citation for Part 111 continues to read in part as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641;

\* \* \* \* \*

2. In § 111.1, the definition of "customs business" is amended by adding at the end of the last sentence before the period the words "and does not include a corporate compliance activity", and a new definition of "corporate compliance activity" is added in appropriate alphabetical order to read as follows:

#### **§ 111.1 Definitions.**

\* \* \* \* \*

*Corporate compliance activity.* "Corporate compliance activity" means activity performed by a parent company or subsidiary company or sister subsidiary company to ensure that

documents for a parent company or subsidiary company or sister subsidiary company are prepared and filed with Customs using "reasonable care", but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a parent company is a corporation that owns more than 50 percent of the voting shares of another corporation, a subsidiary company is a corporation in which a parent company owns more than 50 percent of the voting shares, and a sister subsidiary company is one of two or more corporations in which the same parent company owns more than 50 percent of the voting shares.

\* \* \* \* \*

3. In § 111.2, a new paragraph (a)(2)(vii) is added to read as follows:

**§ 111.2 License and district permit required.**

- (a) \* \* \*  
(2) \* \* \*

(vii) *Corporate compliance activity.* A company performing a corporate compliance activity is not required to be licensed as a broker.

\* \* \* \* \*

**Douglas M. Browning,**

*Acting Commissioner of Customs.*

Approved: October 8, 2002.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2002-4]

#### Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Copyright Office of the Library of Congress is preparing to conduct proceedings mandated by the Digital Millennium Copyright Act, which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine

whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit evidence on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by this prohibition on the circumvention of measures that control access to copyrighted works.

**DATES:** Written comments are due by December 18, 2002. Reply comments are due by February 19, 2003.

**ADDRESSES:** Electronic Internet submissions must be made through the Copyright Office Web site: [http://www.copyright.gov/1201/comment\\_forms](http://www.copyright.gov/1201/comment_forms); See section 3 of the **SUPPLEMENTARY INFORMATION** section for file formats and other information about electronic and non-electronic filing requirements. If delivered by hand, comments should be delivered to the Office of the General Counsel, Copyright Office, LM-403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. If delivered by means of the United States Postal Service (see section 3 of the **SUPPLEMENTARY INFORMATION** about continuing mail delays), comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400. See **SUPPLEMENTARY INFORMATION** section for information about requirements and formats of submissions.

**FOR FURTHER INFORMATION CONTACT:** Rob Kasunic, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024-0400. Telephone (202) 707-8380; telefax (202) 707-8366.

**SUPPLEMENTARY INFORMATION:**

#### 1. Mandate for Rulemaking Proceeding

On October 28, 1998, President Clinton signed into law the Digital Millennium Copyright Act, Pub. L. 105-304 (1998). Section 103 (subtitled "Copyright Protection Systems and Copyright Management Information") of Title I of the Act added a new Chapter 12 to title 17 United States Code, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. Specifically, subsection 1201(a)(1)(A) provides, inter alia, that

"No person shall circumvent a technological measure that effectively controls access to a work protected under this title." Subparagraph (B) limits this prohibition. It provides that prohibition against circumvention "shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title" as determined in this rulemaking. This prohibition on circumvention became effective two years after the date of enactment, on October 28, 2000.

At the end of the 2-year period between the enactment and effective date of the provision, the Librarian of Congress made an initial determination as to classes of works to be exempted from the prohibition for the first triennial period. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 FR 64556, 64574 (2000) (hereinafter Final Reg.). This determination was made upon the recommendation of the Register of Copyrights following an extensive rulemaking proceeding. The exemptions promulgated by the Librarian in the first rulemaking will remain in effect until October 28, 2003. At that point, the exemptions created in the first anticircumvention rulemaking will expire and any exemptions promulgated in this second anticircumvention rulemaking will take effect for a new 3-year period.

#### 2. Background

Title I of the Digital Millennium Copyright Act was, inter alia, the congressional fulfillment of obligations of the United States under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. For additional information on the historical background and the legislative history of Title I, See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 64 FR 66139, 66140 (1999) (<http://www.loc.gov/copyright/fedreg/1999/64fr66139.html>).

Section 1201 of title 17 of the United States Code prohibits two general types of activity: (1) The conduct of "circumvention" of technological protection measures that control access and (2) trafficking in any technology, product, service, device, component, or part thereof that protects either access to a copyrighted work or that protects the "rights of the copyright owner," if that