

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

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

[T.D. 86-161, 51 FR 30344, Aug. 26, 1986]

§ 111.54 Appropriate officer of the Customs.

Unless otherwise indicated in this part, the port director shall be the appropriate officer of the Customs within the scope of section 641(d)(2), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)). In the case of sickness or absence of the port director, another Customs officer designated by the port director shall be the appropriate officer of the Customs. If the office of port director is vacant or the port director is unable to designate a Customs officer, Headquarters shall designate a Customs officer to be the appropriate officer of the Customs.

[T.D. 75-58, 40 FR 11562, Mar. 12, 1975, as amended by T.D. 86-161, 51 FR 30344, Aug. 26, 1986]

§ 111.55 Investigation of complaints.

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

§ 111.56 Review of report on investigation.

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

§ 111.57 Determination by Commissioner.

(a) *Determination not to prefer charges.* If the Commissioner determines that charges will not be preferred, he shall notify the port director of his decision.

(b) *Determination to prefer charges.* If the Commissioner determines that charges will be preferred, he shall notify the port director of his determination and require that a proposed statement of charges be prepared for his review, if not previously submitted.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30344, Aug. 26, 1986]

§ 111.58 Content of statement of charges.

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

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30344, 30345, Aug. 26, 1986]

§ 111.59 Preliminary proceedings.

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

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

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(1) Transmits a copy of the proposed statement of charges;

(2) Informs him that formal proceedings are available to him;

(3) Informs him that 5 U.S.C. 554 and 558 will be applicable if formal proceedings are necessary;

(4) Invites him to show cause why the formal proceedings should not be instituted;

(5) Informs him that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(7) Advises him of his right to be represented by counsel;

(8) Specifies the place where the broker may respond in writing; and

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

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30344, Aug. 26, 1986]

§ 111.60 Request for additional information.

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

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.61 Decision on preliminary proceedings.

The port director shall prepare a summary of any oral presentations made by the broker or his attorney and

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

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.62 Contents of notice of charges.

The notice of charges shall inform the broker that:

(a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;

(b) He may be represented by counsel;

(c) He will have the right to cross-examine witnesses;

(d) He will be notified within 10 days after service of this notice of the time and place of a hearing on the charges; and

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

§ 111.63 Service of notice and statement of charges.

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

(1) By delivery to the broker personally;

(2) By certified mail, with demand for a return card signed solely by the addressee;