



The Laredo Licensed U.S. Customs Brokers Association Webinar



Just for Brokers

Avoiding Mistakes that Lead to Compliance Problems & Penalties!

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PRESENTED BY

GEORGE R. TUTTLE, III
GEORGE R. TUTTLE LAW OFFICES
PHONE (415) 986-8780
E-MAIL: GEO@TUTTLELAW.COM



Agenda



- ❖ **Top 10 Mistakes that Brokers can make that Lead to Compliance Problems & Penalties!**
- ❖ **Responding to Broker penalty Notices**
- ❖ **Getting Prepared for CBP's New Broker Audit Questionnaire**
- ❖ **Highlights: Modernization of the Customs Brokers Regulations**
- ❖ **A review of CBP's new proposed Broker Education Requirements**
- ❖ **Q & A**



Top Ten Broker Mistakes and how to avoid them!



- ❖ 19 USC 1641 provides:
 - The *Secretary* may prescribe such rules and regulations relating to:
 - the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States,
 - To carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and
 - Furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of U.S. Customs and Border Protection.
- ❖ Penalties
 - Penalties are issued under 19 U.S.C. 1641(d)(2)(A), and may be as much as \$30,000 per incident or pattern of violation
 - Penalty and mitigation guidelines are contained in Appendix C to Part 171 of the Customs Regulations



Top Ten Broker Mistakes and how to avoid them!



- ❖ Mistake 1 -- Failure to Obtain or Produce Valid Powers of Attorney (POA)(19 CFR § 141.46)
 - Before transacting Customs business in the name of a **principal**, a customhouse broker is required to obtain a valid power of attorney.
 - Custom brokers must retain powers of attorney with their books and papers and make them available to CBP upon request.
 - § 111.23 Retention of records
 - Period of retention. Powers of attorney must be retained until **revoked**
 - **Revoked** powers of attorney and letters of revocation **must be retained for 5 years after the date of revocation** or
 - for 5 years after the date the client ceases to be an “**active client**” as defined in §111.29(b)(2)(ii), whichever period is later.
 - An **active client** means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted customs business on at **least two occasions within the 12-month period**.
 - Must make records available to CBP within 30 calendar days.
 - A broker who has received a facsimile power of attorney from a client will only have to produce the power in its facsimile or alternative format. HQ 115616, April 8, 2002.



Top Ten Broker Mistakes and how to avoid them!



❖ § 141.34 Duration of power of attorney

- A Power of Attorney issued by a **partnership** is 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, unless limited to a specific duration of time.

❖ Limited Liability Companies (LLC's)

- Limited liability companies (LLC) are not strictly a partnership, sole proprietorship, or a corporation, but incorporates elements of all three.
- CBP has not definitively ruled that an LLC is a partnership for purposes of § 141.34 See HQ 226829, dated April 8, 1996 and HQ 225878, DEC 13, 1995



Top Ten Broker Mistakes and how to avoid them!



❖ § 141.39 Partnerships.

- 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.

❖ Limited Partnerships

- 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.**
- A partnership or limited partnership means any business association recognized as such under the laws of the state where the association is organized.
- 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.



Top Ten Broker Mistakes and how to avoid them!



❖ Non-Resident Importers

- 141.32 Definitions of resident and nonresident.
- A “resident” means an individual who resides within, or a partnership one or more of whose partners reside within, the Customs territory of the United States or the Virgin Islands of the United States, or
- a corporation incorporated in any jurisdiction within the Customs territory of the United States or in the Virgin Islands of the United States.
- A “nonresident” means an individual, partnership, or corporation not meeting the definition of “resident.”

❖ § 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.



Top Ten Broker Mistakes and how to avoid them!



- ❖ Remember Section 116 of the *Trade Facilitation and Trade Enforcement Act* of 2015?
 - SEC. 116. CUSTOMS BROKER IDENTIFICATION OF IMPORTERS
 - CBP shall prescribe regulations setting forth the **minimum standards** to
 - Identify the information that an importer, including a nonresident importer, is required to submit to a broker and that a broker is **required to collect** in order to verify the identity of the importer;
 - Identify reasonable procedures that a broker is required to follow in order to **verify the authenticity** of information collected from an importer; and
 - Require a broker to **maintain records of the information collected** by the broker to verify the identity of an importer.
 - Any customs broker who fails to collect information required under the regulations prescribed under this subsection shall be liable for a monetary penalty not to exceed \$10,000 for each violation and shall be subject to revocation or suspension of a license or permit
 - Validating POAs -- <https://www.cbp.gov/trade/programs-administration/customs-brokers/validating-power-attorney>



Top Ten Broker Mistakes and how to avoid them!



❖ Mistake 2 -- Relations with unlicensed persons – No POA Freight Forwarders and other 3rd Parties

§ 111.36 Relations with unlicensed persons.

(a) Employment by unlicensed person other than importer. When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer,

- ❖ In CBP ruling H258556, dated September 6, 2017, Headquarters said that having a POA from the freight forwarder is not a requirement if the broker has a valid POA from the importer.
- ❖ A Freight Forwarder with a valid POA from an importer may issue a POA to a Broker for the purpose of transaction customs business if the POA by the importer to the Freight Forwarder is an unlimited POA or otherwise grants the Freight Forwarder authority to issue sub-POAs
- ❖ CBP's general POA permits the agent to generally transact **any and all CBP business** on behalf of the principal "which may be properly transacted or performed by an agent or attorney." See CBP Form 5291.



Top Ten Broker Mistakes and how to avoid them!



❖ Frequent broker Audit Request –

- How do you maintain your client POA files?
- Do you regularly audit your “active client list” to verify that you have a valid POA?
- How do you manage your client POAs for:
 - Limited duration corporate POAs?
 - Partnership or JV POAs?
 - Do you have a copy of the partnership agreement for clients that are Partnership or JV?
 - Do you verify that you have a valid POA for a Partnership or JV before you engage in “Customs Business on behalf of that entity?”
 - How do you treat Limited Liability Companies (LLC), as a partnership or a corporation?
 - Do you have POA’s from Freight Forwarders to transaction customs business for importers? If so, do you have a copy of the Freight Forwarder’s POA from the importer?



Top Ten Broker Mistakes and how to avoid them!



- ❖ Mistake # 3 Failure to Notify Actual Importer of Brokerage Charges
- ❖ Mistake # 4 Failure to Maintain Copy of Importer Waiver of Notification of Brokerage Charges

§ 111.36 Relations with unlicensed persons.

When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer, the broker **must transmit to the actual importer** either a copy of his bill for services rendered or a copy of the entry, **unless**

the merchandise was purchased on a delivered duty-paid basis **or** unless the importer has in **writing waived** transmittal of the copy of the entry or bill for services rendered.

- ❖ 19 CFR § 111.36(c)(2)(i) -- A broker must provide a true copy of brokerage charges to a client when fees and charges are collected by or through a freight forwarder **unless**:
 - The requirement is **waived in writing by the importer**; or
 - A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges is **collected by or through the broker**



Top Ten Broker Mistakes and how to avoid them!



❖ Mistake # 5 -- Broker Notification to Importers of their right to pay customs charges directly

19 CFR § 111.29(b), requires brokers to notify importers:

“If you are the importer of record, payment to the broker will not relieve you of liability for customs charges (duties, taxes, or other debts owed CBP) in the event the charges are not paid by the broker. Therefore, if you pay by check, customs charges may be paid with a separate check payable to the “U.S. Customs and Border Protection” which will be delivered to CBP by the broker.”

❖ The written notification required by § 111.29(b) must be provided by brokers to the **actual importer**:

- On, or attached to, any **power of attorney** provided by the broker to a client for execution; **and**
- To each **active client** at least once at any time within **each 12-month period**.
- An active client means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted customs business on at **least two occasions within the 12-month period preceding notification**.



Top Ten Broker Mistakes and how to avoid them!



❖ Mistake # 6 – Failure to maintain Confidentiality Of Importer Records

§ 111.24 Records confidential

Records pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents, or any information connected with the records to any persons other than those clients, their surety on a particular entry, and [CBP] ...

- ❖ A Broker may not disclose a bill for services or a copy of the entry to **any** 3rd party such as Freight Forwarder, unless the actual importer consents to disclosure.
- ❖ A Broker may not disclose confidential information though the use of a 3rd party for ancillary financial functions, such as bookkeeping, accounting, invoicing, banking and collection services.



Top Ten Broker Mistakes and how to avoid them!



❖ 19 CFR § 111.21(a) Failure maintain accurate records reflecting financial transactions

§ 111.21 Record of transactions.

Each broker must keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker.

Broker must keep and maintain on file copies of all correspondence and other records relating to his customs business.

- Brokers are required to maintain and produce upon request
 - Invoices for services and charges to importer's account or to 3rd party on behalf of importer's account
 - Copies of checks or other forms of payments by Importer for services and charges or payments by 3rd party on behalf of importer's account
 - Copies of checks or other forms of payment to CBP or 3rd parties by Broker on behalf of importer's account
 - Payment of duty, tax, or other debt owing to the Government for which the broker is responsible, or for which the broker has received payment from a client
 - Each broker must provide a **written statement to a client** accounting for funds:
 - received for the client from the Government, or
 - received from a client where no payment to the Government has been made, or
 - received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business



Top Ten Broker Mistakes and how to avoid them!



- ❖ § 111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.
 - **Change of address.** When a broker changes his business address, must immediately provide the new address to each director of a port that is affected by the change of address.
 - (b) **Change in an organization.** A partnership, association, or corporation broker must immediately notify the director of each port through which it has been granted a permit:
 - (1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of §111.11(b) or (c)(2), and the name of the broker who will succeed as the qualifying member or officer; and
 - (2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization
 - (c) **Change in name.** A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he has been granted a permit and is authorized by State law to do so, must submit to the Office of International Trade evidence of his authority to use that name.
 - The name must not be used until the approval of Headquarters has been received.
 - In the case of a trade or fictitious name, the broker must affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.



Top Ten Broker Mistakes and how to avoid them!



- ❖ Lack of Responsible Supervision and Control (19 CFR 111.28 and 19 U.S.C. 1641(b)(4))
- ❖ Indications of lack of responsible supervision and control may INCLUDE:
 - continuous errors on the same type of entry,
 - failing to properly instruct employees about Customs business,
 - Failure to produce documents material to specific Customs business, including
 - Failure to maintain and produce valid POAs
 - Failure to produce financial or customs records
 - Failure to maintain Confidentiality Of Importer Records, or obtain waivers
 - Employment by unlicensed person other than importer
 - comparatively high rates of entry rejections or late filing liquidated damages cases,
 - Failure to respond to Customs requests for information



Responding To Broker Penalties



- ❖ Customs Directive 099-3530-007, dated August 11, 1992, establishes national policies and operating procedures for ensuring compliance of Licensed brokers
- ❖ Directive 099-3530-007 instructs that for non-egregious violations counseling and a warning letter or letter of reprimand should be given before resorting to monetary penalties
 - communication about a particular deficiency
 - a warning letter
 - a penalty
 - a larger penalty and a warning about suspension
 - suspension/revocation of the license
- ❖ Directive 099-3530-007 provides that penalty actions are justified only after counseling and warning letters fail to generate corrective actions



Responding To Broker Penalties



- ❖ A non-egregious violation is not defined. Most broker violations are non-egregious
- ❖ An egregious violation is a **flagrant act or omission** that **shows gross irresponsibility** beyond that of a nonrepetitive clerical mistake or a good-faith oversight
- ❖ Examples of egregious violations provided in Directive 099-3530-007:
 - continued employment of a felon after Customs has denied the broker permission for such employment
 - continued filing of entries by a broker after the broker is notified that his or her permit has been revoked
 - Intentional misuse of clients' funds. (Misuse of a client's funds includes the failure to pass on refunds from Customs or to pay to Customs monies given to a broker by a client for that purpose).
- ❖ CBP's 2014 Broker Compliance Webinar (Attachment 0100287.PDF)



Preparing for CBP's New Broker Audit Questionnaire



- ❖ Broker Audit Questionnaire Attached
- ❖ Management of Broker firm and Qualify Broker should review Questionnaire and draft proposed responses
- ❖ Broker Audit Questionnaire divided into 9 sections:
 - Section 1: Company Information
 - Section 2: Company Overview
 - Section 2.1: Company Information
 - Section 2.2: Changes in Business - (19 CFR 111.28 and 111.30)
 - Section 2.3: Volume and Type of Activity
 - Section 2.4: Services Provided
 - Section 2.5: Conflict of Interest (19 CFR 111.31)
 - Section 2.6: Employee Information - 19 CFR 111.28 and 19 CFR 111.53

Preparing for CBP's New Broker Audit Questionnaire



- Section 3: Powers of Attorney
 - Section 3.1: Verification of POAs
 - Section 3.2: Non-resident Importers
- Section 4: Relations with Unlicensed Persons
 - Section 4.1: Referrals for Brokerage Business
 - Section 4.2: Relations with a Freight Forwarder
- Section 5: Bonds
- Section 6: Record Keeping
 - Section 6.1: Maintenance of Files
- Section 7: Financial
 - Section 7.1: Due Diligence in Paying Monies
- Section 8: Responsible Supervision and Control
 - Section 8.1: Supervision
 - Section 8.2: Training
 - Section 8.3: Reference Materials and Written Guidance
 - Section 8.4: Correspondence w/ CBP
- Section 9: Right to Make Entry
 - Section 9.1 Evidence of right to make entry



Preparing for CBP's New Broker Audit Questionnaire



- ❖ Provide a copy of the following documents for selected entries:
 - Power of Attorney
 - Broker Billing Invoice
 - Proof of Payment (from importer to broker)
 - Billing Waiver if applicable
 - Importer Security Filing
 - Delivery Order
 - Purchase Order

Section 2.6: Employee Information - 19 CFR 111.28 and 19 CFR 111.53

Have there been any changes to most recently submitted Employee list (employees newly hired or recently terminated)? YES () NO ()

Were these changes reported to CBP timely? YES () NO ()

If no, give reason _____

Do you perform background checks on potential employees? YES () NO ()

What type of background check? _____

What method is used to determine if an employee has been convicted of a felony?

Is the licensed Broker or any employees related to any CBP employees? YES () NO ()

If yes, who _____

Section 3: Powers of Attorney
19 CFR 141.31 - 141.46

Section 3.1: Verification of POAs

How are Powers of Attorney (POAs) obtained from the client?

How is the process expedited for POA, if requested by a new client?

How do you validate the information on the POAs?

How do you verify a clients' Federal Employer Identification Number (i.e., importer of record number)? For example, do you obtain forms from the Internal Revenue Service and/or verify the number against CBP internal systems? If so, please explain. _____

Are clients referred from freight forwarders, out of port Brokers, etc.? YES () NO ()

- How do you validate the information on referred POAs?
- Are you provided with Sub-Powers of Attorney from these parties?

Is the validation process different when a POA is received from another party? (i.e. freight forwarder, out of port Broker, other logistics providers)

Do you review POA validations performed by the employees? YES () NO ()
How? _____

Section 3.2: Non-resident Importers

Do you have clients that are non-resident importers? YES () NO ()

What are the company's established procedures for validating POAs for non-resident IOR's?

Do you request proof of authorization from the party signing a POA on behalf of a non-resident importer? YES () NO () Explain. _____

Do the non-resident importers authorize you/your company to accept service of process?
YES () NO ()

Section 4: Relations with Unlicensed Persons
19 CFR 11.36

Section 4.1: Referrals for Brokerage Business

Are clients ever referred to you from another business? YES () NO ()

How often do you obtain clients from freight forwarders and/or other logistics providers?

What type of brokerage services are provided to referred clients?

Do any of your clients utilize a freight forwarder or other logistics provider? YES () NO ()

Which freight forwarding companies do they use? _____

How is the importer billed when a freight forwarder is used? _____

Section 4.2: Relations with a Freight Forwarder

Do you compensate freight forwarders for referring brokerage business? YES () NO ()

What form is the compensation? _____

When a client is referred from another business, how is the importer billed? (Who bills the importer for the brokerage services?) _____

How does the importer submit payment when the business was referred by a freight forwarder or other party? _____

What is your procedure for forwarding documents to the importer (such as billing receipts and CBP entry documentation)? _____

Has a freight forwarder prohibited direct contact with the importer? YES () NO ()

Why? _____

Section 8: Responsible Supervision and Control
19 CFR 111.1, 19 CFR 111.28

Section 8.1: Supervision

Describe how you provide active supervision over the Brokerage:

Describe audit procedures or review measures of employees conducting Customs Business:

What controls are in place to recognize possible problems with CBP? _____

Do you work in other offices? YES () NO () How often? _____
When not on-site, how do you provide supervision and resolve issues with the employees?

Do you employ any other licensed Customhouse Brokers? YES () NO ()

How many? _____

Section 8.2: Training

How often are you available for training and consultation with the employees?

What training program/materials are provided to new employees? _____

Is new employee training required? YES () NO ()

What type? _____

Is training provided to employees on a regular basis? YES () NO ()

What Type? _____

Is reoccurring training for employees required? YES () NO ()

How are employees notified of changes in CBP laws, regulations, rulings, and procedures?

Section 8.3: Reference Materials and Written Guidance

Do employees have access to Standard Operating Procedures or written instructions and guidelines? YES () NO ()

How are these materials prepared? _____

What topics are covered? _____

How often are they updated? _____

Are the following reference materials available?

Customs Regulations: YES () NO ()

Are the Customs Regulations up to date: YES () NO ()

How are they updated? _____

Harmonized Tariff Schedule of the United States (HTSUS): YES () NO ()

Date of HTSUS: _____

Section 8.4: Correspondence

Describe procedures for responding to the following CBP correspondences:

CBP Form 28: _____

CBP Form 29: _____

CBP Form 4647: _____

Other CBP notices: _____

Do you maintain copies of CBP correspondence? YES () NO ()

Where are these files maintained? _____

Describe your procedures for correcting rejected entries/entry summaries:

How do you ensure that an error or rejection issue is corrected and not repeated?

Describe your procedures for responding to verbal requests from CBP: _____

Describe how Census warnings/errors are reviewed: _____



Highlights: Customs Broker Regulations Modernization



- ❖ Notice of Proposed Rule – June 5, 2020
- ❖ <https://www.federalregister.gov/documents/2020/06/05/2020-04711/modernization-of-the-customs-brokers-regulations>
- ❖ Comment Period Closed August 4, 2020
- ❖ Rule gives background and overview why changes are necessary, including impact of ACE and advent of Centers for processing import transactions.



Highlights: Customs Broker Regulations Modernization



❖ Proposed Major Changes

❖ National Permits

- ✓ Transition **all brokers** to national permits and expand the scope of the national permit authority to allow national permit holders to conduct all customs business throughout the customs territory of the United States.
- ✓ Eliminate broker districts, district permits, district permit waivers, and requirement for brokers to maintain district offices.
- ✓ The broker's "office of record" would interface with a "designated Center" of Excellence for licensing and other issues, and the primary point of contact with CBP Broker Management
- ✓ CBP has determined that brokers may need to make contact with CBP personnel across the customs territory due to the existence of the Centers and the increasingly automated environment
- ✓ With eliminate of district permits, the need to maintain a place of business at each port where an application for a district permit has been filed and to employ at least one licensed broker in each district **is no longer necessary**
- ✓ the list of permitted brokers will be maintained centrally by CBP as opposed to by individual port directors.



Highlights: Customs Broker Regulations Modernization



- ❖ New Duties and Responsibilities of Customs Brokers
 - ✓ Proposes that each broker notify its designated Center of any **known breach of electronic or physical records** relating to the broker's customs business.
 - ✓ Notification must be provided within 72 hours of the discovery of the breach with a list of all compromised importer identification numbers.
 - ✓ designation of a knowledgeable recordkeeping employee who will serve as the party responsible for broker-wide financial and recordkeeping requirements
 - ✓ CBP proposes that a customs broker must maintain customs records, including any electronic records, within the U.S. customs territory.
 - ✓ Makes minor changes to recordkeeping and production provisions



Highlights: Customs Broker Regulations Modernization



- ❖ Update the responsible supervision and control oversight framework
 - The current definition of “responsible supervision and control” in § 111.1 provides a list of factors that CBP will consider in determining whether a broker is exercising responsible supervision and control.
 - Proposes to amend the definition of “responsible supervision and control” by moving the list of factors from §§ 111.1 through 111.28.
 - Makes minor clarifying changes to definition of “responsible supervision and control”
 - the obligation to provide training of employees on the broker.
 - remove the word “written” so as to include electronic resources for written instructions and guidelines.
 - to amend the fourth factor covering reject rates by considering the reject rate relative to the overall volume of transactions conducted by the broker.
 - to change the word “maintenance” to “accessibility” in the fifth factor which addresses CBP available to broker employees.
 - amend the sixth factor requiring the availability of “an individually licensed broker” be changed to “a sufficient number of individually licensed brokers” for necessary consultation with broker employees to better account for the proposed national permit operating environment. [crucial that licensed brokers are readily available to employees, both in person or virtually.]



Highlights: Customs Broker Regulations Modernization



- ❖ Updates to Responsible Supervision and Control Provision
 - CBP proposes to add five new factors that may be considered:
 - ✓ (1) The timeliness of processing entries and payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client;
 - ✓ (2) communications between CBP and the broker;
 - ✓ (3) the broker's responsiveness and action to communications, direction, and notices from CBP;
 - ✓ (4) communications between the broker and its officer(s); and,
 - ✓ (5) the broker's responsiveness and action to communications and direction from its officer(s).
 - A broker filing entries late, paying the government late, or not returning client communications are all evidence of failure to exercise responsible supervision and control.
 - A broker not communicating well with CBP or the broker's officer(s) (not returning calls or emails, etc.) also evidences failure of responsible supervision and control.



Highlights: Customs Broker Regulations Modernization



- ❖ Section 111.36 –Dealing with Unlicensed Persons
 - The regulations identify conditions under which a broker may compensate a freight forwarder for referring brokerage business.
 - CBP proposes adding drawback claimants to the persons that a freight forwarder cannot forbid or prevent direct communication with by a broker in a compensation agreement.
 - In addition, CBP proposes a **new requirement that a broker must not rely on a customs power of attorney granted by a freight forwarder**, but rather that the **broker must obtain a customs power of attorney directly from the importer of record** or drawback claimant.
 - This proposed amendment is intended to clarify that the freight forwarder cannot serve as a barrier to communications between the broker and the importer of record or drawback claimant and to address issues of identity theft, supply chain security, fee transparency, and to help ensure that unlicensed persons are not benefitting from the customs business conducted.



Highlights: Customs Broker Regulations Modernization



- ❖ Section 111.39 describes the requirements for brokers giving advice to clients.
 - CBP proposes a new paragraph (b) titled “Due diligence” and adding language to specify that a broker must practice **due diligence in providing advice on the proper payment** of any duty, tax, or other debt or obligation owing to the U.S. Government.
 - CBP proposes adding a new sentence to 111.39 to require that the broker must advise the client on the **proper corrective actions required** and **retain a record of the broker's communication** with the client in accordance with 19 CFR 111.23. The proposed new language adds an affirmative duty to document the broker's communication with the client.

- ❖ Changes to Subpart D, Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation



CBP's Proposed Broker Education Requirements



- ❖ Advanced Notice of Public Rulemaking -- October 28, 2020
- ❖ <https://www.federalregister.gov/documents/2020/10/28/2020-22604/continuing-education-for-licensed-customs-brokers>
- ❖ Comment Period closes COB December 28, 2020
- ❖ CBP is considering a requirement for a Continuing Education requirement for licensed customs brokers
- ❖ FR Notice is soliciting input from licensed customs brokers in order to:
 - assess the current situation among members of the customs broker industry and
 - develop a potential framework of continuing education requirements
 - analyze the potential impact of such a framework on customs brokers.
- ❖ Comments or questions should be addressed to: ContinuingEducation@cbp.dhs.gov,



CBP's Proposed Broker Education Requirements



❖ Objectives

❖ Goal of the publication of ANPRM is to:

- **gather information** and data from the broker industry in order to **analyze and identify** information that would help CBP in considering whether, and if so what type of, **mandatory requirements** would be beneficial for the trade community and CBP.
- CBP believes that requiring customs brokers to take continuing education courses would enhance the credibility and value of a customs broker's license and improve a broker's skills, performance, and productivity.
- CBP also believes that this would increase client service and compliance with the customs laws, which would protect the revenue of the United States and the trade community.

❖ Advance Notice reviews

- CBP Authority and Potential Framework for Continuing Education Requirements
- Customs Broker's Statutory Duties, Customs Broker Exam, and Licensing
- World Customs Organization (WCO) 2018 Recommendations Regarding Continuing Education for Customs Brokers
- CBP's Customs Broker Continuing Education Task Force (Task Force)

❖ 40 some Questions in three parts.



CBP's Proposed Broker Education Requirements



- ❖ Notice describes a potential framework for mandatory continuing education for licensed customs brokers.
- ❖ CBP has laid out a **series of propositions** on various topics, which are followed by questions seeking more information.
- ❖ The comments received in response to this ANPRM will be used, potentially, to draft a Notice of Proposed Rulemaking
 - CBP is suggesting **40 hours of continuing education over the course of 3 years** directly related to the import and export of goods into and out of the United States
 - a wide variety of activities are being considered to qualifying as continuing education opportunities to fulfill requirements.
 - Credit could be given to established corporate training courses offered by customs brokers associations, and CBP online webinars.
 - Other U.S. government agencies (such as the U.S. Department of Agriculture, U.S. Food and Drug Administration, U.S. Environmental Protection Agency, and U.S. Consumer Product Safety Commission) routinely offer training relevant to customs business, which could be used to fulfill the requirement.
 - Should the program include internet-based training, webinars, or in-person trainings offered by a **third parties** in order to meet a mandatory training requirement?



CBP's Proposed Broker Education Requirements



- ❖ Should there be different categories, and if so, how should those be weighted?
- ❖ For example, should continuing education be categorized as “CBP procedures and requirements”, “other government agency requirements”, and “specific areas related to international trade”, and
- ❖ should there be a certain number of courses within each category **that must** be taken?
- ❖ Are there any categories of individuals holding licenses who should exempt from the continuing education requirement?
- ❖ CBP is proposing that Brokers concurrently report CE with the submission of the triennial status report.
- ❖ What is the best process to validate compliance with reported CE activity? Random sampling?
- ❖ What is an appropriate disciplinary action for failing to complete a continuing education requirement?
- ❖ Should CBP require accreditation? Why or why not? If yes, should CBP create a framework to accredit education provided by non-government entities?



Questions?