

19 CFR 111.28: A Broker's Responsibilities

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Being a Licensed Customs Broker (LCB) carries a great deal of responsibility, and all LCBs must ensure that they meet all of their obligations for daily operations, record-keeping, and future actions in regards to clearing imported cargo. An LCB must meet all the requirements put forth by Customs & Border Protection (CBP), as well as meet the needs of their clients. CBP has outlined basic requirements for LCBs (both individual and corporate) in the 19th Edition of the Code of Federal Regulations 111.28, which covers Responsibility & Control, and underwent major revisions in 2022. Customs Brokers must maintain responsible supervision and control over every aspect of their business, which requires a concerted effort to provide all employees with on-going training, regular and sustained engagement with a Licensed Broker, a robust auditing system to identify errors and target training, and appropriate tools to allow them to effectively operate. 19 CFR 111.28 spells out what a Customs Broker must do to meet their extensive responsibilities, providing a framework for integrating their varied responsibilities. A Customs Broker has many responsibilities to their customers, employees, and various government agencies, but cannot be successful without understanding and adhering to the tenets laid out in 19 CFR 111.28. Engaging in the business of being a Customs Broker requires a very high level of compliance, accuracy, accountability, and documentation in order to fully comply with all of the appropriate requirements as set forth in the federal regulations.

Customs Brokers have extensive knowledge of, and unique insight into, the processes that importers and exporters need to manage their businesses effectively. More importantly, they possess the expertise to meet all of CBP's strict requirements for compliance. Educated clients are more likely to have better control of their supply chain, and to partner with the Broker to ensure that compliance goals are met and appropriately maintained over time. Brokers should

utilize their position as a logistic partner to keep their clients informed through direct contact (emails, phones), industry updates and newsflashes, webinars, and other training opportunities.

One of a Broker's most important responsibilities is ensuring that all of its employees are cognizant of, and well-trained in, the responsibilities of a Customs Broker. An active, ongoing, and dynamic program of education and training is essential in ensuring that a Broker is able to meet their responsibilities to CBP, along with providing excellent service to their importer clients. In order to ensure close compliance with the myriad of regulations that make up a Customs Broker's responsibilities, they must have a variety of methods to train and work with their employees. Training in a Broker's office is an on-going, multiple-level process, and should never have an end point. Brokers should have an on-boarding process for every employee, which encompasses the company's approach to regulatory compliance requirements. This should include such topics as client confidentiality, communications with government agencies, extensive training on the Customs software used to transmit entry data to CBP, expectations for on-going industry education, and other internal and external processes. Every employee should be instructed on how to easily access important tools such as the Code of Federal Regulations (CFR), the Harmonized Tariff Schedule of the United States (HTSUS), and Customs Rulings Online Search System (CROSS).

To maintain a robust training environment, a Broker should have a framework in place to access new, current, and older information such as CBP's Cargo Systems Messaging Service (CSMS) messages, bulletins issued by CBP in local ports, or press releases by industry associations such as the National Customs Brokers and Freight Forwarders Associations (NCBFAA). Brokers should require their employees to attend webinars and training opportunities provided by government agencies, industry partners such as sureties or exam

facilities, and their own software providers. By documenting all training opportunities and resources in a written format, recorded webinars, or a shared computer-based drive, this also serves as an excellent portfolio for future training/education/review for new and current employees and clients.

A detailed understanding of the Customs entry software is essential for all employees of a Customs Broker, as it is the linchpin of the communications between the Broker and CBP. The Broker should know how to transmit Customs entries of all types, create reports to track and maintain records of Customs rejections, and provide a framework for determining what information is required for various commodities, entry types, and other variables. Brokers should provide new employees with specific, detailed education on using the software, with one-on-one training, videos, and manuals issued by both the software company and the Broker. Current and long-time employees should be provided with the same training as needed; all employees should be required to attend updated education sessions and given new information as soon as it is available from the software company and/or CBP. As with all training and education, the Broker should utilize in-person meetings, video conference calls, webinars, manuals, and company-wide notices to ensure that information is pushed to all employees on a regular and on-going basis. All of this information should be documented and readily accessible for review at any time. Brokers should have written policies and procedures to record, organize, and delineate the various ways that training should be conducted, the levels of training needed for each position, and the requirements for further education needed to maintain the appropriate levels of competency and compliance for each employee. Brokers should encourage their employees to become Certified Customs Specialists through the NCBFAA as proof of continuing education.

A Customs Broker should employ multiple methods of communication to share industry information both with employees and their clients. Brokers should be involved in the greater logistics industry such as trade organizations, local and national Customs Brokers and Freight Forwarders Associations, and government and trade partnerships, if those are available. Such partnerships and trade organizations are often excellent sources of information and may give Customs Brokers the opportunity to help shape future policy by providing a conduit for shared information. Brokers should require their employees and encourage their clients to participate in webinars and in-person conferences provided by industry partners. This constitutes both an ongoing educational opportunity and the sharing of industry knowledge, which benefits all parties.

A comprehensive, detailed, and documented program of auditing is essential for a Broker in terms of being able to quantify both accuracy and margins of error. Brokers should employ a variety of methods to audit their employees' work. While not required by regulations, LCBs are well-equipped to audit Customs entries ensuring a higher level of accuracy versus allowing non-LCBs to audit. Brokers with higher volumes and higher levels of complexity of commodities should utilize a systematic process of audits to ensure they can accurately identify errors or areas where additional training is needed. This auditing process should include generating reports to identify specific issues and manual review of individual entries with their corresponding documents. This should be done regularly on a percentage of specific entries chosen for their complexities, along with a randomly-chosen subset of entries. While regular daily audits can be handled by non-licensed employees, more comprehensive and in-depth audits should be handled by an LCB to ensure the best level of oversight and compliance with regulations. Due to their

qualifications and continuing education, LCBs and CCSs should be very qualified to audit entries with a lower margin of error, as referenced in 19 CFR 111.28(8).

Brokers with more employees and/or more complex transactions should emphasize greater interactions between LCBs and other employees to ensure compliance with CBP's regulatory requirements. Engagement with an LCB is critical for all employees of a Customs Broker as it is the LCB's responsibility (by virtue of holding their license) to see that CBP's regulations are understood and adhered to by all employees. In order to become a Licensed Customs Broker, an individual must prove that they have a deep knowledge of most aspects of CBP requirements for importing goods to the US. Therefore, they are specifically qualified to ensure that all regulations are understood and followed. The most effective Brokers will have regular interaction between all employees and one or more Licensed Customs Brokers. Although there is no required ratio of licensed brokers to non-licensed employees, 19 CFR 111.28(a) specifies that a Broker must provide a "sufficient number of licensed brokers relative to the job complexity, similarity of subordinate tasks, physical proximity of subordinates, abilities and skills of employees, and abilities and skills of the managers." This clearly makes the Broker responsible for ensuring that all their employees have frequent, high-quality access to a licensed Broker or Brokers. Access to an LCB should be in sufficient quantity as to allow the employees to ask questions, receive on-going training, and understand processes in real time. In cases where a Broker has only one license-holder, that LCB should be involved with the employees on a daily basis, with frequent direct communications about commodities, importer requirements, CBP updates, etc. For larger Brokers with multiple offices, 19 CFR 111.28 does not require a specific number of LCBs. However, it should be considered that a busy office without an LCB on-site or in regular, daily contact will have fewer resources available to

its employees and its clients. This issue is directly and indirectly addressed in 111.28 (6)-111.28(10), so all Brokers should carefully assess their operations to ensure that they continue to meet CBP requirements in this area.

Licensed Customs Brokers have many varied, complicated responsibilities to meet every day. Each Customs entry is an opportunity to ensure that CBP's regulations are met. The Code of Federal Regulations is extensive, and all regulations are equally important. 19 CFR 111.28 provides an excellent framework for an LCB to ensure that their office is managed properly and efficiently for long-term success.

Bibliography

- 111.28(a) responsible supervision and control*: | CBP. U.S. Customs and Border Protection. (2022, December 19). https://www.cbp.gov/sites/default/files/assets/documents/2022-Oct/Fact%20Sheet%20-%20Responsible%20Supervision%20and%20Control_0.pdf
- Cargo Systems Messaging Service*. U.S. Customs and Border Protection. (n.d.). <https://www.cbp.gov/trade/automated/cargo-systems-messaging-service>
- Code of Federal Regulations*. National Archives- The Federal Register. (n.d.). <https://www.ecfr.gov/current/title-19/chapter-I/part-111/subpart-C/section-111.28>
- Harmonized tariff schedule*. Harmonized Tariff Schedule. (n.d.). <https://hts.usitc.gov/>
- U.S. Customs and Border Protection*. Cross Customs Rulings Online Search System. (n.d.). <https://rulings.cbp.gov/home>