



Instructions for Completing the Customs Power of Attorney

1. Check the appropriate block which best identifies the type of importer you or your company will be.
2. Provide the company's Federal Tax ID number or, if an individual, your Social Security Number. Evidence of the authenticity of your Federal ID by means of correspondence from the IRS department will need to be provided as well as a copy of your business license or registration. If you are an individual, you must provide copy of your SS card and personal ID (driver's license or passport).
3. **Corporation or LLC:** State the complete legal name of the corporation, as shown in the Articles of Incorporation – no abbreviations.
4. **Partnership or LP:** Give the full name of each partner, and the business name of the partnership. Use an additional sheet if necessary. (See special instructions/information attached.)
5. **Proprietorship:** State the full name of the individual operating as a Sole Proprietorship and the business name under which business is transacted.
6. **Individual:** Give **full name** (including middle name) of the individual.
7. State the type of business of the Grantor, i.e. Corporation, Partnership, LLC, LLP, etc.
8. Indicate the State of Incorporation. If not a corporation, the state in which the company or individual is registered to transact business.
9. The physical address of the company or individual. Post Office Boxes are not permitted.
10. Insert the name of the corporation, LLC, individual or proprietorship. In the case of a partnership, use the names of each of the general partners or the partnership name.
11. Signature of the person executing the Power of Attorney. **Be sure to type or print the full name immediately next to the signature.** In the case of a corporation, the Power of Attorney **MUST** be signed by a Corporate Officer authorized to do so by a resolution of the Board of Directors, usually the President, Vice President, Secretary or Treasurer. **A manager, general manager or supervisor IS NOT ACCEPTABLE by LAW.** In case of a LLC, an authorized official must sign the Power of Attorney, and by doing so, is certifying that they have been given such authority under the Articles or Bylaws of the company. In case of a partnership or LLP, any one of the “general partners” may execute the Power of Attorney.
12. Title of the officer or authorized person who has signed.
13. Date the Power of Attorney is executed.

§ 141.34 Duration of power of attorney.

Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of execution. All other powers of attorney may be granted for an unlimited period.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.35 Revocation of power of attorney.

Any power of attorney shall be subject to revocation at any time by written notice given to and received by the port director.

§ 141.36 Nonresident principals in general.

A power of attorney executed by a nonresident principal shall not be accepted unless the agent designated thereby is a resident and is authorized to accept service of process against such nonresident.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.37 Additional requirements for nonresident corporations.

If a nonresident corporation has not qualified to conduct business under state law in the state in which Customs district the agent is empowered to perform the delegated authority, the power of attorney shall be supported by documentation establishing the authority of the grantor designated to execute the power of attorney on behalf of the corporation.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.38 Resident corporations.

A power of attorney shall not be required if the person signing Customs documents on behalf of a resident corporation is known to the port director to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized to do so.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.39 Partnerships.

(a)(1) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of the partnership may execute a power of attorney in the name of the partnership for the transaction of all its Customs business.

(2) *Limited partnership.* A power of attorney granted by a limited partnership need only state the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. A copy of the partnership agreement must accompany the power of attorney. For this purpose, a partnership or limited partnership means any business association recognized as such under the laws of the state where the association is organized.

(b) *Change in partners.* When a new firm is formed by a change in membership, no power of attorney filed by the antecedent firm shall thereafter be recognized for any Customs purpose.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 86-204, 51 FR 42999, Nov. 28, 1986]

§ 141.40 Trusteeships.

A trustee may execute a power of attorney for the transaction of Customs business incident to the trusteeship.

§ 141.41 Surety on Customs bonds.

Powers of attorney to sign as surety on Customs bonds are subject to the requirements set forth in part 113 of this chapter.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 74-227, 39 FR 32023, Sept. 4, 1974]

§ 141.42 Protests.

Powers of attorney to file protests are subject to the requirements set forth in §174.3 of this chapter.

§ 141.43 Delegation to subagents.

(a) *Resident principals.* Except as otherwise provided for in paragraph (c) of this section, the holder of a power of attorney for a resident principal cannot appoint a subagent except for the purpose of executing shippers' export declarations. A subagent so appointed cannot delegate his power.

(b) *Nonresident principals.* Except as otherwise provided for in paragraph (c) of this section, an agent who has power of attorney for a nonresident principal may execute a power of attorney delegating authority to a subagent only if the original power of attorney contains express authority from the principal for the appointment of a subagent or subagents. Any subagent so appointed must be a resident authorized to accept service of process in accordance with §141.36.

(c) *Customhouse brokers.* A power of attorney executed in favor of a licensed customhouse broker may specify that the power of attorney is granted to the broker to act through any of its licensed officers or authorized employees as provided in part 111 of this chapter.

§ 141.44 Designation of Customs ports in which power of attorney is valid.

Unless a power of attorney specifically authorizes the agent to act thereunder at all Customs ports, the name of each port where the agent is authorized to act thereunder shall be stated in the power of attorney. The power of attorney shall be filed with any port director, in a sufficient number of copies for distribution to each port where the agent is to act, unless exempted from filing by §141.46. The port director with whom a power of attorney is filed, irrespective of whether his port is named therein, shall approve it, if it is in the correct form and the provisions of this subpart are complied with, and forward any copies intended for other ports as appropriate.

§ 141.45 Certified copies of power of attorney.

Upon request of a party in interest, a port director having on file an original power of attorney document (which is not limited to transactions in a specific Customs location) will forward a certified copy of the document to another port director.

[T.D. 95-77, 60 FR 50020, Sept. 27, 1995]

§ 141.46 Power of attorney retained by customhouse broker.

Before transacting Customs business in the name of his principal, a customhouse broker is required to obtain a valid power of attorney to do so. He is not required to file the power of attorney with a port director. Customhouse brokers shall retain powers of attorney with their books and papers, and make them available to representatives of the Department of the Treasury as provided in subpart C of part 111 of this chapter.

Using a Power of Attorney

Resident Corporations - The President, Vice President, Secretary, or Treasurer of the corporation is assumed to have authority to bind the corporation. (HRL 221480). Nonetheless, if questioned by CBP, the burden remains on the officer signing and asserting his authority to provide evidence of his authority to bind the corporation. (HRL 228104). Otherwise, the *Power of Attorney* should be accompanied by a certification attesting to the authority of the executor to bind the corporation. The certification must certify that the executor is authorized to sign the *Power of Attorney* by resolution of the Board of Directors and must be consistent with the articles of incorporation and bylaws of the corporation.

Nonresident Corporations - Unless authorized to conduct business under the laws of the state in which the Customs district designated in the *Power of Attorney* is located, the *Power of Attorney* should be supported by documentation establishing the authority of the signator to bind the corporation. (Section 141.37, CR). Proper supporting documentation is a certification from the appropriate corporate official attesting to the ability of the grantor to act on the corporation's behalf (HRL 729775). Such documentation must be consistent with the laws of the country in which the corporation is registered.

Limited Liability Corporations - The *Power of Attorney* should state the names of all members of the LLC that have the authority to execute the *Power of Attorney* on behalf of the LLC. In addition, if the signator is not a named member, documentation must be provided certifying the signator is authorized to sign the *Power of Attorney* under the terms of the LLC Agreement.

Partnerships - The *Power of Attorney* may be executed by any member of the partnership. (Section 141.39(a)(1), CR). If the executor is not a general partner, the partnership must certify that the executor is authorized to sign the *Power of Attorney* under the terms of the partnership agreement.

Limited Partnerships - For purposes of executing a *Power of Attorney*, a limited partnership is any business association recognized as such under the laws of the State where the association is organized. The *Power of Attorney* should reflect only the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. In addition, a copy of the partnership agreement must accompany the *Power of Attorney*. (Section 141.39(a)(2), CR). If the executor is not a general partner with the authority to bind the firm, the partnership must certify the executor is authorized to sign the *Power of Attorney* under the terms of the partnership agreement.

Questions to Consider:

Q: Is the *Power of Attorney* valid if not dated?

A: Yes. However, to avoid questions as to when the *Power of Attorney* became effective, it should be routinely dated. If there is no date, the broker should note the date it received the *Power of Attorney* by "date stamp" preceded by the word "Received."

Q: If the importer is the "XYZ Division" of the "ABC Corp." may the *Power of Attorney* be signed by the president of the XYZ Division?

A: No, unless it is accompanied by evidence of a board resolution empowering that person to sign. An officer of a division or branch of a corporation is not assumed to have corporate

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What is a valid *Power of Attorney*?

Customs Regulations require that the broker obtain a "valid *Power of Attorney* to transact customs business" in the name of a principal. (Sections 141.31, 141.32, and 141.46, CR) This means a written appointment of the broker, in the words of the CBPF 5291, to act as "a true and lawful agent and attorney of the grantor." A valid *Power of Attorney* should be written in English.

While the language contained in the CBPF 5291 (the CBP *Power of Attorney* form) represents CBP policy, it is merely illustrative and subordinate to the regulatory requirements (HRL 221480). Thus, a CBPF 5291 or a privately printed form, which is incomplete or erroneously completed, may still nonetheless be "valid" - in the sense of creating a legally binding principal/agency relationship - provided that the error or omission does not violate a specific regulatory requirement in creating a legally binding principal/agency relationship and does not otherwise violate the Customs Regulations. (See discussion under "**Completing the Form.**")

Many *Power of Attorney* forms include a provision for inserting the grantor's tax identification number or social security number. While this information can be useful in validating the grantor's identity, this information is not legally required. (See discussion under "**After the Form Is Completed.**")

There is a paucity of rulings relating to the effect of errors and omissions in completing the *Power of Attorney* form. Incomplete *Powers of Attorney* forms, even if missing non-required information, are frequently the subject of broker enforcement actions by CBP. In order to avoid issues, every effort should be made to execute the *Power of Attorney* form accurately and completely.

Employee Powers of Attorney

Section 111.2 of the Customs Regulations provides that a person must obtain a license to transact customs business as a broker. A broker's employee, whether or not individually licensed, is permitted to sign documents pertaining to customs business under the broker's license when the following conditions are met: (1) the broker has authorized the employee to do so on his behalf and, (2) the broker has executed a power of attorney for that purpose. (Section 111.2(a)(2)(ii)(1), CR).

The NCBFAA has provided in the appendix an example of the requisite *Employee Power of Attorney*. (See **Appendix C**).

Conclusion

Sound business practice requires that brokers and/or forwarders provide detailed written instructions for the execution of the *Power of Attorney* and to fill in as much information as possible on the form prior to sending it to the principal; this will facilitate prompt and correct execution and return. The *Power of Attorney* should be inspected upon receipt to insure completeness. The broker should immediately return the *Power of Attorney* to the grantor for correction of material deficiencies and/or for re-execution. The retention of *Powers of Attorney*