

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR PART 111**

RIN 1515-AC34

Customs Brokers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise Part 111 of the Customs Regulations, which governs the licensing and conduct of customs brokers in the performance of customs business on behalf of others. The proposed revision includes changes to the regulatory texts to reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. The proposed revision also includes changes to reflect the recent reorganization of Customs as well as changes to improve the content, layout and clarity of the regulatory texts.

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Bruce Ingalls, Office of Field Operations (202-927-1082).

Legal Aspects: Jerry Laderberg, Office of Regulations and Rulings (202-927-2320).

SUPPLEMENTARY INFORMATION:**Background**

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).

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of enactment of the North American Free Trade Agreement Implementation Act ("the Act"), Public Law 103-182, 107 Stat. 2057. Title VI of the Act set forth Customs Modernization provisions that included, in section 648, certain amendments to section 641 of the Tariff Act of 1930. The substantive amendments to section 641 are as follows:

1. In the definition of "customs business" in section 641(a)(2), a second sentence was added that provides that customs business "also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of [the customs business activities listed in the first sentence], whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs."

2. Section 641(c)(1) was amended by adding a provision for the issuance of a national permit for the conduct of such customs business as the Secretary of the Treasury prescribes by regulation.

3. A new subsection (c)(4) was added to provide that when electronic filing (including remote location filing) of entry information with Customs at any location is implemented by the Secretary of the Treasury pursuant to

the provisions of the National Customs Automation Program ("the NCAP," which was established by section 631 of the Act and is codified at 19 U.S.C. 1411-1414), a licensed broker may appoint another licensed broker who holds a permit in a Customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted to be filed electronically. New subsection (c)(4) also provides that the broker who appoints a subagent remains liable for all obligations arising under bond and for all duties, taxes and fees, and for any other liabilities imposed by law, and cannot delegate such liability to the subagent.

4. Section 641(d)(2)(B), which sets forth the procedures for the suspension or revocation of a broker's license or permit, was amended to increase to 30 days the period within which a hearing is to be held after written notice of a hearing is provided to the broker.

5. Finally, section 641(f) was amended to provide: that the Secretary of the Treasury may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business; that for purposes of any provision of the Tariff Act of 1930 pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium; and that, pursuant to such regulations as the Secretary of the Treasury shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

On September 27, 1995, Customs published the following documents in the **Federal Register** as a result of changes in the Customs Headquarters and field organizational structure:

1. T.D. 95-77 (60 FR 50008) amended the Customs Regulations on an interim basis. The amendments included extensive changes to §§ 101.1, 101.3 and 101.4 (19 CFR 101.1, 101.3 and 101.4) to reflect the changes to the basic Customs field organization, involving the elimination of regions and districts for most purposes so that ports of entry would constitute the foundation of the Customs field structure and would be empowered with most of the functions and authority that had been held in the district and regional offices and also involving the designation of some ports as service ports having a full range of cargo processing functions, including inspection, entry, collection, and

verification. T.D. 95-77 also included amendments to Parts 4, 19, 24, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146 and 174 of the Customs Regulations (19 CFR Parts 4, 19, 24, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146 and 174) to reflect these organizational changes. The background portion of T.D. 95-77 pointed out that districts and regions would still exist as geographical descriptions for limited purposes such as for broker permits and certain cartage and lighterage purposes, and T.D. 95-77 therefore set forth certain additional regulatory changes in order to reflect this fact; these changes included the addition of definitions for "district," "district director" and "region" in § 111.1 (19 CFR 111.1) to enable the current statutory broker licensing and permitting schemes to operate. (The background portion of T.D. 95-77 also noted that the Customs reorganization included the creation of twenty Customs Management Centers and five Strategic Trade Centers for which no regulatory changes were being made because these new organizational entities will not have direct contact with the public.)

2. T.D. 95-78 (60 FR 50020) also amended the Customs Regulations on an interim basis and involved nomenclature changes. The T.D. 95-78 changes were set forth in a table format in numerical order by section affected and in most cases involved the replacement of outdated references with new references to reflect the new Customs Headquarters and field organizational structure. The majority of these changes involved replacing "district" with "port" and replacing "district director" with "port director," or some variation thereof. The T.D. 95-78 changes involved almost every part within Chapter I of the Customs Regulations (19 CFR Chapter I) and included a large number of changes to Part 111.

3. A general notice (60 FR 49971) informed the public of the geographic areas covered for purposes of Customs broker permits and for certain cartage and lighterage purposes where the word "district" appears in the Customs Regulations. This notice was a consequence of the publication of T.D. 95-77 and T.D. 95-78 and, in particular, of the T.D. 95-77 regulatory changes made in order to retain the concept of a "district" for certain Customs broker and cartage and lighterage purposes. This general notice consisted of a table, arranged by State or other geographic location, setting forth in the left column a list of service ports (each of which represents a "district") and in the right column the ports of entry within each such "district."

With regard to the changes to section 641 made by section 648 of the Act, Customs has determined that a number of those changes should be reflected in Part 111. Specifically, the regulations should be amended as follows: (1) to reflect the change to the section 641(a)(2) definition of "customs business;" (2) to provide for the issuance of national permits as authorized under amended section 641(c)(1); (3) to reflect the 30-day period within which a suspension or revocation hearing is to be held under amended section 641(d)(2)(B); (4) to implement the amended section 641(f) proscription against prohibiting a broker from limiting its liability to other persons; and (5) to reflect the amended section 641(f) recordkeeping provisions. With regard to the appointment of subagents as authorized under amended section 641(c)(4), Customs believes that it would be premature to amend Part 111 at this time; rather, it would be preferable to address this issue at such time as related NCAP test procedures have been concluded, appropriate programming enhancements have become operational, and appropriate regulatory proposals have been formulated.

Customs has also performed a general review of Part 111 to determine whether other regulatory changes should be made. Based on that review, Customs has identified a number of other areas where significant improvement could be made to the existing regulatory texts. These improvements include: (1) the elimination of obsolete or otherwise unnecessary provisions; (2) the addition of new provisions where the regulations appear to be incomplete or are otherwise in need of clarification; (3) further textual changes arising out of the reorganization of Customs that were not fully addressed in the district/port terminology changes made by T.D. 95-77 and T.D. 95-78, including some changes to those previously-published changes and particularly in order to clarify certain procedural aspects of the regulations (for example, where to file permit applications and broker status reports and where to pay permit user fees); and (4) a large number of nonsubstantive, editorial changes to improve the precision and clarity of the regulations, ranging from the reorganization or complete redrafting of existing texts to minor word changes within a particular regulatory provision.

In the light of the number and breadth of the changes outlined above, Customs believes that the proposed changes should be presented in the context of a complete revision of Part 111. With the exception of minor wording or other

editorial-type changes that do not appear to warrant specific mention, the changes reflected in the proposed revision of Part 111 set forth in this document are discussed in more detail below.

Discussion of Proposed Amendments

Section 111.1

The following proposed changes have been made to this definitions section:

1. References to "Commissioner" have been replaced by references to "Assistant Commissioner" throughout Part 111, and a definition of "Assistant Commissioner" has been added to clarify that each such use of this term refers to the Assistant Commissioner, Office of Field Operations.

2. Two sentences have been added at the end of the definition of "customs business" to reflect the change to the section 641(a)(2) definition effected by section 648 of the Act as discussed above.

3. In the first sentence of the definition of "district" (added by T.D. 95-77 as discussed above), the words "other than a national permit" have been added after "permit" in order to avoid an inconsistency with the national permit concept reflected in new § 111.19(f) (which is discussed below), and the words "issued under this part" have been removed because they are no longer necessary in view of the proposed new definition of "permit" discussed below. In addition, the second sentence has been modified to refer to publication of the listing of districts and ports "periodically" (rather than "on or before October 1, 1995, and whenever updated") since the date mentioned in the present text no longer serves a useful purpose.

4. The definition of "district director" (added by T.D. 95-77 as discussed above) has been removed because this term is not used in revised Part 111.

5. A definition of "employee" has been added to ensure that this term will have the same meaning wherever used in Part 111 (for example, for determining whether a license is required under § 111.3(b) and for purposes of providing required employee information under § 111.28(b)).

6. A definition of "permit" has been added. This new definition refers to any permit issued to a broker under § 111.19 and applies to both district permits and national permits (the latter are addressed in new § 111.19(f) discussed below).

7. The definition of "records" conforms to the final rule published in the **Federal Register** (63 FR 32916) on

June 16, 1998, involving a revision of the Customs Regulations pertaining to recordkeeping requirements principally in order to implement statutory changes made by sections 614 and 615 of the Act as well as the change made by section 648 of the Act to section 641(f) as discussed above. Changes for the same reason are also reflected in the texts of §§ 111.21 and 111.23, and in the treatment of § 111.22, as set forth below.

8. A definition of "responsible supervision and control" has been added. Customs believes that this definition is needed because the expression is used in multiple sections in Part 111 (that is, in §§ 111.11, 111.13, 111.19 and 111.28). The proposed definition is based on paragraph (d) of present § 111.11, which would be eliminated.

Section 111.2

Section 111.2, which sets forth the basic circumstances in which a license and district permit are required, has been considerably expanded and divided into two paragraphs: paragraph (a) pertains to licenses and paragraph (b) pertains to permits. The specific organizational and substantive changes reflected in the revised text of this section are as follows:

1. Paragraph (a)(1) repeats the basic license requirement statement contained in the first sentence of present § 111.2 but with the addition of a cross-reference to paragraph (a)(2), which sets forth exceptions to the general rule.

2. Present § 111.3, regarding specific types of transactions not requiring a broker's license, has been moved to § 111.2 as new paragraph (a)(2) because, for purposes of organizational clarity, Customs believes it is preferable in this case to have those exception provisions immediately following the general statement to which they relate. In addition, the following textual changes are reflected in this new § 111.2(a)(2) text:

a. The second sentence of present § 111.3(b)(2), which refers to filing the required statement "at each port within the district," has not been included in the corresponding new § 111.2(a)(2)(ii)(A)(2) because it adds nothing not already covered by the first sentence. In addition, the present text has been modified to not require the filing of the statement if the broker is operating within a district under a paragraph (b)(2) exception to the district permit rule because compliance with such a requirement would be problematic, particularly in the case of transactions initiated from a remote location.

b. Present § 111.3(e) (new § 111.2(a)(2)(v)) has been revised to refer to "noncommercial" shipments or merchandise (rather than "informal" entry) and by replacing the language regarding § 143.26 and 19 U.S.C. 1498 with a simple proviso regarding meeting the requirements of § 141.33. Customs believes that the revised text more accurately reflects the circumstances intended to be covered by this provision.

c. A subparagraph (vi) has been added to the new § 111.2(a)(2) text to cover foreign trade zone activities not involving the transfer of merchandise to the customs territory of the United States.

3. The permit provisions of new paragraph (b) reflect the same structure as that described above for the license provisions of new paragraph (a). Thus, paragraph (b)(1) repeats the basic district permit requirement statement contained in the second sentence of present § 111.2 but with the addition of a cross-reference to new paragraph (b)(2) which sets forth exceptions to the general rule. The new § 111.2(b)(2) exceptions to the district permit rule include the following:

a. Paragraph (b)(2)(i) would allow a broker who files entries for a client at other locations covered by a district permit to place the broker's employee at the client's premises for the purpose of performing customs business (other than filing entries or other documents with Customs) solely on behalf of that client even though the broker does not have a permit for the district in which the client's premises are located.

b. Paragraph (b)(2)(ii) would allow a broker to file a manual drawback claim, and represent a client regarding such a claim, at the drawback office that has been designated by Customs for the purpose of filing drawback claims even though the broker does not have a permit for the district where that drawback office is located. The electronic filing of drawback claims in a district for which a broker does not have a permit may be done only pursuant to a national permit issued to that broker.

c. Paragraph (b)(2)(iii) describes the basic circumstances under which a national permit may be used in lieu of obtaining a district permit, with a cross-reference to new § 111.19(f) that sets forth the procedures for obtaining such a national permit. These new national permit provisions, which are intended to implement section 641(c)(1) as amended by section 648 of the Act as discussed above, are explained in more detail below in the discussion of new § 111.19(f).

d. Finally, paragraph (b)(2)(iv) would allow a broker to orally or in writing or electronically represent an importer of record before Customs after an entry of merchandise filed by another broker (as agent and not as importer of record) has been completed and accepted by Customs even though that broker does not have a permit for the district where the representations are to be made, provided that the broker has a national permit and provided that the broker, if requested by Customs, submits evidence of the broker's right to represent the client. This provision is intended to provide brokers with more flexibility in responding to their clients' needs on a national basis once an entry has come under the jurisdiction of Customs. The text reflects the view of Customs that a broker should be able to follow up with Customs on any matter arising out of an entry filing or regarding the merchandise covered by an entry without being constrained by the need to have a district permit covering the location where the representations on behalf of the client are made.

Section 111.3

As a consequence of the transfer of the text of this section to § 111.2, this section has been designated as "reserved."

Section 111.5

In paragraph (a), which concerns the general right of a broker who represents a client in the importation or exportation of merchandise to represent the client before Treasury Department agencies, the exception language at the end regarding representation in a district where the broker does not have a permit has been removed because exceptions to the district permit rule are covered by new § 111.2(b)(2).

Section 111.11

The basic requirements for an individual broker's license under paragraph (a) have been modified as follows: in subparagraph (a)(1), to require that the individual be a citizen of the United States "on the date of submission of the application;" in subparagraph (a)(2), to require that the individual attain the age of 21 "prior to the date of submission of the application;" and in subparagraph (a)(4), to provide that the individual must have attained a passing grade on a written examination "taken within the 3-year period before submission of the application." The changes in subparagraphs (a)(1) and (a)(2) are intended to add necessary precision by more clearly defining the time at which these basic requirements must be met.

Revised subparagraph (a)(4) is intended to achieve several objectives. First, as in the case of the other paragraph (a) criteria, it makes the taking and passing of the examination a condition precedent to the submission of a license application to Customs (a failure to pass the examination would no longer result in the denial of a license application because no application would exist at that point in time). Second, prescribing a 3-year period in which to submit a license application after passing the examination gives an individual more flexibility concerning where and when the application is submitted (thus, the examination could be taken and passed in one district and the application could be submitted later to a port director within another district at any time within the 3-year period). Third, drawing a distinction between the examination process and the application submission process makes it possible to provide for a separate fee payment for each process in the simplified § 111.96(a) fee structure discussed below. Fourth, the revision will enhance administrative efficiency by eliminating the need for Customs to process license applications that may never result in the issuance of a license because the applicant has not passed the required examination.

In addition, for the reasons stated above in connection with the proposed addition of the definition of "responsible supervision and control" in § 111.1, paragraph (d) has been removed.

Section 111.12

The following changes have been made to this section which sets forth license application procedures:

1. Paragraph (a) reflects the following changes: the third sentence has been modified to refer to a "\$200 application" fee in order to reflect changes to the fee provisions of § 111.96(a) that are discussed below; in the fourth sentence, after the reference to "one or more States," the words "at a port" have been removed because they are unnecessary and potentially confusing; the fifth sentence, which concerns the time for submitting an application for an individual's license, has been modified to reflect the 3-year period specified in § 111.11(a)(4); the sixth sentence has been modified (also as a consequence of the § 111.11(a)(4) changes) to provide that the port director may also require a copy of the notification that the individual passed the examination (see the discussion of § 111.13(e) below) and by removing at the end the words "or after the applicant obtains a passing score on the

written examination;" and a new sentence has been added at the end to permit the port director to refuse to accept the filing of an application that, on its face, demonstrates noncompliance with one or more of the basic requirements of § 111.11 (for example, the application is filed more than 3 years after the individual passed the written examination), in which case the application and fee would be returned to the filer without further action.

2. Also as a consequence of the § 111.11(a)(4) changes, paragraph (c), which concerns application withdrawals, has been modified by removing the reference to providing notice before the date of the written examination and by revising the remaining text. Revised paragraph (c) provides that any license application may be withdrawn by written notice at any time prior to issuance of the license but also specifically precludes a refund of the \$200 application fee because a refund no longer would be necessary or appropriate in the new regulatory context.

Section 111.13

The following changes have been made to this section which concerns written examinations for individual licenses:

1. Throughout the section all references to an "applicant" have been removed or have been modified (for example, to read "individual" or "examinee" or "prospective applicant") to reflect that under the § 111.11(a)(4) and related changes a written examination will always precede the filing of a license application.

2. In paragraph (b), which concerns the date and place of the examination, a new sentence has been added after the first sentence to require written notice of an individual's intent to take the examination, and payment of the \$200 examination fee, at least 30 calendar days prior to the scheduled examination date. The advance notice is necessary in order for Customs to ensure that an adequate facility will be available to accommodate all prospective examinees, and payment of the fee at that time is necessary because the examination fee would no longer be part of the application fee under the § 111.11(a)(4) and related textual changes discussed above (see also the new paragraph (d) examination fee refund provision discussed below). In addition, in order to afford procedural flexibility to Customs when appropriate, the first sentence no longer refers to examinations "at each district office" and the last sentence provides for giving

notice of the exact time and place but without implying that notice will be given individually to each prospective examinee.

3. Paragraph (c), which concerns special examinations, has been modified to provide for a separate written request for a special examination (rather than in connection with the filing of a license application) in order to reflect the separation of the examination and application processes as discussed above. In addition, a sentence has been added at the end to provide that the license applicant shall be responsible for all additional costs incurred by Customs in connection with the special examination that exceed the \$200 examination fee and to require reimbursement to Customs of such additional costs before the examination is given.

4. Paragraph (d), which addresses a prospective examinee's failure to appear for the examination, has been modified to reflect the separation of the examination and application processes. Thus, the modified text no longer provides for denial of an application for failure to appear but rather simply provides for a refund of the \$200 examination fee if the prospective examinee notifies the port director at least 2 working days prior to a regularly scheduled examination that he will not appear. However, the modified text precludes any refund in the case of a paragraph (c) special examination, because Customs believes that the person who specifically requested the special treatment should remain responsible for the costs to Customs resulting from the request.

5. The heading and text of paragraph (e) have been revised to refer to notice of the examination result (rather than license application denial) as a consequence of the separation of the examination and application processes. The revised text provides for written notice to each examinee and is intended in particular to ensure that an examinee who attained a passing grade would be able to present appropriate written proof of meeting the § 111.11(a)(4) criterion when filing a license application in another district within the prescribed 3-year period. Revised paragraph (e) also clarifies that failure to pass the examination precludes the filing of a license application but does not preclude the examinee from taking an examination at a later date.

6. A new paragraph (f) has been added to set forth an administrative appeal procedure for an individual who failed to pass the written examination and wishes to challenge that result.

Section 111.14

The texts of paragraphs (a) and (b) have been merged into one new paragraph (a) entitled "referral of application for investigation" in order to eliminate unnecessarily repetitive text, with paragraphs (c) through (e) redesignated as paragraphs (b) through (d). In addition, in paragraph (d) (redesignated as paragraph (c)), the first sentence regarding the "return" of the application with the investigative report and recommendation has been removed since it is archaic and unnecessary and the wording of the paragraph heading has been revised accordingly.

Section 111.15

The following changes have been made to this section, which concerns the procedures for issuing licenses:

1. In the first sentence, the words "and has paid all applicable fees prescribed in § 111.96(a)" have been added at the end of the opening clause to clarify that other license application fees must be paid by individual applicants in addition to the \$200 fee that must accompany the application under § 111.12(a).

2. The last sentence regarding maintenance and availability of an alphabetical list of brokers licensed at each port has been removed since it is inconsistent with the current national license concept (see also the below discussion of the proposed changes to § 111.19(e)).

Section 111.19

The following changes have been made to this section, which concerns the issuance of permits:

1. Paragraph (a) has been modified to provide that, in the case of a permit issued concurrently with a license, the permit is issued with reference to the district "in which the port" through which the license application was submitted "is located". This change reflects the operational reality arising out of the Customs reorganization as discussed above, under which the ports now operate as the basic organizational units for public access and other purposes, including the submission of applications for broker licenses and permits. Similar clarifying wording changes are reflected elsewhere in Part 111.

2. The first sentence of paragraph (b) has been modified to provide for submission of a district permit application in the form of a letter to the director of the port at which the applicant intends to conduct customs business. The regulations would no longer provide for submission of a

permit application on Customs Form 3124 (which was designed for license application purposes and thus is not suitable in a permit context). The remaining paragraph (b) text has been replaced by a new final sentence that specifies seven classes of documents or other information that must be submitted with the application.

3. Existing paragraph (c) has been modified to more clearly identify the fees that must accompany the permit application (that is, the § 111.96(b) district and national permit application fee and the § 111.96(c) annual user fee). In addition, a new second sentence has been added to clarify that the annual user fee must be paid when an initial permit is issued concurrently with a license under paragraph (a).

4. Paragraph (d) has been divided into two subparagraphs. New subparagraph (d)(1) sets forth general principles regarding the exercise of responsible supervision and control over the customs business conducted in a district for which a permit is granted; the text reflects the substance of the first two sentences of present paragraph (d) but does not retain the "[o]n or after October 31, 1987" reference in the second sentence since this reference is no longer necessary. New subparagraph (d)(2) sets forth rules permitting an exception to the at-least-one-individual-broker-per-district rule and reflects the substance of the remainder of present paragraph (d) except for the following: the word "region" has been replaced by the words "larger geographical area" to avoid a circular effect when the § 111.1 definition of "region" is applied; and a sentence has been added at the end to provide that a written decision on a waiver under this subparagraph will be issued by the Office of Field Operations and must specify the region covered by a waiver.

5. The following changes have been made to paragraph (e): the first two sentences have been removed because the present procedure of notifying other port directors of a permit application and obtaining their comments is unnecessarily cumbersome and time-consuming; the last two sentences have been replaced by two new sentences that provide for issuance of a written decision on the permit application, set forth a specific legal standard for issuance of a permit, and require that the port director refer the matter to Customs Headquarters for instructions if the port director believes that the permit should not be issued; and a new sentence has been added at the end to require that each port director maintain and make available to the public an

alphabetical list of all brokers permitted through his port.

6. Present paragraph (f) (which allows the port director to require an investigation if additional facts are deemed necessary) no longer appears to be appropriate or necessary and has been replaced by a new paragraph (f) covering the issuance of national permits to reflect the change to section 641(c)(1) made by section 648 of the Act (see also the references to the national permit exception to the district permit rule in new §§ 111.2(b)(2) (ii) and (iii) as discussed above and set forth below). New paragraph (f) provides that a broker must have a national permit in order to transact customs business under the NCAP within a district for which the broker does not have a district permit. The text requires that the broker be an NCAP participant and in this regard refers specifically to the electronic filing of entries from a remote location and to the electronic filing of drawback claims as well as more generally to the transaction of other customs business pursuant to an NCAP component that is in operation. In referring both to specific NCAP components and to NCAP components in a more general sense, the text is not intended to limit or otherwise define the scope or operation of the NCAP but rather is intended only to prescribe, consistent with the broad authority set forth in section 641(c)(1) as mentioned above, the circumstances in which the conduct of customs business by a broker would require a national permit. Finally, new paragraph (f) provides for an application in the form of a letter addressed to Customs Headquarters and sets forth five classes of documents or other information that must accompany the application, including evidence that the application fee and user fee required under §§ 111.96 (b) and (c) have been paid.

7. A new paragraph (g) has been added to set forth procedures regarding the administrative and judicial review of a denial of a permit. This new text is intended in part to reflect the right to judicial review of a permit denial under section 641(e)(1) and is based on the license denial review provisions of § 111.17 (but without provision for review by the Secretary of the Treasury, which does not appear to be necessary or appropriate in a permit context).

Sections 111.21 Through 111.23

Sections 111.21 and 111.23 reflect, and § 111.22 has been reserved without accompanying text as a result of, the changes made to these sections in the recordkeeping final rule document mentioned above in connection with the § 111.1 definition of "records." In

addition, in § 111.23, a number of additional editorial changes have been included as a consequence of those recordkeeping final rule document changes, and subparagraphs (b)(2)(i) and (ii) thereof have been further revised to refer to "each" address or location for consolidated records in order to not preclude the use of multiple consolidated locations.

Section 111.24

The phrase "their surety on a particular entry," has been added to the text after "such clients." This change is intended to ensure that disclosure to a surety will not automatically constitute a violation of the confidentiality principle embodied in § 111.24. The change is not intended to mandate disclosure to a surety, and is not intended to represent the view of Customs regarding the propriety of disclosure to sureties in all cases, because Customs believes that the issue of whether records or information are properly disclosable by one party to another should be treated as a private matter to be resolved by the parties. In addition, the phrase "the port director," has been added after the reference to the special agent in charge in order to more completely reflect operational realities in the field. Finally, the words "officers or" have been added before "agents of the United States."

Section 111.25

Similar to the approach reflected in the recordkeeping changes to §§ 111.1, 111.21 and 111.23, this section, which concerns the availability of broker records, has been revised (1) to clarify that there is a distinction between records that are peculiar to Part 111 and other records that brokers are responsible for under Part 163, and (2) to provide that the records peculiar to Part 111 shall be made available to Customs "upon reasonable notice." In addition, the words "or other authorized Customs officers" have been added in the second sentence to reflect that authority within Customs to examine such records is not restricted to regulatory auditors and special agents.

Section 111.26

The reference in this section to "§§ 162.1a through 162.1i" has been replaced by a reference to "part 163 of this chapter" as a consequence of the recordkeeping changes.

Section 111.27

The second and third sentences have been removed because (1) the second sentence (which concerns inspection of records to protect importers and the

revenue of the United States) is adequately reflected in other provisions and (2) the third sentence (which specifies where a report of findings is to be submitted within Customs) relates solely to internal agency management practices and procedures that are not normally the subject of a regulation.

Section 111.28

The following changes have been made to this section:

1. Paragraph (b), which concerns employee information, has been reorganized so that paragraph (b)(1) will cover all current employees, including new employees. In addition, in paragraph (b)(1)(i) as set forth below, which contains general rules for providing current employee information to Customs and thus corresponds to present paragraph (b)(1), a new sentence has been added after the first sentence to specify more clearly when the initial list of employees is to be submitted to the port director.

2. A new paragraph (d) has been added to provide that, in the case of a broker for which ownership shares are not publicly traded, the broker must give immediate written notice to the Assistant Commissioner, and to each director of a port through which a permit has been granted to the broker, if the ownership of the broker changes, including a change in ownership that results in the addition of a new principal to the organization (but not a mere shift in ownership interest among principals already of record with Customs). The new paragraph also contains provision for a background investigation of a new principal and ultimately for the initiation of license suspension or revocation proceedings if the investigation of the new principal uncovers information upon which a denial of a license application could have been based and the relationship is not terminated to the satisfaction of the port director.

Section 111.30

The following changes have been made to this section:

1. In paragraph (a), which concerns notice of a change of a broker's address, the requirement for notice to the Commissioner has been removed to eliminate a duplicate collection and reduce the reporting burden (a similar change also has been made in the introductory texts of paragraphs (b) and (e) of this section), and the remaining requirement has been modified to require notice to each director of an affected port. In addition, a new sentence has been added at the end of paragraph (a) to provide that an

individual broker not actively engaged in transacting business as a broker must provide notice of a change in his non-business mailing address in the paragraph (d) triennial status report. Customs believes that such notice is necessary for Customs to be able to contact the broker for purposes of administering Part 111.

2. In paragraph (b), which concerns notice of a change in a partnership, association, or corporate broker, the words "or any other change in the legal nature of the organization" have been added at the end of paragraph (b)(2).

3. Paragraph (d), which concerns the triennial status report, has been divided into four subparagraphs. Paragraph (d)(1) sets forth general provisions and corresponds to the first six sentences of present paragraph (d); the only substantive change concerns provision for submission of the report only to the port through which the broker's license was issued (rather than to Customs Headquarters and with a copy to each port where the broker has been granted a permit). Paragraph (d)(2) sets forth provisions applicable to individual brokers and paragraphs (d)(2)(i) and (ii) correspond to the seventh and eighth sentences of present paragraph (d); paragraph (d)(2)(iii) is new and requires statements of continued compliance with §§ 111.11 and 111.19 (which Customs believes must be administered as ongoing standards) and about conduct that could constitute grounds for suspension or revocation under § 111.53 (the standards for which are continuously applicable to all brokers). Paragraph (d)(3) sets forth provisions applicable to partnership, association and corporate brokers, corresponds to the ninth sentence of present paragraph (d), and contains the additional requirement that the report be signed by a licensed member or officer of the organization. Paragraph (d)(4) concerns the failure to file timely and corresponds to the remaining text of present paragraph (d) but with the following changes of note: provision is made for issuance of the notice of suspension by the port director (rather than by the Commissioner) as a consequence of the change incorporated in new subparagraph (d)(1); and, in the next to the last sentence, reference is made to revocation of the broker's license "by operation of law" if the broker fails to file the report within the prescribed 60-day period.

Section 111.36

The following changes have been made to this section, which concerns relations with unlicensed persons:

1. Paragraph (a) has been divided into two paragraphs (a) and (b), with a separate heading for each. New paragraph (a) incorporates the substance of the second sentence of present paragraph (a) and new paragraph (b) incorporates the substance of the first sentence of present paragraph (a). In addition, under new paragraph (a), the broker may choose to transmit a copy of the entry (in lieu of a copy of his bill for services rendered), and the words "or unless the importer has in writing waived transmittal of the copy of the entry or bill for services rendered" have been added at the end.

2. Present paragraph (b) has been redesignated as paragraph (c) with the following changes: in paragraphs (c)(1), (c)(2), and (c)(3), the words "or other party in interest" have been added after "importer" to cover cases in which the broker is the importer of record but not the true party in interest; and the words "unless this requirement is waived in writing by the importer or other party in interest" have been added at the end of paragraph (c)(2)(i).

Section 111.42

This section has been reorganized into two paragraphs. The text of all the present paragraphs of the section are consolidated into paragraph (a), except for the last sentence of paragraph (e). Paragraph (a) provides restrictions on the actions of a broker with any person who is notoriously disreputable or whose license has been suspended, cancelled "with prejudice," or revoked. The last sentence of present paragraph (e) is set forth as a separate new paragraph (b) to reflect that it operates as a general exception to the restrictions set forth in proposed paragraph (a).

Section 111.43

This section, which concerns the display of broker licenses and permits, no longer has significant practical utility and has been removed.

Section 111.44

This section, which precludes a broker from limiting the broker's liability to a client with regard to the conduct of his brokerage business, has been removed to reflect the prohibition added to section 641(f) by section 648 of the Act as discussed above.

Section 111.45

The following changes have been made to this section which concerns revocation of a license or permit by operation of law:

1. The words "[o]n or after October 31, 1987" at the beginning of paragraph (b) have been removed as unnecessary.

2. A new paragraph (d) has been added to clarify a broker's ongoing duty to exercise responsible supervision and control over the conduct of its brokerage business and to otherwise comply with Part 111, and to underscore a broker's potential exposure to disciplinary sanctions for failure to do so, even during the 120-day period referred to in paragraph (a) or during the 180-day period referred to in paragraph (b).

Section 111.51

In paragraph (b), which concerns the cancellation of a license or permit with prejudice, an exception regarding a right of appeal has been added at the end of the second sentence because the exercise of such a right would be entirely inconsistent with the context reflected in the first sentence.

Section 111.53

The following changes have been made to this section, which concerns grounds for disciplinary action against brokers:

1. The section heading has been modified by removing the words "or monetary penalty in lieu thereof," to align on the change to the introductory text of this section as discussed below.

2. The introductory text has been modified to state that the appropriate "port director" (rather than "Customs official") may "initiate proceedings for the suspension* * * or revocation" (rather than "suspend" or "revoke"). The first change conforms to the use of "port director" elsewhere in Subpart D and the second change reflects the fact that under the statute the actual suspension or revocation action is taken by the Secretary of the Treasury. In addition, the words "or assess a monetary penalty in lieu of suspension or revocation" have been removed from the introductory text, to reflect the fact that for Subpart D (and contrary to monetary penalties under Subpart E) the statute allows the assessment of a monetary penalty only as an alternatively imposed sanction arising out of the initiation of suspension or revocation proceedings. The grounds for disciplinary action set forth in paragraphs (a)-(f) of this section technically relate to only suspension or revocation proceedings, and the assessment of monetary penalties arises in a Subpart D context only in connection with the final decision taken by the Secretary of the Treasury under § 111.74 after initiation of such proceedings.

3. In paragraph (b)(3), the words "(infractions set forth in this subparagraph may form the basis for an action to suspend or revoke only)" have

been removed as unnecessary in the light of the removal of all references to monetary penalties.

4. A new paragraph (g) has been added to refer to a broker who no longer meets the applicable requirements of § 111.11 and § 111.19. Customs believes that this standard is necessary and appropriate because, as already suggested above in connection with the changes to § 111.30(d), §§ 111.11 and 111.19 include standards that constitute ongoing requirements (rather than merely one-time application criteria).

Section 111.54

This section, which was intended to clarify the meaning of "appropriate officer of the Customs" as used in 19 U.S.C. 1641(d)(2), has been removed because (1) the expression defined in the regulation appears in the statute neither in exactly the same words nor in the context of suspension or revocation actions (19 U.S.C. 1641(d)(2)(A) uses the expression "appropriate customs officer" but only in the context of monetary penalties which are covered under Subpart E of Part 111) and (2) the section does not otherwise serve any useful purpose.

Section 111.57

This section has been revised to simply provide in one paragraph for a determination by the Assistant Commissioner whether or not charges should be preferred and for notice to the port director of this decision, without the present paragraph (b) requirement of submission of a proposed statement of charges because it already is adequately covered by § 111.56.

Section 111.64

The following changes have been made to paragraph (a) of this section, which concerns service of the notice of hearing:

1. At the beginning of the first sentence, the words "[w]ithin 10 days" have been removed because this time frame for service is overly restrictive and is not required by statute.

2. In the second sentence, the figure "15" has been replaced by "30" to reflect the change to section 641(d)(2)(B) made by section 648 of the Act regarding the number of days within which a hearing must be held.

Section 111.73

This text of this section, which permits a decision based on a partial proof of charges, has been incorporated into the text of § 111.74 to which it is more appropriate since it also concerns the decision on disciplinary action taken by the Secretary of the Treasury.

Section 111.74

In addition to the insertion of a new first sentence to reflect present § 111.73, the following changes have been made to this section:

1. In the second sentence, the words "or permit" have been added after "license" in two places in order to correct an omission in scope in the present text. In addition, the words "except in a case described in § 111.53(b)(3)" have been added to the second sentence to reflect the exception contained in the introductory text of section 641(d)(1).

2. In the third sentence, the words "[i]f no appeal from the Secretary's order is filed" have been added at the beginning. In addition, the third sentence has been changed to provide that the Secretary's order shall become effective 60 calendar days after the Assistant Commissioner issues written "notification of" the order (rather than after issuance of the order by the Secretary).

3. The fourth sentence has been changed to provide that payment of an assessed monetary penalty must be tendered within "60" calendar days "after the effective date" of the order (rather than within 120 days of the issuance of the order) in order to align with the 60-day period specified in the case of suspension or revocation actions.

Section 111.76

The following changes have been made to this section, which concerns reopening a disciplinary case:

1. In paragraph (a), the words "[p]rovided that no appeal is filed in accordance with § 111.75" have been added at the beginning in order to preclude concurrent administrative and judicial proceedings.

2. In paragraph (b), a new sentence has been added at the end to clarify the status of an existing order of the Secretary during the pendency of proceedings under this section.

Section 111.80

This section, which clarifies the applicability of Part 111 in broker disciplinary cases that were instituted prior to the broker statute amendments of 1984, is longer necessary and has been removed.

Section 111.91

In paragraph (a), a proviso has been added at the end to clarify that under section 641 imposition of monetary penalties under this section and institution of suspension or revocation proceedings under Subpart D are mutually exclusive actions when

applied to the same violation of a broker.

Section 111.92

The last sentence, which requires that a monetary penalty notice involving more than \$10,000 be referred to Customs Headquarters, has been removed since it is neither necessary nor reflective of current Customs procedures.

Section 111.95

This section has been revised to simply refer to the filing of supplemental petitions for relief in accordance with Part 171 and without making a distinction between determinations over \$1,000 and determinations involving lesser amounts.

Section 111.96

The following changes have been made to this section:

1. In paragraph (a), which concerns fees pertaining to the license issuance process, the first sentence has been modified to refer only to the processing of a license application and to prescribe a \$200 fee that would apply to all individual or organization applicants. The remainder of the paragraph has been modified to cover fees that are only required to be paid by individuals: a \$200 fee before taking a written examination under § 111.13, and a fingerprint check and processing fee after an individual's license application is submitted to Customs. These changes in the paragraph (a) fee structure are intended (1) to reflect the distinction between the examination process and the application process as discussed above in connection with the modification of § 111.11(a)(4), (2) to indicate more clearly which conditions apply only to individuals, and (3) to eliminate the need to refund \$100 if an examinee receives a failing grade on the examination (because Customs believes that a refund would be appropriate only in the circumstance covered by modified § 111.13(d)).

2. In paragraph (c), which concerns the \$125 annual permit user fee, references to a "national permit" have been added to clarify that the fee applies to a permit issued under § 111.19(f). In addition, as in the case of § 111.19(c), the text has been modified to clarify that the fee is payable upon issuance of a district permit for which an application was not submitted (that is, when an initial district permit is issued concurrently with a license under § 111.19(a)).

Comments

Before adopting this proposed regulation 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 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

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. The regulatory amendments primarily represent a clarification of existing statutory and regulatory requirements. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information that are republished and referenced in §§ 111.12, 111.13, 111.17, 111.19, and 111.28 of these proposed regulations have previously been reviewed and approved by OMB and assigned control number 1515-0076. The information to be collected is necessary for the issuance of customs broker licenses and permits and for monitoring the performance of brokers in the conduct of customs business.

The new collections of information in these proposed regulations are in

§§ 111.30, 111.36, 111.60, and 111.76. The information to be collected is necessary for monitoring the performance of brokers in the conduct of customs business and in connection with the institution of disciplinary actions against brokers. The likely respondents are individuals, partnerships, associations, and corporations, including individuals and such organizations that are licensed brokers.

Estimated total annual reporting and/or recordkeeping burden: 1500 hours.

Estimated average annual burden per respondent/recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 1500.

Estimated annual number of responses: 1500.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to Customs at the address set forth previously. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the information collection burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information.

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

Sec.

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111.91 Grounds for imposition of a monetary penalty; maximum penalty.

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111.96 Fees.

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641. Section 111.3 also issued under 19 U.S.C. 1484, 1498; Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, the qualifications required of applicants, and the procedures for applying for licenses and permits. This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the assessment of monetary penalties, and the revocation or suspension of licenses.

Subpart A—General Provisions**§ 111.1 Definitions.**

When used in this part, the following terms shall have the meanings indicated:

Assistant Commissioner. “Assistant Commissioner” means the Assistant Commissioner, Office of Field Operations, United States Customs Service, Washington, DC.

Broker. “Broker” means a customs broker.

Customs broker. “Customs broker” means a person who is licensed under this part to transact customs business on behalf of others.

Customs business. “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 such 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 thereof 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.

District. “District” means the geographic area covered by a customs broker permit other than a national permit. A listing of each district, and the ports thereunder, will be published periodically.

Employee. “Employee” means a person who meets the common law definition of employee and is in the service of a customs broker.

Freight forwarder. “Freight forwarder” means a person engaged in the business of dispatching shipments in foreign commerce between the United States, its territories or possessions, and foreign countries, and handling the formalities incident to such shipments, on behalf of other persons.

Officer of an association or corporation. “Officer of an association or corporation” means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute and the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

Permit. “Permit” means any permit issued to a broker under § 111.19.

Person. “Person” includes individuals, partnerships, associations, and corporations.

Records. “Records” means documents, data and information referred to in, and required to be made or maintained under, this part and any other records, as defined in § 163.1(a) of this chapter, that are required to be maintained by a broker under part 163 of this chapter.

Region. “Region” means the geographic area covered by a waiver issued pursuant to § 111.19(d).

Responsible supervision and control. “Responsible supervision and control” means that degree of supervision and control necessary to ensure the proper transaction of the customs business of a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which Customs will consider include, but are not limited to: The training required of employees of the broker; the issuance of written instructions and guidelines to employees of the broker; the volume and type of business of the broker; the reject rate for the various customs transactions; the maintenance of current editions of the Customs Regulations, the Harmonized Tariff Schedule of the United States, and Customs issuances; the availability of an individually licensed broker for necessary consultation with employees of the broker; the frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have a resident individually licensed broker; the frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker; the extent to which the individually licensed broker who qualifies the district permit is involved in the operation of the brokerage; and any circumstance which indicates that an individually licensed broker has a real interest in the operations of a broker.

Treasury Department or any representative thereof. “Treasury Department of any representative thereof” means any office, officer, or employee of the U.S. Department of the Treasury, wherever located.

§ 111.2 License and district permit required.

(a) *License—(1) General.* Except as otherwise provided in paragraph (a)(2) of this section, a person shall obtain the license provided for in this part in order to transact customs business as a broker.

(2) *Transactions for which license is not required—(i) For one's own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(ii) *As employee of broker—(A) General.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(1) *Authorized to sign documents.* The broker has authorized the employee to sign documents pertaining to customs business on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the port director, but shall provide proof of its existence to Customs upon request. Only employees who are residents of the United States may be authorized to sign such documents; or

(2) *Authorized to transact other business.* The broker has filed with the port director a statement identifying the employee as authorized to transact customs business on his behalf. However, no such statement will be necessary when the broker is transacting customs business under an exception to the district permit rule.

(B) *Broker supervision; withdrawal of authority.* Where an employee has been given authority under paragraph (a)(2)(ii) of this section, the broker must exercise such supervision of the employee as will ensure proper conduct on the part of the employee in the transaction of customs business, and the broker will be held strictly responsible for the acts or omissions of such an employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen. The broker shall promptly notify the port director if authority granted to an employee under paragraph (a)(2)(ii) of this section is withdrawn. The withdrawal of authority shall be effective upon receipt by the port director.

(iii) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(iv) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for such merchandise for transportation in bond without being a broker.

(v) *Noncommercial shipments.* An individual entering noncommercial merchandise for another party is not required to be a broker, provided that the requirements of § 141.33 of this chapter are met.

(vi) *Foreign trade zone activities.* A foreign trade zone operator or user need not be licensed as a broker in order to engage in activities within a zone that do not involve the transfer of merchandise to the customs territory of the United States.

(b) *District permit—(1) General.* Except as otherwise provided in paragraph (b)(2) of this section, a separate permit (see § 111.19) is required for each district in which a broker conducts customs business.

(2) *Exceptions to district permit rule—*
(i) *Employee working in client's facility.* When a broker places an employee in the facility of a client for whom the broker is filing entries at one or more other locations covered by a district permit issued to the broker, and provided that the employee's activities are limited to customs business in support of that broker and on behalf of that client but do not involve the filing of entries or other documents with Customs, the broker need not obtain a permit for the district within which the client's facility is located.

(ii) *Manual filing of drawback claims.* A broker granted a permit for one district may manually file drawback claims at the drawback office that has been designated by Customs for the purpose of filing such claims, and may represent his client before that office in matters concerning those drawback claims, even though the broker does not have a permit for the district in which that drawback office is located. The electronic filing of drawback claims in a district for which a broker does not have a permit may be done only pursuant to a national permit issued to the broker (see paragraph (b)(2)(iii) of this section).

(iii) *National permit.* A broker who is a participant in the National Customs Automation Program (NCAP) may electronically file entries for merchandise from a remote location and may electronically transact other customs business that is provided for and operational under the NCAP even though such entry is filed, or such other customs business is transacted, within a district for which the broker does not

have a district permit, provided that the broker has a national permit issued under § 111.19(f) for such purpose.

(iv) *Representations after entry acceptance.* After an entry of merchandise filed with Customs has been completed and accepted, and except when a broker files that entry as importer of record, another broker who did not file the entry, but who has been appointed by the importer of record, may orally or in person or in writing or electronically represent the importer of record before Customs on any issue arising out of that entry or concerning the merchandise covered by that entry even though the broker does not have a permit for the district within which those representations are made, provided that the broker has been issued a national permit (see paragraph (b)(2)(iii) of this section and § 111.19(f)) and provided that, if requested by Customs, the broker submits appropriate evidence of his right to represent the client on the matter at issue.

§ 111.3 [Reserved]

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, shall be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of 19 U.S.C. 1641. The penalty shall be assessed in accordance with subpart E of this part.

§ 111.5 Representation before Government agencies.

(a) *Agencies within the Treasury Department.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative thereof on any matter concerning such merchandise.

(b) *Agencies not within the Treasury Department.* In order to represent a client before any agency not within the Treasury Department, a broker shall comply with any regulations of such agency governing the appearance of representatives before it.

Subpart B—Procedure To Obtain License or Permit

§ 111.11 Basic requirements for a license.

(a) *Individual.* In order to obtain a broker's license, an individual must:
(1) Be a citizen of the United States on the date of submission of the application referred to in § 111.12(a) and not an officer or employee of the United States Government;

(2) Attain the age of 21 prior to the date of submission of the application referred to in § 111.12(a);

(3) Be of good moral character; and
(4) Have established, by attaining a passing (75 percent or higher) grade on a written examination taken within the 3-year period before submission of the application referred to in § 111.12(a), that he has sufficient knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters to render valuable service to importers and exporters.

(b) *Partnership.* In order to obtain a broker's license, a partnership must:

(1) Have at least one member of the partnership who is a broker; and
(2) Establish that it will have an office within the district in which its customs transactions will be performed by a member of the partnership who is a broker or by an employee under the responsible supervision and control of such a licensed member.

(c) *Association or corporation.* In order to obtain a broker's license, an association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customs business as a broker;
(2) Have at least one officer who is a broker; and
(3) Establish that it will have an office within the district in which its customs transactions will be performed by an officer of the association or corporation who is a broker or by an employee under the responsible supervision and control of such a licensed officer.

§ 111.12 Application for license.

(a) *Submission of application and fee.* An application for a broker's license shall be submitted in duplicate to the director of the port where the applicant intends to do business. The application shall be under oath and executed on Customs Form 3124. The application shall be accompanied by the \$200 application fee prescribed in § 111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each such State must accompany the application. An application for an individual license must be submitted within the 3-year period after the applicant took and passed the written examination referred to in §§ 111.11(a)(4) and 111.13. The port director may require an individual

applicant to provide a copy of the notification that he passed the written examination (see § 111.13(e)) and shall require the applicant to submit fingerprints on Standard Form 87 at the time of filing the application. The port director may reject an application as improperly filed if the application, on its face, demonstrates that one or more of the basic requirements set forth in § 111.11 have not been met at the time of filing, in which case the application and fee will be returned to the filer without further action.

(b) *Posting notice of application.* Following receipt of the application, the port director shall post a notice that the application has been filed. The notice shall 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 shall give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, the names of the members or officers thereof who are licensed as brokers. The notice shall invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* An applicant for a broker's license may withdraw the application at any time prior to issuance of the license by providing written notice of the withdrawal to the port director. However, withdrawal of the application does not entitle the applicant to a refund of the \$200 application fee.

§ 111.13 Written examination for individual license.

(a) *Scope of examination.* The written examination for an individual broker's license shall be designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters. The examination will be prepared and graded at Customs Headquarters, Washington, D.C.

(b) *Date and place of examination.* Written examinations will be given on the first Monday in April and October. An individual who intends to take the written examination must so advise the port director in writing at least 30 calendar days prior to the scheduled examination date and must remit the \$200 examination fee prescribed in § 111.96(a) at that time. The port director shall give notice of the exact time and place for the examination.

(c) *Special examination.* If a partnership, association, or corporation

loses the required member or officer having an individual broker's license (see §§ 111.11(b)(1) and (c)(2)) and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and § 111.45(a) before the next scheduled written examination, Customs may authorize a special written examination for a prospective applicant for an individual license who would serve as the required licensed member or officer. Customs may also authorize a special written examination for an individual for purposes of continuing the business of a sole proprietorship broker. A special written examination for an individual may also be authorized by Customs if a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district (see § 111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and § 111.45(b) before the next scheduled written examination. A request for a special written examination must be submitted to the port director in writing and must describe the circumstances giving rise to the need for the examination; if the request is granted, the port director will notify the prospective examinee of the exact time and place for the examination. If the individual attains a passing grade on the special written examination, the application for the license may be submitted in accordance with § 111.12. The examinee shall be responsible for all additional costs incurred by Customs in preparing and administering the special examination that exceed the \$200 examination fee prescribed in § 111.96(a), and such additional costs shall be reimbursed to Customs before the examination is given.

(d) *Failure to appear for examination.* If a prospective examinee advises the port director at least 2 working days prior to the date of a regularly scheduled written examination that he will not appear for the examination, the port director shall refund the \$200 examination fee referred to in paragraph (b) of this section; however, no refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination provided for under paragraph (c) of this section.

(e) *Notice of examination result.* Customs will provide to each examinee written notice of the result of the examination taken under this section. A failure of an examinee to attain a passing grade on the examination shall preclude the submission of an application under § 111.12 but shall not

preclude the examinee from taking an examination again at a later date in accordance with paragraph (b) of this section.

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written appeal with Trade Compliance, Office of Field Operations, U.S. Customs Service, Washington, DC 20229 within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. Customs will provide to the examinee written notice of the decision on the appeal. If the Customs decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Secretary of the Treasury within 60 calendar days after the date of the notice of that decision.

§ 111.14 Investigation of the license applicant.

(a) *Referral of application for investigation.* The port director shall immediately refer an application for an individual, partnership, association, or corporation license to the special agent in charge or other entity designated by Headquarters for investigation and report.

(b) *Scope of investigation.* An investigation under this section shall ascertain facts relevant to the question of whether the applicant is qualified and shall cover, but need not be limited to:

- (1) The accuracy of the statements made in the application;
- (2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(c) *Referral to Headquarters.* The port director shall forward the originals of the application and the report of investigation to the Assistant Commissioner. The port director shall also submit his recommendation for action on the application.

(d) *Additional investigation or examination.* The Assistant Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Assistant Commissioner may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person before

him or before one or more representatives of the Assistant Commissioner for the purpose of undergoing additional written or oral examination into the applicant's qualifications for a license.

§ 111.15 Issuance of license.

If the Assistant Commissioner finds that the applicant is qualified and has paid all applicable fees prescribed in § 111.96(a), he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license shall be forwarded to the port director, who shall deliver it to the licensee.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Assistant Commissioner determines that the application for a license should be denied for any reason, notice of denial shall be given by him to the applicant and to the director of the port at which the application was filed. The notice of denial shall state the reasons why the license was not issued.

(b) *Grounds for denial.* The grounds sufficient to justify denial of an application for a license shall include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;

(2) The failure to meet any requirement set forth in § 111.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application for the license;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards; or

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

§ 111.17 Review of the denial of a license.

(a) *By the Assistant Commissioner.* Upon the denial of an application for a license, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(b) *By the Secretary.* Upon the decision of the Assistant Commissioner

affirming the denial of an application for a license, the applicant may file with the Secretary of the Treasury, in writing, a request for such additional review as the Secretary shall deem appropriate.

This request must be received by the Secretary within 60 calendar days of the Assistant Commissioner's affirmation of the denial of the application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Secretary of the Treasury affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Secretary's decision.

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of § 111.12.

§ 111.19 Permits.

(a) *General.* Each person granted a broker's license under this part shall be concurrently issued a permit for the district in which the port through which the application was submitted is located and without the payment of the \$100 fee required by § 111.96(b), if it is shown to the satisfaction of the port director that the person intends to transact customs business within such district and the person otherwise complies with the requirements of this part.

(b) *Submission of application for initial permit or permit for additional district.* A broker who intends to conduct customs business at a port within another district for which he does not have a permit, or a broker who was not concurrently granted a permit with the broker's license under paragraph (a) of this section, and except as otherwise provided in paragraph (f) of this section, shall submit an application for a permit in a letter to the director of the port at which he intends to conduct customs business. Each application for a permit for an additional district shall set forth or attach the following:

(1) The applicant's broker license number and date of issuance;

(2) The address where the applicant's office will be located within the additional district and the telephone number of that office;

(3) A copy of a document which reserves the applicant's business name with the state or local government;

(4) The name of the individual broker who will exercise responsible supervision and control over the

customs business transacted in the additional district;

(5) A list of all other districts for which the applicant has a permit to transact customs business;

(6) The place where the applicant's brokerage records will be retained and the names of the applicant's recordkeeping officer and back-up recordkeeping officer (see §§ 111.21 and 111.23); and

(7) A list of all identifiable persons who will be employed by the applicant in the additional district, together with the specific employee information prescribed in § 111.28(b)(1)(i) for each such prospective employee.

(c) *Fees.* Each application for a permit under paragraph (b) or (f) of this section shall be accompanied by the \$100 and \$125 fees specified in §§ 111.96(b) and (c). The \$125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial permit concurrently with a license under paragraph (a) of this section.

(d) *Responsible supervision and control—(1) General.* The applicant for a permit for an additional district shall have a place of business at the port where the application is filed, or shall have made firm arrangements satisfactory to the port director to establish such a place of business, and shall exercise responsible supervision and control over that place of business once the permit is granted. Except as otherwise provided in paragraph (d)(2) of this section, the applicant shall employ in each district for which a permit is granted at least one individual broker to exercise responsible supervision and control over the customs business conducted in the district.

(2) *Exception to district rule.* If the applicant can demonstrate to the satisfaction of Customs that he regularly employs at least one individual broker in a larger geographical area in which the district is located and that adequate procedures exist for such individual broker to exercise responsible supervision and control over the customs business conducted in the district, Customs may waive the requirement for an individual broker in that district. A request for a waiver under this paragraph, supported by information on the volume and type of customs business conducted, or planned to be conducted, and supported by evidence demonstrating that the applicant is able to exercise responsible supervision and control through the individual broker employed in the larger geographical area, shall be sent to the port director in the district in which the waiver is sought. The port director

shall review the request for a waiver and make recommendations which will be sent to the Office of Field Operations, Customs Headquarters for review and decision. A written decision on the waiver request shall be issued by the Office of Field Operations and, if the waiver is granted, the decision letter shall specify the region covered by the waiver.

(e) *Action on application; list of permitted brokers.* The port director who receives the application shall issue a written decision on the permit application and shall issue the permit if the applicant meets the requirements of paragraphs (b), (c), and (d) of this section. If the port director is of the opinion that the permit should not be issued, he shall submit his written reasons for that opinion to the Office of Field Operations, Customs Headquarters, for appropriate instructions on whether to grant or deny the permit. Each port director shall maintain and make available to the public an alphabetical list of brokers permitted through his port.

(f) *National permit.* A broker must be a participant in the National Customs Automation Program (NCAP) under section 411, *et seq.*, Tariff Act of 1930, as amended (19 U.S.C. 1411 *et seq.*), and must have a national permit in order to electronically file entries from a remote location (that is, a location other than the place designated in the entry for examination), or in order to electronically file drawback claims or transact other customs business pursuant to an NCAP component that is in operation, whenever such entry or drawback claim is filed or such other customs business is transacted within a district for which the broker does not have a district permit. An application for a national permit under this paragraph shall be in the form of a letter addressed to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, and shall:

(1) Identify the applicant's broker license number and date of issuance;

(2) Set forth the address and telephone number of the office designated by the applicant as the office of record for purposes of administration of the provisions of this part in respect of all activities of the applicant conducted under the national permit. That office will be noted in the national permit when issued;

(3) Set forth the name, broker license number, office address, and telephone number of the individual broker who will exercise responsible supervision and control over the activities of the applicant conducted under the national permit;

(4) Include a statement that the applicant meets all applicable requirements for remote location filing or other NCAP participation set forth in this chapter; and

(5) Attach a receipt or other evidence showing that the fees specified in §§ 111.96(b) and (c) have been paid at the port having jurisdiction over, or nearest to, the office of record identified under paragraph (f)(2) of this section.

(g) *Review of the denial of a permit—*
(1) *By the Assistant Commissioner.* Upon the denial of an application for a permit under this section, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(2) *By the Court of International Trade.* Upon a decision of the Assistant Commissioner affirming the denial of an application for a permit under this section, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Assistant Commissioner's decision.

Subpart C—Duties and Responsibilities of Customs Brokers

§ 111.21 Record of transactions.

(a) Each broker shall keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He shall keep and maintain on file copies of all his correspondence and other records relating to his customs business.

(b) Each broker shall comply with the provisions of this part and part 163 of this chapter when maintaining records that reflect on his transactions as a broker.

(c) Each broker shall designate a knowledgeable company employee to be the contact for Customs for broker-wide customs business and financial recordkeeping requirements.

§ 111.22 [Reserved]

§ 111.23 Retention of records.

(a) *Place and period of retention—*(1) *Place.* Records shall be retained by a broker in accordance with the provisions of this part and part 163 of this chapter within the broker district that covers the Customs port to which they relate unless the broker chooses to consolidate records at one or more other locations, and provides advance notice of such consolidation to Customs, in

accordance with paragraph (b) of this section.

(2) *Period.* The records described in paragraph (a)(1) of this section, other than powers of attorney, shall be retained for at least 5 years after the date of entry. Powers of attorney shall be retained until revoked, and revoked powers of attorney and letters of revocation shall 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. When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

(b) *Notification of consolidated records—*(1) *Applicability.* Subject to the requirements of paragraph (b)(2) of this section, the option of maintaining records on a consolidated system basis is generally available to brokers who have been granted permits to do business in more than one district.

(2) *Form and content of notice.* If consolidated storage is desired by the broker, he must submit a written notice addressed to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131. The written notice shall include:

(i) Each address at which the broker intends to maintain the consolidated records. Each such location must be within a district where the broker has been granted a permit;

(ii) A detailed statement describing all the records to be maintained at each consolidated location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations; and

(iii) An agreement that there will be no change in the records, the manner of recordkeeping, or the location at which they will be maintained, unless the Director, Regulatory Audit Division, in Miami is first notified.

§ 111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker shall be considered confidential, and the broker shall not disclose their contents or any information connected therewith to any persons other than such clients, their surety on a particular entry, and the Field Director, Regulatory Audit Division, the special agent in charge, the port director, or other duly accredited officers or agents of the United States, except on subpoena by a court of competent jurisdiction.

§ 111.25 Records shall be available.

During the period of retention, the broker shall maintain the records referred to in this part in such manner that they may readily be examined. Records required to be made or maintained under the provisions of this part shall be made available upon reasonable notice for inspection, copying, reproduction or other official use by Customs regulatory auditors or special agents or other authorized Customs officers within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker. Records subject to the requirements of part 163 of this chapter shall be made available to Customs in accordance with the provisions of that part.

§ 111.26 Interference with examination of records.

Except in accordance with the provisions of part 163 of this chapter, a broker shall not refuse access to, conceal, remove, or destroy the whole or any part of any record relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative thereof, nor shall he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in such records.

§ 111.27 Audit or inspection of records.

The Field Director, Regulatory Audit Division, shall make such audit or inspection of the records required by this subpart to be kept and maintained by a broker as may be necessary to enable the port director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part.

§ 111.28 Responsible supervision.

(a) *General.* Every individual broker operating as a sole proprietor and every licensed member of a partnership that is a broker and every licensed officer of an association or corporation that is a broker shall exercise responsible supervision and control over the transaction of the customs business of such sole proprietorship, partnership, association, or corporation.

(b) Employee information.

(1) *Current employees—(i) General.* Each broker shall submit, in writing, to the director of each port at which the broker intends to transact customs business, a list of the names of persons currently employed at that port. The list of employees shall be submitted upon

issuance of a permit for an additional district under § 111.19, or upon the opening of an office at a port within a district for which the broker already has a permit, and before the broker begins to transact customs business as a broker at the port. For each such employee, the broker also shall provide the current home address, last prior home address, social security number, date and place of birth, and, if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3-year period preceding current employment with the broker. After the initial submission, the list shall be updated and submitted with the status report required by § 111.30(d).

(ii) *New employees.* In the case of a new employee, the broker shall submit to the port director the written information required under paragraph (b)(1)(i) of this section within 10 calendar days after the new employee has been employed by the broker for 30 consecutive days.

(2) *Terminated employees.* Within 30 calendar days after the termination of employment of any person employed longer than 30 consecutive days, the broker shall submit the name of the terminated employee, in writing, to the director of the port at which the person was employed.

(3) *Broker's responsibility.* Notwithstanding a broker's responsibility for providing the information required in paragraph (b)(1) of this section, in the absence of culpability by the broker, Customs will not hold him responsible for the accuracy of such information when provided to the broker by the employee.

(c) *Termination of qualifying member or officer.* In the case of an individual broker who is a qualifying member of a partnership for purposes of § 111.11(b)(1) or who is a qualifying officer of an association or corporation for purposes of § 111.11(c)(2), that individual broker shall immediately provide written notice to the Assistant Commissioner when his employment as a qualifying member or officer terminates and shall send a copy of the written notice to the director of each port through which a permit has been granted to the partnership, association, or corporation.

(d) *Change in ownership.* If the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker shall immediately provide written notice of that fact to the Assistant Commissioner and shall send a copy of the written notice to the director of each port through which a permit has been

granted to the broker. When the change in ownership results in the addition of a new principal to the organization, Customs reserves the right to conduct a background investigation on the new principal. The port director will notify the broker if Customs objects to the new principal, and the broker will be given a reasonable period of time to remedy the situation. If the investigation uncovers information which would have been the basis for a denial of an application for a broker's license and the principal's interest in the broker is not terminated to the satisfaction of the port director, suspension or revocation proceedings may be initiated under subpart D of this part. For purposes of this paragraph, a "principal" means any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in a broker or in the business of a broker.

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* Each broker shall exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of records relating to any customs business matter handled by him as a broker. 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, shall be made to the Government on or before the date that payment is due. Payments received by a broker from a client after the due date shall be transmitted to the Government within 5 working days from receipt by the broker. Each broker shall 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, within 60 calendar days of receipt. No written statement is required if there is actual payment of such funds by a broker.

(b) *Notice to client of method of payment—(1)* All brokers shall provide their clients with the following written notification:

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 Customs) 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 Service" which shall be delivered to Customs by the broker.

(2) The written notification set forth in paragraph (b)(1) of this section shall be provided by brokers as follows:

(i) On, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982; and

(ii) To each active client no later than February 28, 1983, and at least once at any time within each 12-month period thereafter. 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.

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.

(a) *Change of address.* When a broker changes his business address, he shall immediately give written notice of his new address to each director of a port that is affected by the change of address. In addition, if an individual broker is not actively engaged in transacting business as a broker and changes his non-business mailing address, he shall give written notice of the new address in the status report required by paragraph (d) of this section.

(b) *Change in an organization.* A partnership, association, or corporation broker shall immediately provide written notice of any of the following to 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)(1) 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, shall submit to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, evidence of his authority to use such name. The name shall not be used until the approval of Headquarters has been received. In the case of a trade or fictitious name, the broker shall affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.

(d) *Status report*—(1) *General.* Each broker shall file a written status report with Customs on February 1, 1979, and on February 1 of each third year thereafter. The report shall be accompanied by the fee prescribed in § 111.96(d) and shall be addressed to the director of the port through which the broker's license was issued. A report received during the month of February will be considered filed timely. No form or particular format is required.

(2) *Individual.* Each individual broker shall state in the report required under paragraph (d)(1) of this section whether he is actively engaged in transacting business as a broker. If he is so actively engaged, he shall also:

(i) State the name under which, and the address at which, his business is conducted if he is a sole proprietor;

(ii) State the name and address of his employer if he is employed by another broker, unless his employer is a partnership, association or corporation broker for which he is a qualifying member or officer for purposes of § 111.11(b)(1) or (c)(2); and

(iii) State whether or not he still meets the applicable requirements of § 111.11 and § 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53.

(3) *Partnership, association or corporation.* Each corporation, partnership or association broker shall state in the report required under paragraph (d)(1) of this section the name under which its business as a broker is being transacted, its business address, the names and addresses of the licensed members of the partnership or licensed officers of the association or corporation who qualify it for a license under § 111.11(b)(1) or (c)(2), and whether it is actively engaged in transacting business as a broker, and the report shall be signed by such a licensed member or officer.

(4) *Failure to file timely.* If a broker fails to file the report required under paragraph (d)(1) of this section by March 1 of the reporting year, the broker's license is suspended by operation of law on that date. By March 31 of the reporting year, the port director shall transmit written notice of the suspension to the broker by certified mail, return receipt requested, at the address reflected in Customs records. If the broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, the license shall be reinstated. If the broker does not file the required report within that 60-day period, the broker's license is revoked by operation of law without prejudice to

the filing of an application for a new license. Notice of the revocation shall be published in the Customs Bulletin.

(e) *Custody of records.* Upon the permanent termination of a brokerage business, written notification of the name and address of the party having legal custody of the brokerage business records shall be provided to the director of each port where the broker was transacting business within each district for which a permit has been issued to the broker. Such notification shall be the responsibility of:

(1) The individual broker, upon the permanent termination of his brokerage business;

(2) Each member of a partnership who holds an individual broker's license, upon the permanent termination of a partnership brokerage business; or

(3) Each association or corporate officer who holds an individual broker's license, upon the permanent termination of an association or corporate brokerage business.

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker who was formerly an officer or employee in U.S. Government service shall not represent a client before the Treasury Department or any representative thereof in any matter to which the broker gave personal consideration or gained knowledge of the facts while in U.S. Government service, except as provided in 18 U.S.C. 207.

(b) *Relations with former officer or employee of U.S. Government.* A broker shall not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before the Treasury Department or any representative thereof to which matter such person gave personal consideration or gained personal knowledge of the facts or issues thereof while in U.S. Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself shall not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client has full knowledge of the facts. The same restriction shall apply if a broker's employee is an importer.

§ 111.32 False information.

A broker shall not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false. Nor shall a broker knowingly give, or solicit or procure the giving of, any false or misleading information or

testimony in any matter pending before the Treasury Department or any representative thereof.

§ 111.33 Government records.

A broker shall not procure or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

§ 111.34 Undue influence upon Government employees.

A broker shall not influence or attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative thereof by the use of duress or a threat or false accusation, or by the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to customs transactions, a broker shall not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 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, the broker shall 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 for delivery on an all-free basis (duty and brokerage charges paid by the unlicensed person) or unless the importer has in writing waived transmittal of the copy of the entry or bill for services rendered.

(b) *Service to others not to benefit unlicensed person.* Except as otherwise provided in paragraph (c) of this section, a broker shall not enter into any agreement with an unlicensed person to transact Customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person.

(c) *Relations with a freight forwarder.* A broker may compensate a freight forwarder for services rendered in obtaining brokerage business, subject to the following conditions:

(1) The importer or other party in interest is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer or other party in interest:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, unless this requirement is waived in writing by the importer or other party in interest; or

(ii) 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 are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant thereto, forbids or prevents direct communication between the importer or other party in interest and the broker; and

(4) In making the agreement and in all actions taken pursuant thereto, the broker shall remain subject to all other provisions of this part.

§ 111.37 Misuse of license or permit.

A broker shall not allow his license, permit or name to be used by or for any unlicensed person (including a broker whose license or permit is under suspension), other than his own employees authorized to act for him, in the solicitation, promotion or performance of any customs business or transaction.

§ 111.38 False representation to procure employment.

A broker shall not knowingly use false or misleading representations to procure employment in any customs matter. Nor shall a broker represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative thereof.

§ 111.39 Advice to client.

(a) *Withheld or false information.* A broker shall not withhold information relative to any customs business from a client who is entitled to the information. Moreover, a broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he shall not knowingly impart to a client false information relative to any customs business.

(b) *Error or omission by client.* If a broker knows that a client has not

complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires such client to execute, he shall advise the client promptly of such noncompliance, error, or omission.

(c) *Illegal plans.* A broker shall not knowingly suggest to a client or prospective client any illegal plan for evading payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

§ 111.40 Protests.

A broker shall not act on behalf of any person, or attempt to represent any person, in respect of any protest unless he is authorized to do so in accordance with § 174.3 of this chapter.

§ 111.41 Endorsement of checks.

A broker shall not endorse or accept, without authority of his client, any U.S. Government draft, check, or warrant drawn to the order of such client.

§ 111.42 Relations with person who is notoriously disreputable or whose license is under suspension, canceled "with prejudice," or revoked.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a broker shall not knowingly and directly or indirectly:

(1) Accept employment to effect a Customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose broker license was revoked for any cause or is under suspension or was cancelled "with prejudice;"

(2) Assist in the furtherance of any customs business or transactions of any person described in paragraph (a)(1) of this section;

(3) Employ, or accept assistance in the furtherance of any customs business or transactions from, any person described in paragraph (a)(1) of this section, without the approval of the Assistant Commissioner (see § 111.79);

(4) Share fees with any person described in paragraph (a)(1) of this section; or

(5) Permit any person described in paragraph (a)(1) of this section to participate, directly or indirectly and whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker.

(b) *Client exception.* Nothing in this section shall prohibit a broker from transacting customs business on behalf of a bona fide importer or exporter who may be notoriously disreputable or whose broker license is under suspension or was cancelled "with prejudice" or revoked.

§ 111.43 [Reserved]**§ 111.44 [Reserved]****§ 111.45 Revocation by operation of law.**

(a) *License.* If a broker that is a partnership, association, or corporation fails to have, during any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who holds a valid individual broker's license, such failure shall, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and any permits issued to the partnership, association, or corporation. The Assistant Commissioner will notify the broker in writing of an impending revocation by operation of law under this section 30 calendar days before the revocation is due to occur.

(b) *Permit.* If a broker who has been granted a permit for an additional district fails, for any continuous period of 180 days, to employ within that district (or region, if an exception has been granted pursuant to § 111.19(d)) at least one person who holds a valid individual broker's license, such failure shall, in addition to any other sanction that may be imposed under this part, result in the revocation of the permit by operation of law.

(c) *Notification.* If the license or an additional permit of a partnership, association, or corporation is revoked by operation of law under paragraph (a) or (b) of this section, the Assistant Commissioner will notify the organization of the revocation. If an additional permit of an individual broker is revoked by operation of law under paragraph (b) of this section, the Assistant Commissioner will notify the broker. Notice of any revocation under this section will be published in the Customs Bulletin.

(d) *Applicability of other sanctions.* Notwithstanding the operation of paragraph (a) or (b) of this section, each broker still has a continuing obligation to exercise responsible supervision and control over the conduct of its brokerage business and to otherwise comply with the provisions of this part. Any failure on the part of a broker to meet that continuing obligation during the 120 or 180-day period referred to in paragraph (a) or (b) of this section, or during any shorter period of time, may result in the initiation of suspension or revocation proceedings or the assessment of a monetary penalty under subpart D or subpart E of this part.

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, or Monetary Penalty in Lieu Thereof**§ 111.50 General.**

This subpart sets forth provisions relating to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu thereof, under section 641(d)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)(B)). The provisions relating to assessment of a monetary penalty under sections 641 (b)(6) and (d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641 (b)(6) and (d)(2)(A)), are set forth in subpart E of this part.

§ 111.51 Cancellation of license or permit.

(a) *Without prejudice.* The Assistant Commissioner may cancel a broker's license or permit "without prejudice" upon written application by the broker if the Assistant Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the Assistant Commissioner determines that the application for cancellation was made in order to avoid such proceedings, he may cancel the license or permit "without prejudice" only with authorization from the Secretary of the Treasury.

(b) *With prejudice.* The Assistant Commissioner may cancel a broker's license or permit "with prejudice" when specifically requested to do so by the broker. The effect of a cancellation "with prejudice" is in all respects the same as if the license or permit had been revoked for cause by the Secretary except that it shall not give rise to a right of appeal.

§ 111.52 Voluntary suspension of license or permit.

The Assistant Commissioner may accept a broker's written voluntary offer of suspension of the broker's license or permit for a specific period of time under such terms and conditions as the parties may agree.

§ 111.53 Grounds for suspension or revocation of license or permit.

The appropriate Customs officer may initiate proceedings for the suspension, for a specific period of time, or revocation of the license or permit of any broker for any of the following reasons:

(a) The broker has made or caused to be made in any application for any license or permit under this part, or report filed with Customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with

respect to any material fact, or has omitted to state in any application or report any material fact which was required;

(b) The broker has been convicted, at any time after the filing of an application for a license under § 111.12, of any felony or misdemeanor which:

(1) Involved the importation or exportation of merchandise;

(2) Arose out of the conduct of customs business; or

(3) Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(c) The broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any such provision;

(d) The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by Customs or the rules or regulations issued under any such provision;

(e) The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Assistant Commissioner;

(f) The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client; or

(g) The broker no longer meets the applicable requirements of § 111.11 and § 111.19.

§ 111.54 [Reserved]**§ 111.55 Investigation of complaints.**

Every complaint or charge against a broker which may be the basis for disciplinary action shall be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge shall submit a report on the investigation to the director of the port and send a copy of it to the Assistant Commissioner.

§ 111.56 Review of report on investigation.

The port director shall review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He shall then submit his recommendation with supporting reasons to the Assistant Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 111.57 Determination by Assistant Commissioner.

The Assistant Commissioner shall make a determination on whether or not charges should be preferred, and he shall notify the port director of his decision.

§ 111.58 Content of statement of charges.

Any statement of charges referred to in this subpart shall give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license or permit. The statement of charges also shall specify the sanction being proposed (that is, suspension of the license or permit or revocation of the license or permit), but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed. A statement of charges which fairly informs the broker of the charges against him so that he is able to prepare his response shall be deemed sufficient. Different means by which a purpose might have been accomplished, or different intents with which acts might have been done, so as to constitute grounds for suspension or revocation of the license may be alleged in the alternative under a single count in the statement of charges.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* The port director shall advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license or permit.

(b) *Notice of preliminary proceedings.* The port director shall serve upon the broker, in the manner set forth in § 111.63, written notice that:

- (1) Transmits a copy of the proposed statement of charges;
- (2) Informs the broker that formal proceedings are available to him;
- (3) Informs the broker that sections 554 and 558, Title 5, United States Code, will be applicable if formal proceedings are necessary;
- (4) Invites the broker to show cause why formal proceedings should not be instituted;
- (5) Informs the broker that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;
- (6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;
- (7) Advises the broker of his right to be represented by counsel;
- (8) Specifies the place where the broker may respond in writing; and

(9) Advises the broker that the response must be received within 30 calendar days of the date of the notice.

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request such information in writing. The broker's request shall set forth in what respect the proposed statement of charges leaves him in doubt and shall describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the port director such information is reasonably necessary to enable the broker to prepare his response, he shall furnish the broker with such information.

§ 111.61 Decision on preliminary proceedings.

The port director shall prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Assistant Commissioner together with a copy of each paper filed by the broker. The port director shall also give to the Assistant Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Assistant Commissioner determines that the broker has satisfactorily responded to the proposed charges and that further proceedings are not warranted, he shall so inform the port director who shall notify the broker. If no response is filed by the broker or if the Assistant Commissioner determines that the broker has not satisfactorily responded to all of the proposed charges, he shall so advise the port director and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker in the preliminary proceedings, the Assistant Commissioner shall instruct the port director to omit those charges from the statement of charges.

§ 111.62 Contents of notice of charges.

The notice of charges shall inform the broker that:

- (a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;
- (b) The broker may be represented by counsel;
- (c) The broker will have the right to cross-examine witnesses;

(d) Within 10 calendar days after service of this notice, the broker will be notified of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, the broker may file, in duplicate with the port director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual.* The port director shall serve the notice of charges and the statement of charges against an individual broker as follows:

- (1) By delivery to the broker personally;
- (2) By certified mail addressed to the broker, with demand for a return card signed solely by the addressee;
- (3) By any other means which the broker may have authorized in a written communication to the port director; or
- (4) If attempts to serve the broker by the methods prescribed in paragraphs (a)(1) through (a)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The port director shall serve the notice of charges and the statement of charges against a partnership, association, or corporation broker as follows:

- (1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;
- (2) By certified mail addressed to any member of the partnership or to any officer of the association or corporation, with demand for a return card signed solely by the addressee;
- (3) By any other means which the broker may have authorized in a written communication to the port director; or
- (4) If attempts to serve the broker by the methods prescribed in paragraphs (b)(1) through (b)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service under this section is by certified mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* After service of the notice and statement of charges, the port director shall serve upon the broker and his attorney if known, by one of the methods set forth in § 111.63 or by ordinary mail, a written notice of the

time and place of the hearing. The hearing shall be scheduled to take place within 30 calendar days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by one of the methods set forth in § 111.63 or by ordinary mail or upon the broker's attorney.

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to § 111.67(a) may reschedule the hearing and in such a case shall notify the broker or his attorney in writing of the extension and the new time for the hearing.

§ 111.66 Failure to appear.

If the broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to § 111.67(a) shall proceed with the hearing as scheduled and shall hear evidence submitted by the parties. The provisions of this part shall apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension of the license or permit for a specified period of time or revocation of the license or permit, or of assessment of a monetary penalty in lieu thereof, in accordance with § 111.74 if he finds such action to be in order.

§ 111.67 Hearing.

(a) *Hearing officer.* The hearing officer shall be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the broker.* The broker or his attorney shall have the right to examine all exhibits offered at the hearing and shall have the right to cross-examine witnesses and to present witnesses who shall be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the hearing record.

(d) *Transcript of record.* The port director shall provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the port director shall deliver a copy of the transcript of record to the hearing

officer, the broker and the Government representative without charge.

(e) *Government representatives.* The Assistant Commissioner shall designate one or more persons to represent the Government at the hearing.

§ 111.68 Proposed findings and conclusions.

The hearing officer shall allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons therefor as contemplated by 5 U.S.C. 557(c).

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68, the hearing officer shall make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The hearing officer's recommended decision shall conform to the requirements of 5 U.S.C. 557.

§ 111.70 Additional submissions.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make such additional submissions as permitted under 5 U.S.C. 557(c) or as otherwise required by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or ownership of any property, any other immaterial mistake in the statement of charges, or a failure to prove immaterial allegations in the description of the broker's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the port director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedures set forth in this subpart.

§ 111.73 [Reserved]

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base a suspension,

or monetary penalty action on any remaining charges if the facts alleged in the charges are established by the evidence. If the Secretary of the Treasury, in the exercise of his discretion and based solely on the record, issues an order suspending a broker's license or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in § 111.53(b)(3), assessing a monetary penalty in lieu of suspension or revocation, the Assistant Commissioner shall promptly provide written notification of the order to the broker and, unless an appeal from the Secretary's order is filed by the broker (see § 111.75), the Assistant Commissioner shall publish a notice of the suspension or revocation, or the assessment of a monetary penalty in lieu thereof, in the **Federal Register** and in the Customs Bulletin. If no appeal from the Secretary's order is filed, an order of suspension or revocation or assessment of a monetary penalty shall become effective 60 calendar days after issuance of written notification of the order unless the Secretary finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal from the Secretary's order is filed, payment of the penalty shall be tendered within 60 calendar days after the effective date of the order, and, if payment is not tendered within that 60-day period, the license or permit of the broker shall immediately be suspended until payment is made.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit, or assessing a monetary penalty in lieu thereof, may be filed by the broker in the Court of International Trade as provided in section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of such proceedings shall, unless specifically ordered by the Court, operate as a stay of the Secretary's order.

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Provided that no appeal is filed in accordance with § 111.75, a person whose license or permit has been suspended or revoked, or against whom a monetary penalty has been assessed in lieu of suspension or revocation, may make written application in duplicate to the Assistant Commissioner to reopen the case and have the order of suspension or revocation or monetary penalty assessment set aside or modified on the

ground that new evidence has been discovered or on the ground that important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application shall set forth the precise character of the evidence to be relied upon and shall state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The Assistant Commissioner shall forward the application, together with his recommendation for action thereon, to the Secretary of the Treasury. The Secretary may grant or deny the application to reopen the case and may order the taking of additional testimony before the Assistant Commissioner. The Assistant Commissioner shall notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the Assistant Commissioner shall set a time and place for such hearing and give due written notice thereof to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer shall be the same as those governing the original proceeding. The original order of the Secretary shall remain in effect pending conclusion of the new proceedings and issuance of a new order under § 111.77.

§ 111.77 Notice of vacated or modified order.

If, pursuant to § 111.76 or for any other reason, the Secretary of the Treasury issues an order vacating or modifying an earlier order under § 111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty in lieu thereof, the Assistant Commissioner shall notify the broker in writing and shall publish a notice of the new order in the **Federal Register** and in the Customs Bulletin.

§ 111.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but such failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings, Headquarters, or the port director with the approval of Headquarters, may serve the broker with a written reprimand. Such a reprimand, and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted against the broker in question.

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation "with prejudice" of a license, the ex-broker may petition the Assistant Commissioner for authorization to assist, or accept employment with, a broker. Such a petition shall not be approved unless the Assistant Commissioner is satisfied that the petitioner has refrained from all activities described in § 111.42 and that the petitioner's conduct has been exemplary during the period of disability. The Assistant Commissioner shall also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which such misconduct led to pecuniary loss to the Government or to any person, the Assistant Commissioner shall also take into account whether the petitioner has made restitution of such loss.

§ 111.80 [Reserved]

§ 111.81 Settlement and compromise.

The Assistant Commissioner, with the approval of the Secretary of the Treasury, may settle and compromise any disciplinary proceeding which has been instituted under this subpart according to the terms and conditions agreed to by the parties including, but not limited to, the assessment of a monetary penalty in lieu of any proposed suspension or revocation of a broker's license or permit.

Subpart E—Monetary Penalty and Payment of Fees

§ 111.91 Grounds for imposition of a monetary penalty; maximum penalty.

Customs may assess a monetary penalty or penalties as follows:

- (a) In the case of a broker, in an amount not to exceed an aggregate of \$30,000 for one or more of the reasons set forth in §§ 111.53(a) through (f) other than those listed in § 111.53(b)(3), and provided that no license or permit suspension or revocation proceeding has been instituted against the broker under subpart D of this part for any of the same reasons; or
- (b) In the case of a person who is not a broker, in an amount not to exceed \$10,000 for each transaction or violation referred to in § 111.4 and in an amount not to exceed an aggregate of \$30,000 for all such transactions or violations.

§ 111.92 Notice of monetary penalty.

If assessment of a monetary penalty under § 111.91 is contemplated, Customs shall issue a written notice which advises the broker or other person of the allegations or complaints

against him and explains that the broker or other person has a right to respond to the allegations or complaints in writing within 30 calendar days of the date of mailing of the notice. The port director has discretion to provide additional time for good cause.

§ 111.93 Petition for relief from monetary penalty.

A broker or other person who receives a notice issued under § 111.92 may file a petition for relief from the monetary penalty in accordance with the procedures set forth in part 171 of this chapter.

§ 111.94 Decision on monetary penalty.

Customs shall follow the procedures set forth in part 171 of this chapter in considering any petition for relief filed under § 111.93. After Customs has considered the allegations or complaints set forth in the notice issued under § 111.92 and any timely response made thereto by the broker or other person, the Fines, Penalties, and Forfeitures Officer shall issue a written decision to the broker or other person setting forth the final determination and the findings of fact and conclusions of law on which the determination is based. If the final determination is that the broker or other person is liable for a monetary penalty, the broker or other person shall pay the monetary penalty, or make arrangements for payment thereof, within 60 calendar days of the date of the written decision. If payment or arrangements for payment are not timely made, Customs shall refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

§ 111.95 Supplemental petition for relief from monetary penalty.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

§ 111.96 Fees.

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to § 111.12 shall pay a fee of \$200 to defray the costs to Customs in processing the application. Each individual who intends to take the written examination provided for in § 111.13 shall pay a \$200 examination fee before taking the examination. An individual who submits an application for a license shall also pay a fingerprint check and processing fee; the port director shall inform the applicant of the current

Federal Bureau of Investigation fee for conducting fingerprint checks and the Customs fingerprint processing fee, the total of which must be paid to Customs before further processing of the application will occur.

(b) *Permit fee.* Each application for a permit pursuant to § 111.19, including an application for reinstatement of a permit that was revoked by operation of law or otherwise, shall be accompanied by a fee of \$100 to defray the costs of processing the application.

(c) *User fee.* Payment of an annual user fee of \$125 is required for each permit, including a national permit under § 111.19(f), granted to an individual, partnership, association, or corporate broker. The user fee is payable when an initial district permit is issued concurrently with a license under § 111.19(a), or upon filing the

application for the permit under § 111.19(b) or (f), and for each subsequent calendar year at the port through which the broker was granted the permit or at the port referred to in § 111.19(f)(5) in the case of a national permit. The user fee shall be paid by the due date as published annually in the **Federal Register**, and shall be remitted in accordance with the procedures set forth in § 24.22(i) of this chapter. When a broker submits an application for a permit or is issued an initial district permit under § 111.19, the full \$125 user fee shall be remitted with the application or when the initial district permit is issued, regardless of the point during the calendar year at which the application is submitted or the initial district permit is issued. If a broker fails to pay the annual user fee by the

published due date, the appropriate port director shall notify the broker in writing of the failure to pay and shall revoke the permit to operate. The notice will constitute revocation of the permit.

(d) *Status report fee.* The status report required under § 111.30(d) shall be accompanied by a fee of \$100 to defray the costs of administering the reporting requirement.

(e) *Method of payment.* All fees prescribed under this section shall be paid by check or money order payable to the United States Customs Service.

Raymond W. Kelly,

Commissioner of Customs.

Approved: March 11, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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