

*What Every Member of the  
Trade Community Should Know About:*  
**Customs Brokers**



AN INFORMED COMPLIANCE PUBLICATION

JANUARY 2005

**U.S. CUSTOMS and BORDER PROTECTION**

**NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the International Trade Compliance Division, ORR, is part of a series of informed compliance publications advising the public of new or revised regulations or procedures. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

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## **NOTE ON SPELLING, HYPHENATION AND CAPITALIZATION**

Over the years, the spelling and hyphenation of “customhouse” has varied. Government and trade publications and even statutes refer to “custom-house,” “customhouse,” or “Custom House.” The hyphenated form “custom-house” was preferred in the nineteenth century, while the non-hyphenated form “customhouse” became popular in the twentieth century. The two-word form was often found on signs and buildings. The variations “Customs House,” and “customshouse” were never officially sanctioned, but nonetheless, appear in some publications. In this publication, we generally use “customhouse”, except in quoted material where the format appears as in the original material quoted.

In recent U. S. Customs and Border Protection (CBP) publications, “Customs” is capitalized when referring to a CBP officer, the CBP organization, or a specific building such as the New York Customhouse, but is usually not capitalized when referring to customs duties, customs bonds or customhouses in general. The practice has varied since 1789, and consistency is often missing. In this publication, the current practice is followed except in quoted material where the format appears as in the original material.

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## **INTRODUCTION**

When goods are imported into the customs territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving U.S. Customs and Border Protection (CBP) (formerly known as U.S. Customs Service). In almost all cases, the goods are required to be “entered,” that is, declared to CBP, and are subject to detention and examination by CBP officers to ensure compliance with all laws and regulations enforced or administered by CBP.

When a formal “entry of merchandise” is made under the provisions of 19 U.S.C. §1484, the required documentation or information is required to be filed or electronically transmitted by the “importer of record.” Under the statute, the “importer of record” is either the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license as a customs broker. As part of the entry process, goods must be “classified” (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use “reasonable care” to “enter,” “classify”, and “value” the goods, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met. These requirements can be complex. In order to assist importers in meeting their responsibilities, importers may employ experts within their organizations or seek advice or services from outside experts such as customs brokers, attorneys who specialize in customs matters or consultants. Of these outside experts, only customs brokers may actually prepare and file entry documentation, because the preparation and filing of entry documentation constitutes “customs business” which, by statute, may be performed on behalf of others only by a licensed customs broker.

This informed compliance publication explains the historical background that led to the current licensing and permit regime, and discusses, in detail, the recently revised procedures to become a customs broker, the duties and responsibilities of a customs broker, and the procedures for disciplining a customs broker.

Today’s customs broker is a federally licensed, highly regulated professional who offers many services to the international trade community. However, as evidenced by the following historical discussion, this was not always the case.

## **HISTORICAL BACKGROUND**

Section 36 of the Act of March 2, 1799 provided that the owner(s) or consignee(s) or “in case of his, her, or their absence or sickness, his, her, or their known agent or factor, in his, her, or their names, shall make entry thereof...”. According to Article 193 of the Customs Regulations of 1857,

The manifest intent of this clause was to compel the original consignee to enter the goods, and the whole object of the act would be defeated by allowing a mere stranger to make entry or take the oath prescribed on the entry.

By the mid 1850's, a practice had arisen at many ports where an importer or consignee endorsed the bill of lading over to a tradesman, variously called a "customhouse broker" or "express agent", who then filed the entry documents. These brokers or agents were unregulated and made entry in their own names, rather than as an agent for the original consignee. This apparently led to many problems, including frauds on the revenue, and Article 194 of the Customs Regulations of 1857 addressed the issue by stating:

The practice of allowing custom-house brokers, express agents, and other parties, not the owner or original consignees, to make entries of merchandise in their own names, on the production of bill of lading endorsed by the importer or consignee, is in contravention of the express provisions of law and the decisions of the courts, and will therefore be discontinued. Entry must, in all cases, be made by the owner or consignee, who alone is authorized, under our revenue system, to take the prescribed oath, give the requisite bond, and pay the duties; and in cases where, from either of the causes averted to in the act [absence or sickness], the owner or consignee may be unable to attend personally at the custom-house, he will be required to be represented by a duly constituted agent or attorney, whose power must be lodged with the collector, who will make entry and perform all the necessary acts in the owners name, giving bond for the due production of his oath.

Although the customs laws and regulations continued to restrict the right to make entry until the late nineteenth century, the basically unregulated business of customhouse broker continued to grow as trade expanded. Experienced brokers knew their way around the customhouse and were familiar with the forms and legal requirements. With a properly executed power of attorney, they could act as the importer's agent and file entries in the importer's name. The importer, of course, remained legally responsible, since the customhouse broker was an agent of the importer.

Customhouse brokers were filling a void and providing a much needed service. Unfortunately, not every broker was honest, and several of the Treasury Decisions and Solicitor of the Treasury's opinions of the time addressed integrity concerns. As a result, the necessity of government licensing and regulation of the industry became apparent. There was also recognition that unregulated "agents" should not be permitted to transact customs business.

Section 23 of the Act of August 27, 1894 (28 Stat. Chap 349) provided:

"That the collector or chief officer of the customs at any port of entry or delivery shall issue a license to *any reputable and competent person desiring to transact business as a custom-house broker*. Such license shall be granted for a period of one year, and may be revoked for cause at any time by the Secretary of the

Treasury. From and after the first day of August, eighteen hundred and ninety-four, *no person shall transact business as a custom-house broker without a license* granted in accordance with its provision; but this Act shall not be so construed as to prohibit any importer from transacting business at a custom-house pertaining to his own importations. (*emphasis added*)

These provisions continued until passage of the Act of June 10, 1910 (36 Stat. 464). The 1910 Act changed the standard from “any reputable and competent person” to “any person of good moral character.” The Act of 1910 provided in part that:

“the collector or chief officer of the customs at any port of entry or delivery shall, upon application, issue to any person of good moral character, being a citizen of the United States *a license to transact business as a customhouse broker* in the collection district in which such license is issued, and on and after sixty days from the approval of this act *no person shall transact business as a customhouse broker without a license* granted in accordance with its provision, but this act shall not be so construed as to prohibit any person from transacting business at a customhouse pertaining to his own importations. (*emphasis added*)

By statute, the term “person” was defined to include persons, co-partnerships, associations, joint-stock associations and corporations. The 1910 Act also authorized the Secretary of the Treasury to prescribe regulations necessary or convenient for carrying the Act into effect. Broker regulations were originally promulgated as Treasury Decisions and later consolidated into the customs regulations. The regulations generally tracked the statute, but did require licensed brokers to submit employee lists, written authorizations for employees to act, and required brokers “*to exercise such discipline as will insure proper conduct on the part of their employees in the transaction of customs business, and will be held strictly responsible for the acts of such employees.*”

The Act further provided the Secretary of the Treasury with the authority to revoke the license after notice and an administrative hearing on the record if charges were brought for “good and sufficient reasons” by the “collector or chief officer of customs.” Provisions were made for judicial appeals to the local United States Circuit Court (later renamed District Court), which was to decide the appeal on the merits as disclosed by the record. The decision of the Court was final and the case was to be remanded to the Secretary to take further action in accordance with the terms of the court’s decree.

The statutory scheme established in the 1910 Act continued until enactment of the Tariff Act of 1930. The original section 641 of that act gave the Secretary of the Treasury more control over the licensing function. In addition to a requirement of good moral character, the Secretary could require the showing “of such facts as he may deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters.” Two individually licensed officers or partners were required for the issuance of corporate, association and partnership licenses which were deemed revoked if sixty days passed without meeting such requirement. Detailed provisions for revocations and suspensions “based on good and sufficient reasons” and specific time

periods for notices were set forth in the legislation. Appeals were to be heard by the United States Customs Court, which was to decide the case on the merits as disclosed by the administrative record. A timely appeal served to stay the suspension or revocation. The implementing Customs Regulations of 1931 included provisions for requiring applicants to pass an oral or written examination to show their knowledge of the customs laws, regulations and procedures.

Over the years, the statutes and regulations governing customhouse brokers were revised. Major changes occurred under the Anti-Smuggling Act of 1935, the Trade and Tariff Act of 1984, and title VI (Customs Modernization) of the NAFTA Implementation Act in 1993.

The Anti-Smuggling Act of 1935 allowed the Secretary to revoke or suspend the license of a customhouse broker “shown to be incompetent, disreputable, or has refused to comply with the rules and regulations” governing customhouse brokers, or “who has with intent to defraud, in any manner willfully and knowingly deceived, misled, or threatened any importer, exporter, claimant, or client, or prospective importer, exporter, claimant, or client, by word, circular, letter or by advertisement.” Appeals from the Secretary’s decision were moved to the United States Court of Appeals, which was required to accept the Secretary’s findings of the facts (provided they were supported by substantial evidence), although the legislation included provisions allowing the court to remand the action to the U.S. Customs Service for additional taking of evidence. Appeals to the Supreme Court were also authorized in the law. During the judicial appeals process, the Secretary’s revocation or suspension order was stayed “unless specifically ordered by the court.” In addition to authority to promulgate implementing regulations, the 1935 Act also specifically authorized the Secretary to prescribe regulations:

- to protect importers and the revenue of the United States;
- establishing recordkeeping and accounting requirements;
- requiring inspection of brokers, their papers, documents and correspondence; and
- requiring the furnishing by brokers of “information relating to their business” to any duly accredited agent of the United States.

Except for references to collectors, these provisions remained substantially unchanged until the enactment of Public Law 95-410 in 1978, which established the requirement of brokers to file triennial reports that indicated whether the licensed broker was actively engaged in business as a customhouse broker, and the name and address at which customhouse business was being conducted. In 1980 the Court of International Trade was given jurisdiction over appeals from the Secretary.

A major revision of section 641 occurred in the Trade and Tariff Act of 1984. The main broker provisions of that Act were:

- a change in title from customhouse broker to customs broker;

- a definition of “customs business”;
- changing the requirement from a separate license in each district to a single national license and a permit for each district in which the broker conducts customs business, provided that the district offices regularly employ a licensed broker to exercise responsible supervision and control over the district business (which requirement can be waived if there is a regularly employed licensed broker in the region and the company has sufficient procedures to exercise responsible supervision and control over the district business) and establishment of a 180-day period before a permit is revoked by operation of law when a licensed broker is no longer employed in the district (or region, as applicable);
- a listing of examination topics for individual applicants;
- allowing corporate, association or partnership applicants to have only one licensed officer or partner (rather than the previously required two) and extending the period from 60 days to 120 days before a license is revoked by operation of law when a licensed officer or partner is no longer employed;
- establishment of a monetary penalty of up to \$10,000 for each transaction of customs business by an unlicensed person;
- detailed procedures and reasons for disciplinary proceedings against brokers;
- establishment of a monetary penalty not to exceed \$30,000 for a violation or violations of section 641, and procedures for: notice prior to assessment, for assessment, and remission or mitigation such penalties;
- requirements for an administrative law judge to preside over suspension or revocation hearings and detailed hearing procedures;
- authority to use a monetary penalty of up to \$30,000 in lieu of suspension or revocation and the ability to settle and compromise disciplinary proceedings;
- establishment of a statute of limitations requiring the notice of charges to be served within 5 years from the date the alleged violation was committed (or 5 years from discovery if fraud was alleged);
- establishment of detailed judicial appeals procedures in the Court of International Trade with time limits after which the Court would lack jurisdiction;
- expanded authority for the Secretary to promulgate regulations governing brokers, but limited to their customs business;
- continuation of triennial reporting with provisions suspending licenses for failure to timely file and allowing the revocation without prejudice, after notice, of licenses if the reports are not filed within a 60-day period;
- authority for the Secretary to prescribe reasonable fees and charges (including but not limited to licensing and examination) to defray Customs Service expenses in carrying out the provisions of section 641.

## **SUMMARY OF THE CURRENT STATUTORY REQUIREMENTS**

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. It 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 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 CBP 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, Public Law 103-182, 107 Stat. 2057. Title VI of the Act set forth Customs Modernization provisions ("the modest") that included, in section 648, certain amendments to section 641 of the Tariff Act of 1930. The substantive amendments to section 641 were as follows:

- the definition of "customs business" was amended to include "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 already listed], 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";
- inclusion of a provision for the issuance of a national permit for the conduct of such customs business as the Secretary prescribes by regulation;
- a new subsection was added to provide that when electronic filing (including remote location filing) of entry information with the Customs Service at any location is implemented by the Secretary pursuant to the provisions of the National Customs Automation Program (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. That subsection 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, the procedures for the suspension or revocation of a broker's license or permit were 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;

- a provision was added which states that the Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business;
- provisions were added which allow all data required to be retained by a customs broker to be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium; and which permit, pursuant to regulations, the conversion of data to such storage medium at any time subsequent to the relevant customs transaction and permitting the data to be retained in a centralized basis according to such broker's business system.

On August 6, 2002, Section 343(a), Trade Act of 2002 (116 Stat. 933), was enacted, requiring that the Secretary endeavor to promulgate final regulations (see Final Rule, 68 FR 68140, December 5, 2003) providing for the mandatory collection of electronic cargo information by the Customs Service (now CBP) either prior to the arrival of the cargo in the United States or its departure from the United States by any mode of commercial transportation (sea, air, rail or truck). Under these regulations, customs brokers are authorized to provide information about cargo that is determined to be reasonably necessary to enable identification of high-risk shipments arriving in the United States by air or truck, so as to ensure cargo safety and security and prevent smuggling pursuant to the laws that are enforced and administered by CBP.

## **EFFECT OF CUSTOMS SERVICE REORGANIZATION ON BROKERS**

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

- T.D. 95-77 (60 FR 50008) amended the customs regulations on an interim basis. The amendments included extensive changes to the basic Customs Service field organization, involving the elimination of regions and districts for most purposes so that ports of entry would constitute the foundation of the Customs Service 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. 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;
- 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, in most cases, involved the replacement of outdated references with newer references to reflect the changes to the Customs Service 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 the customs regulations (19 CFR Customs Brokers Chapter I) and included a large number of changes to Part 111;

- 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.

Based on a review of the changes to section 641 made by the Mod Act, the Customs Service determined that the Part 111 regulatory texts should be amended as follows:

- to reflect the change to the definition of "customs business";
- to provide for the issuance of national permits;
- to reflect the 30-day period within which a suspension or revocation hearing is to be held;
- to implement the proscription against prohibiting a broker from limiting its liability to other persons; and
- to reflect the amended recordkeeping provisions.

With regard to the appointment of subagents as authorized under amended section 641(c)(4), the Customs Service determined that it would be premature to amend Part 111 at this time. It concluded that 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.

The Customs Service also performed a general review of Part 111 to determine whether other regulatory changes should be made. Based on that review, it identified a number of other areas where significant improvement could be made to the existing regulatory texts. These improvements included:

- the elimination of obsolete or otherwise unnecessary provisions;
- the addition of new provisions where the regulations appeared to be incomplete or were otherwise in need of clarification;
- further textual changes arising out of the reorganization of the Customs Service 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
- a large number of non-substantive, 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.

Based on the above considerations, on April 27, 1999, the U.S. Customs Service published in the *Federal Register* (64 FR 22726) a notice of proposed rulemaking setting forth a complete revision of Part 111. The notice of proposed rulemaking included a detailed section-by-section discussion of the proposed amendments (other than those of a minor wording or other editorial nature) and provided a 60-day period for the submission of public comments on the proposed changes. On June 29, 1999, a notice was published in the *Federal Register* (64 FR 34748) to extend the public comment period to July 28, 1999. After reviewing all the comments and making any necessary changes, the final regulations were published in the *Federal Register* on March 15, 2000 (65 FR 13880), and became effective April 14, 2000. The detailed discussion that follows is based on the final text.

In addition, on August 11, 2003, CBP published in the *Federal Register* (68 FR 47455) a final rule concerning performance of customs business by parent and subsidiary corporations and "corporate compliance activity". On December 5, 2003, pursuant to Section 343(a) of the Trade Act of 2002, CBP published in the *Federal Register* (68 FR 68140) a final rule requiring customs brokers, when applicable, to comply with certain advance electronic reporting requirements.

## **GENERAL PROVISIONS (19 CFR PART 111, SUBPART A)**

### **Definitions**

In order to understand the revised regulations, it is necessary to know the definitions of some of the main terms used in Revised Part 111.

- "*Assistant Commissioner*" means the Assistant Commissioner, Office of Field Operations, United States Customs and Border Protection, Washington, DC.
- "*Broker*" means a customs broker.
- "*Corporate compliance activity*" means activity performed by a business entity to ensure that documents for a related business entity or entities are prepared and filed with CBP using "reasonable care", but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a "business entity" is an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes, and the term "related business entity or entities" encompasses a business entity that has more than a 50 percent ownership interest in another business entity, a business entity in which another business entity has more than a 50 percent ownership interest, and two or more business entities in which the same business entity has more than a 50 percent ownership interest.
- "*Customs broker*" means a person who is licensed under this part to transact customs business on behalf of others.
- "*Customs business*" means those activities involving transactions with CBP concerning the entry and admissibility of merchandise, its classification and

valuation, the payment of duties, taxes, or other charges assessed or collected by CBP on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. *"Customs business"* also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with CBP 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 CBP and does not include a corporate compliance activity.

- *"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. [65 FR 14011 contains the current listing]
- *"Employee"* means a person who meets the common law definition of employee and is in the service of a customs broker.
- *"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"*, when used in the context 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"* means any permit issued to a broker under 19 CFR §111.19.
- *"Person"* includes individuals, partnerships, associations, and corporations.
- *"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"* means the geographic area covered by a waiver issued pursuant to 19 CFR § 111.19(d).
- *"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 CBP 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 CBP Regulations, the Harmonized Tariff Schedule of the United States, and CBP 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.

- "*Department of Homeland Security (DHS) or any representative of DHS*" means any office, officer, or employee of the U.S. Department of Homeland Security, wherever located.

## **LICENSE AND DISTRICT PERMIT REQUIRED**

### **License**

A person must obtain the license provided for in 19 CFR Part 111 in order to transact customs business as a broker, unless one of the exceptions listed below applies. A license is not required in the following circumstances:

- 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.
- An employee of a broker, acting solely for his employer, is not required to be licensed where:
  - 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 must provide proof of its existence to CBP upon request; or
  - the broker has filed with the port director a statement identifying the employee as authorized to transact customs business on his behalf. However, no statement will be necessary when the broker is transacting customs business under an exception to the district permit rule.

Nevertheless, the broker must exercise sufficient supervision of the employee acting solely for his employer to 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 the 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 must promptly notify the port director if authority granted to an employee is withdrawn. The withdrawal of authority will be effective upon receipt by the port director.

- 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.
- Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for that merchandise for transportation in bond without being a broker.
- An individual entering noncommercial merchandise for another party is not required to be a broker, provided that the requirements of 19 CFR §141.33 are met.
- 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.

## Permit

A separate permit (see § 111.19) is generally required for each district in which a broker conducts customs business, except where the broker is operating under the authority of a national permit. However, a broker granted a permit for one district may file drawback claims manually or electronically at the drawback office that has been designated by CBP for the purpose of filing those claims, and may represent his client before that office in matters concerning those claims, even though the broker does not have a permit for the district in which that drawback office is located.

A national permit issued to a broker under § 111.19(f) will constitute sufficient permit authority for the broker to act in any of the following circumstances:

- Employee working in client's facility (employee implant). When a broker places an employee in the facility of a client for whom the broker is conducting customs business 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 CBP, the broker need not obtain a permit for the district within which the client's facility is located;
- Electronic drawback claims. A broker may file electronic drawback claims in accordance with the electronic filing procedures set forth in 19 CFR Part 143 even though the broker does not have a permit for the district in which the filing is made;
- NCAP participation. 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 the entry is filed, or the other customs business is transacted, within a district for which the broker does not have a district permit; and
- Representations after entry summary acceptance. After the entry summary has been accepted by CBP, and except when a broker filed the entry as importer of record, a 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 CBP 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, if requested by CBP, the broker submits appropriate evidence of his right to represent the client on the matter at issue.

### **Transacting customs business without a license**

Any person who intentionally transacts customs business, other than as provided in Part 111, without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of 19 U.S.C. 1641. The penalty will be assessed in accordance with subpart E of Part 111.

### **Representation before Government agencies**

A broker who represents a client in the importation or exportation of merchandise may represent the client before the Department of Homeland Security or any representative of DHS on any matter concerning that merchandise. In order to represent a client before any agency not within DHS, a broker must comply with any regulations of that agency governing the appearance of representatives before it.

### **PROCEDURE TO OBTAIN LICENSE OR PERMIT (19 CFR PART 111, SUBPART B)**

#### **Licenses**

##### **Individual broker's license**

In order to obtain a broker's license, an individual must:

- Be a citizen of the United States on the date of submission of the license application and not an officer or employee of the United States Government;
- Attain the age of 21 prior to the date of submission of the license application;
- Be of good moral character; and
- 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 license application, 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.

##### **Partnership**

In order to qualify for a broker's license, a partnership must have at least one member of the partnership who is a broker.

## **Association or Corporation**

In order to qualify for a broker's license, an association or corporation must:

- Be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and
- Have at least one officer who is a broker.

## **Application for license**

An application for a broker's license must be submitted in duplicate to the director of the port where the applicant intends to do business. The application must be under oath and executed on CBP Form 3124. The application must be accompanied by a \$200 application fee 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 of those States 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 required written examination. The port director may require an individual applicant to provide a copy of the notification that he passed the written examination and will require the applicant to submit fingerprints on form FD 258 or electronically 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 for a license 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.

Following receipt of the application, the port director will post a notice that the application has been filed. The notice will 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 also will be posted by appropriate electronic means. The notice will give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, will state the names of all members or officers who are licensed as brokers. The notice will invite written comments or information regarding the issuance of the license.

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.

## **Written examination for individual license**

The written examination for an individual broker's license will 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 CBP Headquarters, Washington, D.C.

Written examinations will, generally, 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 section 111.96(a) at that time. The port director will give notice of the exact time and place for the examination. If a partnership, association, or corporation loses the required member or officer having an individual broker's license and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and 19 CFR § 111.45(a) before the next scheduled written examination, CBP may authorize a special written examination for a prospective applicant for an individual license who would serve as the required licensed member or officer.

CBP 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 CBP 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. The examinee will be responsible for all additional costs incurred by CBP in preparing and administering the special examination that exceed the \$200 examination fee prescribed in 19 CFR § 111.96(a), and those additional costs must be reimbursed to CBP before the examination is given.

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 will refund the \$200 examination fee. No refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination.

CBP 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 will preclude the submission of an application for license, but will not preclude the examinee from taking an examination again at a later date in accordance with 19 CFR 111.13(b).

### **Appeal of failing grade on examination**

If an examinee fails to attain a passing grade on the written examination, the examinee may challenge that result by filing a written appeal with Trade Programs, Office of Field Operations, U.S. Customs and Border Protection, Washington, DC 20229 within 60 calendar days after the date of the written notice of the results of the examination. CBP will provide to the examinee written notice of the decision on the appeal. If the CBP 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 within 60 calendar days after the date of the notice of that decision.

### **Investigation of the license applicant**

The port director will 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.

An investigation under this section will ascertain facts relevant to the question of whether the applicant is qualified and will cover, but need not be limited to:

- The accuracy of the statements made in the application;
- The business integrity of the applicant; and
- 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.

The port director will forward the originals of the application and the report of investigation to the Assistant Commissioner. The port director will also submit his recommendation for action on the application.

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 further written or oral inquiry into the applicant's qualifications for a license.

## **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 will be forwarded to the port director, who will deliver it to the licensee.

## **Denial of license**

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

The grounds sufficient to justify denial of an application for a license include, but need not be limited to:

- Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;
- The failure to meet any requirement set forth in § 111.11;
- A failure to establish the business integrity and good character of the applicant;
- Any willful misstatement of pertinent facts in the application for the license;
- Any conduct which would be deemed unfair in commercial transactions by accepted standards; or
- A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct.

## **Review of the denial of a license**

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.

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 Department of Homeland Security, in writing, a request for any additional review that the Secretary deems 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.

Upon a decision of the Secretary 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.

### **Reapplication for license**

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

### **Permits**

Each person granted a broker's license will be concurrently issued a permit for the district in which the port through which the license was delivered to the licensee is located and without the payment of the \$100 fee required by section 111.96(b), if it is shown to the satisfaction of the port director that the person intends to transact customs business within that district and the person otherwise complies with the requirements of part 111.

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, and except where a national permit is involved, must 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 district permit must set forth or attach the following:

- The applicant's broker license number and date of issuance;
- The address where the applicant's office will be located within the district and the telephone number of that office;
- A copy of a document which reserves the applicant's business name with the state or local government;
- The name of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;
- A list of all other districts for which the applicant has a permit to transact customs business;
- The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact (see §§ 111.21 and 111.23); and
- A list of all persons who the applicant knows will be employed in the district, together with the specific employee information prescribed in § 111.28(b)(1)(i) for each of those prospective employees.

Each application for a district or national permit must be accompanied by the permit fee of \$100 and a user fee of \$125 (see §§ 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.

## **Responsible supervision and control**

The applicant for a district permit must have a place of business at the port where the application is filed, or must have made firm arrangements satisfactory to the port director to establish a place of business, and must exercise responsible supervision and control over that place of business once the permit is granted. Except as provided below, the applicant must 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.

If the applicant can demonstrate to the satisfaction of CBP 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 that individual broker to exercise responsible supervision and control over the customs business conducted in the district, CBP may waive the requirement for an individual broker in that district. A request for a waiver, 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, must be sent to the port director in the district in which the waiver is sought. The port director will review the request for a waiver and make recommendations, which will be sent to the Office of Field Operations, CBP Headquarters, for review and decision. A written decision on the waiver request will be issued by the Office of Field Operations and, if the waiver is granted, the decision letter will specify the region covered by the waiver.

## **Decision on permit**

The port director who receives the application will issue a written decision on the district permit application and will issue the district permit if the applicant meets all applicable requirements. If the port director is of the opinion that the district permit should not be issued, he will submit his written reasons for that opinion to the Office of Field Operations, CBP Headquarters, for appropriate instructions on whether to grant or deny the district permit. Each port director will maintain and make available to the public an alphabetical list of brokers permitted through his port.

## **National permit**

A broker who has a district permit may apply for a national permit for the purpose of transacting customs business in any circumstance for which a national permit is authorized (see discussion above). An application for a national permit must be in the form of a letter addressed to the Office of Field Operations, U.S. Customs and Border Protection, Washington, DC 20229, and must:

- Identify the applicant's broker license number and date of issuance;
- 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 Part 111 regarding all activities of the applicant conducted under the national permit. That office will be noted in the national permit when issued;

- 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; and
- Attach a receipt or other evidence showing that the fees specified in §§ 111.96(b) and (c) have been paid at the port through which the applicant's broker license was delivered.

### **Review of permit denial**

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.

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.

## **DUTIES AND RESPONSIBILITIES OF CUSTOMS BROKERS (19 CFR PART 111, SUBPART C)**

### **Record of transactions**

A broker must keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He must keep and maintain on file copies of all his correspondence and other records relating to his customs business and must comply with the provisions of 19 CFR parts 111 and 163 when maintaining records that reflect on his transactions as a broker.

Each broker must designate a knowledgeable company employee to be the contact for CBP on broker-wide customs business and financial recordkeeping requirements.

### **Retention of records**

Records must be retained by a broker within the broker district that covers the CBP port to which they relate, unless the broker chooses to consolidate records at one or more other locations and provides advance notice of that consolidation to CBP.

The records required to be retained by a broker, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained

for 5 years after the date of revocation or for 5 years after the date the client ceases to be an "active client" as defined in 19 CFR § 111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

### **Consolidated records**

Subject to the requirements outlined below and except when a restriction applies under 19 CFR §163.5(b), the option of maintaining records on a consolidated system basis is available to brokers who have been granted permits to do business in more than one district.

If consolidated storage is desired by the broker, he must submit a written notice addressed to the Director, Regulatory Audit Division, U.S. Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, NC 28217-2856. The written notice must include:

- 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;
- 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
- 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 Charlotte, NC is first notified.

### **Records confidential**

The records referred to in part 111 and pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients, their surety on a particular entry, and 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.

### **Records must be available**

During the period of retention, the broker must maintain the records referred to in part 111 in such a manner that they may readily be examined. Records required to be made or maintained under the provisions of part 111 must be made available upon reasonable notice for inspection, copying, reproduction or other official use by CBP regulatory auditors or special agents or other authorized CBP 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 must be made available to CBP in accordance with the provisions of that part.

Except in accordance with the provisions of part 163, a broker must 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 Department of Homeland Security or any representative of DHS, nor may he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in those records.

The Field Director, Regulatory Audit Division, will make any audit or inspection of the records required to be kept and maintained by a broker as may be necessary to enable the port director and other proper officials of the Department of Homeland Security to determine whether or not the broker is complying with the requirements of part 111.

### **Responsible supervision**

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 must exercise responsible supervision and control over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation.

### **Employee information**

Each broker must 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 by the broker at that port. The list of employees must be submitted upon issuance of a permit for an additional district, 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 employee, the broker also must provide the social security number, date and place of birth, current home address, last prior home address, 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, an updated list, setting forth the name, social security number, date and place of birth, and current home address of each current employee, must be submitted with the triennial status report required by section 111.30(d).

In the case of a new employee, the broker must submit to the port director the required written information within 10 calendar days after the new employee has been employed by the broker for 30 consecutive days.

Within 30 calendar days after the termination of employment of any person employed longer than 30 consecutive days, the broker must submit the name of the terminated employee, in writing, to the director of the port at which the person was employed.

Notwithstanding a broker's responsibility for providing the required information, in the absence of culpability by the broker, CBP will not hold him responsible for the accuracy of any information that is provided to the broker by the employee.

### **Termination of qualifying member or officer**

In the case of an individual broker who is a qualifying member of a partnership or who is a qualifying officer of an association or corporation, that individual broker must immediately provide written notice to the Assistant Commissioner when his employment as a qualifying member or officer terminates and must 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.

### **Change in ownership**

If the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker must immediately provide written notice of that fact to the Assistant Commissioner and must send a copy of the written notice to the director of each port through which a permit has been granted to the broker. When a change in ownership results in the addition of a new principal to the organization, and whether or not ownership shares in the broker are publicly traded, CBP reserves the right to conduct a background investigation on the new principal. The port director will notify the broker if CBP 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 19 CFR part 111, subpart D. 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 the business of a broker.

### **Diligence in correspondence and paying monies**

Each broker must 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, must 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 must be transmitted to the Government within 5 working days from receipt by the broker. Each broker must provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment to the Government has been made, or received from a



client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 calendar days of receipt. No written statement is required if there is actual payment of the funds by a broker.

All brokers must 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 CBP charges (duties, taxes, or other debts owed CBP) in the event the charges are not paid by the broker. Therefore, if you pay by check, CBP charges may be paid with a separate check payable to "U.S. Customs and Border Protection" which will be delivered to CBP by the broker."*

The written notification set forth above must be provided by brokers as follows:

- On, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982; and
- To each active client no later than February 28, 1983, and at least once at any time within each 12-month period after that date. 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.

#### **Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business**

When a broker changes his business address, he must 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 must give written notice of the new address in the required triennial status report.

A partnership, association, or corporation broker must immediately provide written notice of any of the following to the director of each port through which it has been granted a permit:

- The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of § 111.11(b) or (c)(2), and the name of the broker who will succeed as the qualifying member or officer; and
- 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 (for example, conversion of a general partnership to a limited partnership, merger with another organization, divestiture of a part of the organization, or entry into bankruptcy protection).

A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he has been granted a permit

and is authorized by State law to do so, must submit to the Office of Field Operations, U.S. Customs and Border Protection, Washington, DC 20229, evidence of his authority to use that name. The name must not be used until the approval of Headquarters has been received. In the case of a trade or fictitious name, the broker must affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.

Each broker must file a written status report with CBP on February 1, 1985, and on February 1 of each third year after that date. The report must be accompanied by the fee prescribed in § 111.96(d) and must be addressed to the director of the port through which the license was delivered to the licensee. A report received during the month of February will be considered filed timely. No form or particular format is required.

Each individual broker must state in the required triennial status report whether he is actively engaged in transacting business as a broker. If he is so actively engaged, he must also:

- State the name under which, and the address at which, his business is conducted if he is a sole proprietor;
- 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; and
- 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.

Each corporation, partnership or association broker must state in the required triennial report the name under which its business as a broker is being transacted, its business address, the name and address of each licensed member of the partnership or licensed officer of the association or corporation who qualifies it for a license, and whether it is actively engaged in transacting business as a broker, and the report must be signed by a licensed member or officer.

If a broker fails to file the required triennial report 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 will transmit written notice of the suspension to the broker by certified mail, return receipt requested, at the address reflected in CBP 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 will 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 will be published in the *Customs Bulletin*.

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 must 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. That notification will be the responsibility of:

- The individual broker, upon the permanent termination of his brokerage business;
- Each member of a partnership who holds an individual broker's license, upon the permanent termination of a partnership brokerage business; or
- Each association or corporate officer who holds an individual broker's license, upon the permanent termination of an association or corporate brokerage business.

### **Conflict of interest**

A broker who was formerly an officer or employee in U.S. Government service must not represent a client before the Department of Homeland Security or any representative of DHS 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.

A broker must not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before DHS or any representative of DHS to which matter that person gave personal consideration or gained personal knowledge of the facts or issues of the matter while in U.S. Government service.

A broker who is an importer himself must 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 will apply if a broker's employee is an importer.

### **False information**

A broker must 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. In addition, a broker must not knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Department of Homeland Security or any representative of DHS.

### **Government records**

A broker must 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.

## **Undue influence upon Department of Homeland Security employees**

A broker must not influence or attempt to influence the conduct of any representative of the Department of Homeland Security in any matter pending before DHS or any representative of DHS 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.

## **Acceptance of fees from attorneys**

With respect to customs transactions, a broker must 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.

## **Relations with unlicensed persons**

When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual importer either a copy of his bill for services rendered or a copy of the entry, unless the merchandise was purchased on a delivered duty-paid basis or unless the importer has in writing waived transmittal of the copy of the entry or bill for services rendered.

Except as provided below, a broker must 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.

A broker may compensate a freight forwarder for referring brokerage business, subject to the following conditions:

- 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;
- The broker transmits directly to the importer or other party in interest;
- 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
- 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;
- No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement, forbids or prevents direct

communication between the importer or other party in interest and the broker;  
and

- In making the agreement and in all actions taken pursuant to the agreement, the broker remains subject to all other provisions of this part.

### **Misuse of license or permit**

A broker must 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.

### **False representation to procure employment**

A broker must not knowingly use false or misleading representations to procure employment in any customs matter. In addition, a broker must not represent to a client or prospective client that he can obtain any favors from the Department of Homeland Security or any representative of DHS.

### **Advice to client**

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

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 the client to execute, he must advise the client promptly of that noncompliance, error, or omission.

A broker must 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.

### **Protests**

A broker must not act on behalf of any person, or attempt to represent any person, regarding any protest unless he is authorized to do so in accordance with 19 CFR part 174.

### **Endorsement of checks**

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

## **Relations with person who is notoriously disreputable or whose license is under suspension, canceled "with prejudice," or revoked**

A broker must not knowingly and directly or indirectly:

- 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";
- Assist in the furtherance of any customs business or transactions of any person described above;
- Employ, or accept assistance in the furtherance of any customs business or transactions from, any person described above, without the approval of the Assistant Commissioner;
- Share fees with any person described above; or
- Permit any person described above to participate, directly or indirectly and whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker.

However, nothing prohibits 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 canceled "with prejudice" or revoked.

## **Revocation by operation of law**

### **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, that failure will, in addition to any other sanction that may be imposed under Part 111, result in the revocation by operation of law of the license and any permits issued to the partnership, association, or corporation. The Assistant Commissioner or his designee will notify the broker in writing of an impending revocation by operation of law 30 calendar days before the revocation is due to occur.

### **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, as defined above, if an exception has been granted pursuant to § 111.19(d)) at least one person who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under Part 111, result in the revocation of the permit by operation of law.

If the license or an additional permit of a partnership, association, or corporation is revoked by operation of law under either of the foregoing paragraphs, the Assistant Commissioner or his designee will notify the organization of the revocation. If an additional permit of an individual broker is revoked by operation of law, the Assistant Commissioner or his designee will notify the broker. Notice of any revocation under this section will be published in the *Customs Bulletin*.

Notwithstanding the operation of the above paragraphs, 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 above, or during any shorter period of time, may result in the initiation of suspension or revocation proceedings or the assessment of a monetary penalty.

## **CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSE OR PERMIT, AND MONETARY PENALTY IN LIEU OF SUSPENSION OR REVOCATION (19 CFR Part 111, Subpart D)**

### **General**

Subpart D of Part 111 sets forth provisions relating to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu of suspension or revocation, 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 Part 111.

### **Cancellation of license or permit**

#### **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 those proceedings, he may cancel the license or permit "without prejudice" only with authorization from the Secretary of DHS.

#### **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 will not give rise to a right of appeal.

## **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 any terms and conditions to which the parties may agree.

## **Grounds for suspension or revocation of license or permit**

The appropriate CBP 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:

- The broker has made or caused to be made in any application for any license or permit under Part 111, or report filed with CBP, 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;
- The broker has been convicted, at any time after the filing of an application for a license, of any felony or misdemeanor which:
  - Involved the importation or exportation of merchandise;
  - Arose out of the conduct of customs business; or
  - Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;
  - The broker has violated any provision of any law enforced by CBP or the rules or regulations issued under any provision of any law enforced by CBP;
  - 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 CBP or the rules or regulations issued under any provision of any law enforced by CBP;
  - The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of that employment from the Assistant Commissioner;
  - 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
  - The broker no longer meets the license or permit application requirements of 19 CFR § 111.11 and § 111.19.

## **Investigation of complaints**

Every complaint or charge against a broker which may be the basis for disciplinary action will be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge will submit a report on the



investigation to the director of the port and send a copy of it to the Assistant Commissioner.

### **Review of report on investigation**

The port director will review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He will 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.

### **Determination by Assistant Commissioner**

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

## **DISCIPLINARY PROCEEDINGS**

### **Content of statement of charges**

Any statement of charges must 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 must specify the sanction being proposed (that is, suspension of the license or permit or revocation of the license or permit). However, 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 will 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.

### **Preliminary proceedings**

The port director will advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license or permit.

The port director will serve upon the broker written notice that:

- Transmits a copy of the proposed statement of charges;
- Informs the broker that formal proceedings are available to him;
- Informs the broker that sections 554 and 558, Title 5, United States Code, will be applicable if formal proceedings are necessary;
- Invites the broker to show cause why formal proceedings should not be instituted;

- Informs the broker that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;
- Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;
- Advises the broker of his right to be represented by counsel;
- Specifies the place where the broker may respond in writing; and
- Advises the broker that the response must be received within 30 calendar days of the date of the notice.

### **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 that information in writing. The broker's request must set forth in what respect the proposed statement of charges leaves him in doubt and must 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 that information is reasonably necessary to enable the broker to prepare his response, he will furnish the broker with that information.

### **Decision on preliminary proceedings**

The port director will 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 will 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 will so inform the port director who will 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 will advise the port director of that fact 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 will instruct the port director to omit those charges from the statement of charges.

### **Contents of notice of charges**

The notice of charges must inform the broker that:

- Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;
- The broker may be represented by counsel;

- The broker will have the right to cross-examine witnesses;
- 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
- Prior to the hearing on the charges, the broker may file, in duplicate with the port director, a verified answer to the charges.

### **Service of notice and statement of charges**

The port director will serve the notice of charges and the statement of charges against an **individual broker** as follows:

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

The port director will serve the notice of charges and the statement of charges against a **partnership, association, or corporation broker** as follows:

- By delivery to any member of the partnership personally or to any officer of the association or corporation personally;
- 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;
- By any other means which the broker may have authorized in a written communication to the port director; or
- If attempts to serve the broker by the methods prescribed above are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

When the notice and statement of charges are served by certified mail, the receipt of the return card duly signed will be satisfactory evidence of service.

### **Service of notice of hearing and other papers**

After service of the notice and statement of charges, the port director will serve upon the broker and his attorney, if known, by one of the methods described above or by ordinary mail, a written notice of the time and place of the hearing. The hearing will be scheduled to take place within 30 calendar days after service of the notice of hearing.

Other papers relating to the hearing may be served by one of the methods described above or by ordinary mail or upon the broker's attorney.

### **Extension of time for hearing**

If the broker or his attorney requests in writing a delay in the hearing for good cause, the designated hearing officer may reschedule the hearing and in that case will notify the broker or his attorney in writing of the extension and the new time for the hearing.

### **Failure to appear**

If the broker or his attorney fails to appear for a scheduled hearing, the designated hearing officer will proceed with the hearing as scheduled and will hear evidence submitted by the parties. The provisions of part 111 will apply as though the broker were present, and the Secretary of the Department of Homeland Security 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 assessment of a monetary penalty in lieu of suspension or revocation, if he finds that action to be in order.

### **Hearing**

The hearing officer must be an administrative law judge appointed pursuant to 5 U.S.C. § 3105.

The broker or his attorney will have the right to examine all exhibits offered at the hearing and will have the right to cross-examine witnesses and to present witnesses who will be subject to cross-examination by the Government representatives.

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 will be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, will be permitted to cross-examine the witness. The deposition will become part of the hearing record.

The port director will 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 will deliver a copy of the transcript of record to the hearing officer, the broker and the Government representative without charge.

The Assistant Commissioner will designate one or more persons to represent the Government at the hearing.

### **Proposed findings and conclusions**

The hearing officer will 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 for the findings as contemplated by 5 U.S.C. 557(c).

### **Recommended decision by hearing officer**

After review of the proposed findings and conclusions submitted by the parties, the hearing officer will make his recommended decision in the case and certify the entire record to the Secretary of the Department of Homeland Security. The hearing officer's recommended decision must conform to the requirements of 5 U.S.C. 557.

### **Additional submissions**

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

### **Immaterial mistakes**

The Secretary of DHS 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.

### **Dismissal subject to new proceedings**

If the Secretary of DHS 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.

### **Decision and notice of suspension or revocation or monetary penalty**

If the Secretary of DHS finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base a suspension, revocation, or monetary penalty action on any remaining charges if the facts alleged in the charges are established by the evidence.

If the Secretary of DHS, 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 will promptly provide written notification of the order to the broker and, unless an appeal from the Secretary's order is filed by the broker, the Assistant Commissioner will publish a notice of the suspension or revocation, or the assessment of a monetary penalty, 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 will 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 must 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 will immediately be suspended until payment is made.

### **Appeal from the Secretary's decision**

An appeal from the order of the Secretary of DHS suspending or revoking a license or permit, or assessing a monetary penalty, 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 those proceedings will, unless specifically ordered by the Court, operate as a stay of the Secretary's order.

### **Reopening the case**

If no appeal is filed in accordance with the regulations, 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 must set forth the precise character of the evidence to be relied upon and must state the reasons why the applicant was unable to produce it when the original charges were heard.

The Assistant Commissioner will forward the application, together with his recommendation for action thereon, to the Secretary of DHS. 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 will notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the Assistant Commissioner will set a time and place for the hearing and give due written notice of the hearing to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer will be the same as those governing the original proceeding. The original order of the Secretary will remain in effect pending conclusion of the new proceedings and issuance of a new order.

### **Notice of vacated or modified order**

If the Secretary of DHS issues an order vacating or modifying an earlier order suspending or revoking a broker's license or permit, or assessing a monetary penalty, the Assistant Commissioner will notify the broker in writing and will publish a notice of the new order in the *Federal Register* and in the *Customs Bulletin*.

### **Reprimands**

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in part 111 but that 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. The 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.

### **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. The petition will 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 will also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which the misconduct led to pecuniary loss to the Government or to any person, the Assistant Commissioner will also take into account whether the petitioner has made restitution of such loss.

### **Settlement and compromise**

The Assistant Commissioner, with the approval of the Secretary of DHS, may settle and compromise any disciplinary proceeding which has been instituted under subpart D of part 111 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.

## **MONETARY PENALTY AND PAYMENT OF FEES (19 CFR PART 111, SUBPART E)**

### **Penalties**

#### **Grounds for imposition of a monetary penalty; maximum penalty**

CBP may assess a monetary penalty or penalties as follows:

- 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 19 CFR §§ 111.53(a) through (f) other than those listed in 19 CFR § 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 part 111 for any of the same reasons; or
- 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 those transactions or violations.

#### **Notice of monetary penalty**

If assessment of a monetary penalty as described above is contemplated, CBP will 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 days of the date of mailing of the notice. The Fines, Penalties, and Forfeitures Officer has discretion to provide additional time for good cause.

If the broker or other person files a timely response to the written notice of the allegations or complaints, the Fines, Penalties, and Forfeiture Officer will review this response and will either cancel the case, issue a notice of penalty in an amount which is lower than that provided for in the written notice of allegations or complaints or issue a notice of penalty in the same amount as that provided in written notice of allegations or complaints. If no response is received from the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints.

#### **Petition for relief from monetary penalty**

A broker or other person who receives a notice of monetary penalty may file a petition for relief from the monetary penalty in accordance with the procedures set forth in 19 CFR part 171.

#### **Decision on monetary penalty**

CBP will follow the procedures set forth in 19 CFR part 171 in considering any petition for relief from monetary penalty. After CBP has considered the allegations or complaints



set forth in the notice and any timely response made to the notice by the broker or other person, the Fines, Penalties, and Forfeitures Officer will 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 must pay the monetary penalty, or make arrangements for payment of the monetary penalty, within 60 calendar days of the date of the written decision. If payment or arrangements for payment are not timely made, CBP will refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

### **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 19 CFR part 171 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.

### **Fees**

#### **License fee; examination fee; fingerprint fee**

Each applicant for a broker's license must pay a fee of \$200 to defray the costs to CBP in processing the application. Each individual who intends to take the written examination provided for in § 111.13 must pay a \$200 examination fee before taking the examination. An individual who submits an application for a license must also pay a fingerprint check and processing fee; the port director will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks and the CBP fingerprint processing fee, the total of which must be paid to CBP before further processing of the application will occur.

#### **Permit fee**

A fee of \$100 must be paid in connection with each permit application under section 111.19 to defray the costs of processing the application, including an application for reinstatement of a permit that was revoked by operation of law or otherwise.

#### **User fee**

Payment of an annual user fee of \$125 is required for each permit, including a national permit, 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, or in connection with the filing of an 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(c) in the case of a national permit. The user fee must be paid by the due date as published annually in the *Federal Register*, and must be remitted in accordance with the procedures set forth in 19 CFR § 24.22(i).

When a broker submits an application for a permit or is issued an initial district permit under § 111.19, the full \$125 user fee must 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 will notify the broker in writing of the failure to pay and will revoke the permit to operate. The notice will constitute revocation of the permit.

### **Status report fee**

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

### **Method of payment**

All prescribed fees must be paid by check or money order, payable to U.S. Customs and Border Protection.

### **Fee Summary Chart**

Application fee \$ 200  
Examination fee \$ 200  
Fingerprint & processing fee \*based on costs  
Permit application fee \$ 100 per permit  
Annual permit user fee \$ 125 per permit  
Status report fee \$ 100 every three years

## **ADDITIONAL INFORMATION**

### **The Internet**

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

### **Customs Regulations**

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

### **Customs Bulletin**

The *Customs Bulletin and Decisions* ("*Customs Bulletin*") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

## **Importing Into the United States**

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

## **Informed Compliance Publications**

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

## Value Publications

*Customs Valuation under the Trade Agreements Act of 1979* is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

*Customs Valuation Encyclopedia* (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

<p>The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.</p>
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Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

### **“Your Comments are Important”**

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

**REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA**



**Visit our Internet web site: <http://www.cbp.gov>**