4A003.c that are not capable of exceeding a CTP greater than 6,500 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

Dated: March 10, 2000.

Iain S. Baird,

Deputy Assistant Secretary for Export Admininistration.

[FR Doc. 00–6348 Filed 3–10–00; 1:12 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 111 and 178

[T.D. 00–17]

RIN 1515–AC34

Customs Brokers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed revision of part 111 of the Customs Regulations, which governs the licensing and conduct of customs brokers in the performance of customs business on behalf of others. The revision includes changes to the regulatory texts to reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act and also includes changes to reflect the recent reorganization of Customs as well as changes to improve the content, layout and clarity of the regulatory texts. The document also includes conforming changes to parts 24 and 178 of the Customs Regulations.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Mike Craig, Office of Field Operations (202–927–1684). Legal Aspects: Gina Grier, Office of Regulations and Rulings (202–927–2320).

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in Part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

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

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

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

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

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

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

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

1. T.D. 95–77 (60 FR 50008) amended the Customs Regulations on an interim basis. The amendments included extensive changes to §§ 101.1, 101.3 and 101.4 (19 CFR 101.1, 101.3 and 101.4) to reflect the changes to the basic Customs field organization, involving the elimination of regions and districts for most purposes so that ports of entry would constitute the foundation of the

Customs field structure and would be empowered with most of the functions and authority that had been held in the district and regional offices and also involving the designation of some ports as service ports having a full range of cargo processing functions, including inspection, entry, collection, and verification. T.D. 95–77 also included amendments to parts 4, 19, 24, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146 and 174 of the Customs Regulations (19 CFR parts 4, 19, 24, 103, 111, 112, 113, 118, 122, 127, 141, 142, 146 and 174) to reflect these organizational changes. The background portion of T.D. 95–77 pointed out that districts and regions would still exist as geographical descriptions for limited purposes such as for broker permits and certain cartage and lighterage purposes, and T.D. 95–77 therefore set forth certain additional regulatory changes in order to reflect this fact; these changes included the addition of definitions for ''district,'' ''district director'' and ''region'' in § 111.1 (19 CFR 111.1) to enable the current statutory broker licensing and permitting schemes to operate. (The background portion of T.D. 95–77 also noted that the Customs reorganization included the creation of twenty Customs Management Centers and five Strategic Trade Centers for which no regulatory changes were being made because these new organizational entities will not have direct contact with the public.)

2. T.D. 95–78 (60 FR 50020) also amended the Customs Regulations on an interim basis and involved nomenclature changes. The T.D. 95–78 changes were set forth in a table format in numerical order by section affected and in most cases involved the replacement of outdated references with new references to reflect the new Customs Headquarters and field organizational structure. The majority of these changes involved replacing ''district'' with ''port'' and replacing ''district director'' with ''port director,'' or some variation thereof. The T.D. 95–78 changes involved almost every part within Chapter I of the Customs Regulations (19 CFR Chapter I) and included a large number of changes to part 111.

3. A general notice (60 FR 49971) informed the public of the geographic areas covered for purposes of Customs broker permits and for certain cartage and lighterage purposes where the word ''district'' appears in the Customs Regulations. The notice was a consequence of the publication of T.D. 95–77 and T.D. 95–78 and, in particular, of the T.D. 95–77 regulatory changes made in order to retain the concept of a ''district'' for certain Customs broker and cartage and lighterage purposes. The information contained in that notice is republished in a general notice also appearing in this issue of the **Federal Register**.

Based on a review of the changes to section 641 made by section 648 of the Act, Customs determined that the part 111 regulatory texts should be amended as follows: (1) To reflect the change to the section 641(a)(2) definition of ''customs business;'' (2) to provide for the issuance of national permits as authorized under amended section 641(c)(1); (3) to reflect the 30-day period within which a suspension or revocation hearing is to be held under amended section 641(d)(2)(B); (4) to implement the amended section 641(f) proscription against prohibiting a broker from limiting its liability to other persons; and (5) to reflect the amended section 641(f) recordkeeping provisions. With regard to the appointment of subagents as authorized under amended section 641(c)(4), Customs determined that it would be premature to amend part 111 at this time; rather, Customs 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.

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

Based on the above considerations, on April 27, 1999, Customs 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.

Discussion of Comments

A total of 20 commenters responded to the solicitation of comments in the April 27, 1999, notice of proposed rulemaking. A discussion of those comments follows.

Section 111.1

Comment:

The following two comments addressed the proposed definition of ''customs business'':

1. The first comment stated that the definition of ''customs business'' should specify which activities constitute the ''preparation and activities related to the preparation of documents''.

2. The second comment asserted that the language in § 111.1 expands the definition in a manner not authorized by statute, by inserting the phrase ''in furtherance of *any other customs business activity*'' (emphasis added) in place of the statutory language ''in furtherance of *such activities*'' (emphasis added) in the second sentence of the definition.

Customs response: 1. In determining how to define ''customs business'' in part 111, Customs concluded that the range of activities which potentially could be categorized as ''customs business'' was too broad for individual activities to be listed in the regulatory text. Questions on which activities constitute ''customs business'' will be answered through the prospective ruling and internal advice procedures and through the issuance of informed compliance publications. Consequently, the new definition of ''customs business'' in part 111 does not include specific exemplars or otherwise go beyond the general approach of the definition in 19 U.S.C. 1641.

2. Customs disagrees with the second comment. The language used in the second sentence of the regulatory text was intended to ensure that those ''other'' activities refer to the customs business activities listed in the first sentence in the definition, and not to the document preparation and transmission activities mentioned in that second sentence. Given that what is

defined is ''customs business,'' this textual clarification simply avoids the appearance of a tautology or circularity. No expansion of the statutory definition was intended or will result from the proposed regulatory text.

Comment: A commenter suggested that the interchangeable use of the terms ''customs broker'' and ''broker'' throughout the regulations is confusing.

Customs response: Both terms are defined for purposes of part 111, and it is clear from those definitions that both have the same meaning. Accordingly, Customs does not believe that any change to the regulatory texts should be made in response to this comment.

Comment: A commenter recommended that the term ''port director'' be used consistently throughout the regulations, instead of being used interchangeably with the term ''director of the port''. This commenter also asked that the terms ''port director'' and ''port'' be defined in part 111.

Customs response: As regards the first point, the term ''director of the port'' is used as a substitute for ''port director'' purely for reasons of sentence structure, and Customs believes it is clear that the two terms have the same meaning. On the second point, Customs believes that the suggestion is unnecessary, because ''port'' is already defined for general Customs Regulations purposes in 19 CFR part 101, and the meaning of ''port director'' can be logically inferred when it appears in conjunction with the word ''port'.

Section 111.2

Comment: A commenter questioned the need for district permits, now that districts and regions have been eliminated for other Customs purposes and Customs has the ability to monitor a broker's activities through automation.

Customs response: Until such time as Congress repeals the permit system required by 19 U.S.C. 1641(c), brokers must have, as appropriate, either a national permit or a district permit, or both, to transact customs business for others.

Comment: A commenter stated that § 111.2(a)(2)(i) is contrary to law because it precludes persons other than the importer, his or her authorized regular employees or officers, or a customs broker from transacting customs business on behalf of the importer. The commenter asserted that this regulation conflicts with section 484(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1484(a)(1)).

Customs response: Customs disagrees. Section 484(a)(1) authorizes one of the parties qualifying as ''importer of record,'' either in person or by an agent authorized by the party in writing, to make entry. An ''importer of record'' can be the owner or purchaser of imported merchandise, or a licensed customs broker appropriately designated by the owner, purchaser, or consignee of the merchandise. (19 U.S.C. 1484(a)(2)(B)). The statute governing brokers further restricts who may make entry. Section 641(b)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(1)) states that ''no person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license * * *'' The filing of entry documentation qualifies as ''customs business'' (19 U.S.C. 1641(a)(2)). It follows that the only ''agents'' eligible to make entry on behalf of the owner or purchaser of imported merchandise are either persons from within the owner or purchaser's own organization, such as an employee or officer, or alternatively, a licensed customs broker.

Comment: A commenter recommended amendment of § 111.2(a)(2)(i) to allow corporations under common ownership or control to be considered a single entity. This would enable companies with subsidiaries and incorporated divisions to centralize their personnel with customs knowledge under one unit and to have that unit provide comprehensive customs services to all subsidiaries and divisions.

Customs response: Parent corporations and their subsidiaries and incorporated divisions are precluded by their separate legal status from providing customs business assistance to each other, unless they have a broker's license and the necessary district permits and powers of attorney. Customs cannot agree to amend § 111.2(a)(2)(i) as suggested, because to do so would have the effect of denying the reality of the separate legal status of these entities. Affected parties should keep in mind, however, that a licensed entity with a national permit may be able to offer comprehensive customs business assistance to related subsidiaries, divisions, and parents, without having to obtain multiple district permits, by taking advantage of the employee implant and post-entry representation exceptions to the district permit rule.

Comment: One commenter questioned the requirement in § 111.2(a)(2)(ii)(A)(*1*) that employees of brokers who are authorized to sign customs business documents be U.S. residents. This commenter pointed out the inconsistency of imposing a residency requirement on employees of brokers but not on licensed and permitted brokers, who, if they are individuals, may also be signing customs documents.

Customs response: Customs agrees that the restriction lacks logic. Accordingly, the regulatory text in question has been modified in this final rule by removing the residency requirement for employees with signature authority.

Comment: A commenter asked whether § 111.2(a)(2)(iv), which allows carriers without a broker license to make in-bond transportation entries for others, applies to agents of carriers and to all types of in-bond transportation entries.

Customs response: Yes. Agents of carriers may make in-bond transportation entries for all types of in-bond transportation entries.

Comment: A commenter suggested that § 111.2(a)(2)(v) would be an appropriate vehicle for amending the Customs Regulations to clarify that a broker must obtain a power of attorney to file a commercial informal entry for a client. Section 111.2(a)(2)(v) authorizes an unlicensed person to enter a noncommercial shipment for another.

Customs response: Customs believes that the suggested change is not necessary, because § 141.46 of the Customs Regulations already requires a broker to obtain a valid power of attorney before transacting customs business for a client. The fact that an entry is ''commercial informal'' does not remove the activity from designation as ''customs business.''

Comment: A commenter suggested insertion of the word ''rule'' after ''General'' in the heading to § 111.2(b)(1), to make it clear that this is the ''general rule'' to which § 111.2(b)(2) refers.

Customs response: It is the opinion of Customs that the proposed layout and terminology are sufficiently clear in this regard and that the suggested change is therefore unnecessary.

Comment: Several commenters submitted observations on the proposed § 111.2(b)(2)(i) provision regarding an employee working in a client's facility (the ''employee implant'' rule). This new provision is an exception to the general rule that a broker must have a district permit to conduct customs business for another in that district. It allows a broker to place an employee in the facility of a client for whom the broker is filing entries at one or more other locations covered by a district permit issued to the broker, even though the broker has no district permit in the broker district in which the facility is

located. The points made by these commenters were as follows:

1. One commenter objected to the requirement that the broker must be filing entries for the client elsewhere; instead, this commenter suggested that brokers should be allowed to place implants if they are conducting ''customs business'' for the client elsewhere. The commenter argued that the adoption of this change would eliminate the exclusivity of this particular district permit exception, which currently would only benefit customs brokers who file entries.

2. Another commenter stated that a broker with an implanted employee should not be subject to penalties if errors are discovered in documentation filed by the client in the broker district in which the client's facility is located. The stated rationale for this comment is the fact that broker implants are precluded by the regulatory text from filing the client's entries or other documents with Customs in the broker district servicing that location.

3. A commenter stated that proposed § 111.2(b)(2)(i) should specify the activities that an implanted employee may perform at the client's facility.

4. Another commenter expressed concern that the implant exception to the district permit diminishes the importance of both the permit system and the requirement for responsible supervision and control.

Customs response: 1. Customs agrees with the suggestion of the commenter, and the regulatory text has been modified in this final rule by inserting the words ''conducting customs business'' in place of ''filing entries.'' It is noted that proposed § 111.2(b)(2)(i) has been redesignated as § 111.2(b)(2)(i)(A) in this final rule.

2. Customs disagrees with the general principle stated by this commenter that brokers should not be held liable in the described circumstances. The broker employee, by virtue of working with the client, may be involved in customs business activities relating to the preparation of the documents which the client files. The law imposes sanctions on brokers who perform customs business activities improperly. Customs will examine each situation on a case-by-case basis to determine if sanctions are warranted.

3. It was the intent of Customs that the broker implant would confine his customs business activities to those matters that can be accomplished on-site. Since the range of activities which could potentially fall under the definition of ''customs business'' is so broad, it would more appropriate to specify qualifying activities on a case-by-case basis through the binding rulings process.

4. Customs agrees that the proposed regulation is inconsistent with the statutory requirement that a broker have a national permit or a district permit, or both, to conduct customs business for another: Under the proposed text, a broker could use employee implants to conduct customs business in a broker district without coverage of either a local district permit or a national permit. (The concept of a ''regional waiver'', authorized by 19 U.S.C. 1641(c)(2) and reflected in proposed § 111.19(d)(2), would not apply, because a client facility may be located outside of the borders of the ''broker region'' in which the broker has a district permit.) To ensure consistency with the statutory standard, and in consideration of the fact that an employee implant situation represents an exception to the statutory district permit rule, the regulatory text has been modified in this final rule to require that brokers obtain a national permit before using employee implants (see also the discussion below regarding the reorganization of proposed § 111.2(b)(2)). Finally, in response to the concern expressed by this commenter regarding the potential lack of responsible supervision and control in the implant environment, Customs will continue to expect that any work performed by an employee of a broker will be reviewed by an individually licensed permit qualifier of the broker (see 19 U.S.C. 1641(c)(1)(B) and § 111.19(b)(4) as set forth below), regardless of where the work is performed.

Comment: A commenter objected to the decision reflected in § 111.2(b)(2)(ii) to restrict the district permit waiver to the filing of manual, but not electronic, drawback claims in the designated drawback office located in a district in which the broker does not have a district permit.

Customs response: Customs has reconsidered this matter and agrees with the commenter that brokers should be allowed to file both manual and electronic drawback claims in the drawback office designated by Customs for their broker district, without having to obtain an additional district permit if the designated drawback office is physically located in a broker district in which the broker is not permitted. The first sentence of the regulatory text as proposed has been modified in this final rule to reflect this point. However, the requirement in the second sentence of the proposed text, that a broker must have a national permit to file electronic drawback claims at designated drawback offices covering geographical areas in which the broker does not have a district permit, remains but is set forth in this final rule as § 111.2(b)(2)(i)(B) and with some wording changes to clarify its intended filing context (that is, part 143 electronic filing in a not-designated-drawback office). See also the discussion below regarding the reorganization of proposed § 111.2(b)(2).

Comment: A commenter stated that it would be consistent with the Customs policy of ''nationalizing'' drawback to allow brokers to file notices of intent to export in districts in which they are not permitted.

Customs response: Customs disagrees. The filing of a notice of intent to export is a customs business activity. As already emphasized in this document, brokers are required to have a permit to transact customs business for others.

Comment: A commenter recommended that § 111.2(b)(2)(ii) be amended to allow brokers to file electronic and manual drawback entries, and to represent their drawback clients before Customs, at all locations without having to have district or national permits until the drawback component of the National Customs Automation Program (''NCAP'') becomes operational.

Customs response: Customs cannot adopt this recommendation, because it runs counter to a broker's statutory obligation to conduct customs business under cover of a permit.

Comment: Customs received a relatively large number of comments on the representation after entry acceptance provision of § 111.2(b)(2)(iv). Before proceeding to a discussion of those comments, it is necessary to clarify that this district permit exception provision was intended to apply to representations made after entry summary acceptance, and the regulatory text in this final rule has been modified to reflect that intent and redesignated as § 111.2(b)(2)(i)(D) (see also the discussion below regarding the reorganization of proposed § 111.2(b)(2)).

The points made by the various commenters on the provision regarding representation after entry acceptance were as follows:

1. One commenter requested clarification of the meaning of the term ''representations before Customs.''

2. The same commenter also asked how ''representing a client before Customs'' differs from the ''performing of customs business.'' This commenter also expressed confusion over the ''different permit requirement(s)'' for the performing of customs business and the making of post-entry summary representations.

3. One commenter claimed that the standard set forth in proposed § 111.2(b)(2)(iv), under which a broker must have a national permit in order to represent an importer on post-entry matters in situations where the broker did not file the entry and entry summary and does not have a district permit in the broker district in which the representations are made, is in conflict with a broker's right under § 111.5 to represent a client before government agencies.

4. Two commenters supported the concept of post-entry representation by another broker who had no connection to the filing of the entry, but they questioned the connection between post-entry representation and national permits. These commenters stated that the purpose behind national permits is to allow the implementation of remote location filing and of the other components under NCAP.

5. Another commenter in support of choice in post-entry representation stated that Customs should require brokers to formally establish their authority to represent an importer on any given matter.

6. One commenter objected to the proposed § 111.2(b)(2)(iv) post-entry representation provision, stating that brokers who file an entry for a client should not be in the position of being replaced.

7. A commenter requested that proposed § 111.2(b)(2)(iv) be eliminated, for the reason that a broker should be allowed to represent an importer in a district for which the broker does not have a permit irrespective of whether the broker has been issued a national permit. This commenter stated that many importers will want their ''primary broker'' to handle post-entry work, even in situations when an outport broker selected by the primary broker filed the entries.

8. Another commenter suggested that since the issuance of national permits will likely be tied to the implementation of the ACE system, the requirement for a national permit for post-entry representations when the broker does not have a district permit should be put on hold or abolished entirely.

9. A commenter stated that proposed § 111.2(b)(2)(iv) should allow the ''actual importer'' to select a broker to make post-entry representations when another broker served as the importer of record on the entry.

Customs response: 1. Customs intends the term ''representations before Customs'' to encompass any post-entry-summary activity that arises out of the entry or that concerns the merchandise covered by the entry, for example, responding to requests for information or preparing and filing protests or meeting with Customs officials to explain the client's position.

2. ''Representing a client before Customs'' and the ''performing of customs business'' are related in that an importer hires a broker to represent its interests before Customs on matters concerning the transaction of customs business. Thus, the ''representations'' made by the broker to Customs will involve issues falling within the definition of ''customs business.'' As regards the second point regarding permit requirements, the general rule is that a broker must have a district permit to conduct customs business in the broker district in which the transaction occurs. Usually this general rule would apply to brokers who perform post-entry-summary customs business activities for clients. However, brokers may conduct post-entry-summary work for clients under a national permit when the provisions of proposed § 111.2(b)(2)(iv) apply, that is, the entry was filed by the owner or purchaser or by another broker, and the owner or purchaser has elected to hire a second broker to handle its post-entry-summary matters.

3. Customs disagrees. Section 111.5 contemplates that the broker making the representations has already been involved in some aspect of the importation or exportation of the merchandise, such as the filing of the consumption or drawback entry, and thus will have the requisite district permit. Proposed § 111.2(b)(2)(iv), on the other hand, allows brokers to represent clients even though they played no part in the original entry. The latter provision was included in the proposed regulations to give importers the choice of engaging one broker to file the entry and entry summary and another to handle any ensuing post-entry matters. It is conceivable that the second broker may be located outside of the broker district in which the entry and entry summary were filed. The proposed § 111.2(b)(2)(iv) exception to the district permit rule simply enables the second broker who has a national permit to represent the client without having to obtain a district permit in the broker district where the entry was filed and where, presumably, the post-entry representations will be made.

This comment has, however, prompted Customs to reevaluate the position reflected in proposed § 111.2(b)(2)(iv) that the post-entry representation provision will only apply if a broker files the entry and entry summary. Upon further reflection, Customs has concluded that the benefits of this provision should also extend to those situations in which the owner or purchaser files the entry and entry summary. Consequently, Customs has amended the regulatory text in this final rule to refer to representation by ''a broker'' (rather than ''another broker'') who did not file the entry, in order to allow post-entry representation by brokers holding a national permit when the entry was filed either by the owner or purchaser or by another broker who was not acting as importer of record. See also the discussion below regarding the reorganization of proposed § 111.2(b)(2).

4. Customs agrees with the assessment that NCAP is a major reason for the establishment of national permits. This opinion is supported by the legislative history discussing national permits. However, it is the position of Customs that their use is by no means restricted to NCAP, and it is noted in this regard that 19 U.S.C. 1641(c)(1)(A) provides for the issuance of national permits to licensed customs brokers ''for the conduct of such customs business as the Secretary (of the Treasury) prescribes by regulation.'' Clearly, there is agency discretion to determine the purposes for which national permits will be used.

5. The broker would still have to have in his files a valid power of attorney from a client as provided in § 141.46 of the Customs Regulations to establish his authority to represent the client. Customs believes that this requirement (rather than also requiring that the broker establish his authority on a case-by-case basis) is sufficient for purposes of post-entry representations.

6. It is the position of Customs that the selection—or replacement—of a broker by an importer is a matter solely between those two private parties.

7. The observation of this commenter regarding the use of a ''primary broker'' may be correct, but an importer's preference to have a particular broker perform post-entry functions does not override the statutory requirement that a broker have a district or national permit, or both, to transact customs business. Accordingly, Customs does not agree that this regulatory provision should be eliminated.

8. Customs disagrees. The issuance of national permits is not contingent upon ACE being operational. Further, as already noted above, current law does not allow Customs to abolish or ignore the permit requirement.

9. Customs does not agree with this suggestion. The proposed regulation was specifically drafted in order to, among other things, preclude the application of this district permit exception in cases where a broker is named as the importer of record on the

entry. This is because being designated as ''importer of record'' automatically imposes obligations on the person acting in that capacity. For example, the importer of record is responsible for the payment of estimated duties (and will also be liable for any increased and additional duties if an actual owner's declaration and superseding bond are not filed). Given this assumption of obligations, the importer of record must be allowed to retain the right to represent himself, or to select his own representative, in post-entry matters.

Reorganization of Proposed § 111.2(b)(2)

Finally, in the light of the various comments on § 111.2(b) as summarized above and as a consequence of the substantive changes Customs has agreed to make to the regulatory texts as indicated above, Customs has concluded that some restructuring of the regulatory text should also be made. The general rule, that a broker is required to have a separate district permit for each broker district in which the broker conducts customs business for clients, remains as § 111.2(b)(1). However, the ''exceptions'' to the statutory district permit rule listed in § 111.2(b)(2) as set forth below have been reorganized into two basic groups, the first consisting of a ''national permit'' exception (which would no longer be limited to NCAP participants and transactions—see also the comment discussion below regarding § 111.19(f)) with subparagraphs covering employee implants, electronic filing of drawback claims outside the designated drawback office, electronic transactions performed under an existing NCAP component, and post-entry-summary representations, and the second consisting of the filing of manual and electronic drawback claims in the designated drawback office.

Section 111.5

Comment: One commenter objected to § 111.5(b), which provides that, in order to represent a client before any agency not within the Treasury Department, a broker shall comply with any regulations of such agency governing the appearance of representatives before it. The basis of the objection was that Customs has no statutory authority to regulate a broker's interactions with other government agencies.

Customs response: Customs disagrees with the rationale presented by this commenter. The statutory authority for the regulatory provision in question is section 641(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(f)), which gives the Secretary of the Treasury broad authority to prescribe rules and regulations relating to the customs business of customs brokers. Many import transactions involve compliance with the laws and regulations of other government agencies. The involvement of regulations of another agency besides Customs in an import transaction does not take away from the fact that the broker is conducting ''customs business.'' Since the regulation is directed only to the actions of brokers while conducting customs business, it is entirely consistent with the authority conferred by section 641(f).

Section 111.11

Comment: Two commenters requested that the process of qualifying for an individual broker's license be made more stringent, to reflect brokers' status as ''experts'' under the Customs Modernization Act's reasonable care standards. One method suggested was to require applicants to possess a college degree, preferably in a business discipline; another was to require a person to have a 3-year employment history in the customs brokerage business prior to submitting the application.

Customs response: While Customs agrees with the expressed aim of these comments, the imposition of the suggested additional standards does not appear to be necessary because the same goal can be reached at least as well, if not more effectively, through the present individual written examination process which is specifically designed to test an applicant's knowledge of customs requirements and procedures.

Comment: One commenter objected to the new requirement in § 111.11(a)(4) ''to pass the written examination within three years of applying for a broker's license.'' A second commenter addressed a related concern, questioning how the new 3-year rule would affect Customs employees who have passed the examination but whose license issuance has been delayed pending their separation from government service.

Customs response: With regard to the first comment, this commenter misinterpreted the new provision. Instead of requiring an applicant to pass the broker's examination within three years of applying for a license, a person will now have three years in which to apply for a license after passing the examination. This arrangement reflects the newly-instituted separation of the examination and license application processes as discussed in the preamble portion of the April 27, 1999, notice of proposed rulemaking. As regards the second comment, that issue is currently under review and will be the subject of a separate policy determination.

Comment: Another commenter stated that the proposed regulation on the basic requirements for a corporate broker license, contained in § 111.11(c), would allow a corporate license to be issued in a district in which the corporation has neither a licensed officer nor a licensed employee resident within the district.

Customs response: Although the comment incorrectly implies that licenses are issued on a district basis (licenses are only issued on a national basis), it has prompted Customs to reevaluate certain aspects of § 111.11. As a result, proposed §§ 111.11(b)(2) and 111.11(c)(3) have been removed because the substance of their intended message—that is, that the holder of a partnership or association or corporate license will establish an office and will employ a licensed individual in the broker district in which the partnership or association or corporation operates as a broker—is adequately addressed in § 111.19 which concerns broker permits. Customs believes that these changes are necessary because it is clear that the proposed §§ 111.11(b)(2) and 111.11(c)(3) relate more logically to the district permit issuance process (which concerns the actual place where a licensee's brokerage activities are carried out) than to the national license issuance process. In addition, §§ 111.11(b) and 111.11(c)(2) have been modified in this final rule to clarify that a partnership, association or corporation must have a licensed member or officer for the partnership, association or corporation to qualify for a broker license. See also the comment discussion below regarding § 111.19 for other related changes made to that section.

Section 111.12

Comment: One commenter suggested that notice of the filing of an application for a broker's license should be posted on the Customs Electronic Bulletin Board or in some other electronic fashion in addition to being posted at the customhouse.

Customs response: Customs agrees. Accordingly, § 111.12(b) has been modified in this final rule by the inclusion of a reference to the posting of this information by appropriate electronic means.

Section 111.13

Comment: One commenter questioned the legality of the provision in § 111.13(c) which authorizes an individual to take a special written examination for the purpose of

continuing the business of a sole proprietorship broker, on the ground that a license issued to an individual is non-transferrable. This same commenter also recommended the inclusion of an appeal process for the denial of a request for a special written examination.

Customs response: Customs agrees with the statement that licenses are non-transferrable. However, Customs notes that the provision in question exists solely to allow the continuation of the business infrastructure, and not of the license, of a sole proprietorship in the event of the proprietor's incapacity or death. The regulation contemplates that the person taking the special examination will place the business in his or her own name upon receipt of the license, or that a corporation, association, or partnership will be formed with the newly-licensed individual serving as the qualifying officer or member. Disruption of jobs and client services will thus be minimized. As regards appeals, Customs does not believe that an appeal procedure would be appropriate in this context. The special examination provisions were put in the regulations as an accommodation to brokers. Allowing a person to take a special examination is purely discretionary on Customs part, as is denying a special examination request and directing the prospective broker to take the next regularly scheduled examination.

Section 111.14

Comment: Several commenters requested that Customs establish a maximum length of time after receipt of an application for a license during which background investigations on applicants will be completed.

Customs response: Customs has for some time been aware of concerns over this issue, and Customs is currently exploring ways to expedite the investigative process. However, this issue is an administrative, operational matter that should be addressed outside the Part 111 regulatory framework.

Section 111.16

Comment: A commenter proposed that Customs, in its investigation of a license applicant, be limited to reviewing derogatory information that occurred within 15 years of the date of the submission of the license application. The use of older convictions or proof of other unacceptable conduct as grounds for denial of a license when the applicant has had an otherwise clean record since that time would be, in this commenter's view, unfair.

Customs response: Customs does not believe that this suggestion should be adopted because Customs must have the most complete information possible on each applicant.

Section 111.19

As a consequence of the comments on proposed § 111.11 as discussed above, Customs also performed a general review of proposed § 111.19 which concerns permits. As a result of that review, some wording changes have been made to the § 111.19 text in this final rule to improve its clarity. These changes involve: (1) In § 111.19(b), removal of the references to an ''additional'' district in the application information provisions in order to clarify that those requirements apply to all permit applications (including an application for an initial permit); (2) in § 111.19(d)(1), changing the first sentence to refer to an applicant for a ''district permit'' to make it clear that the obligation of a broker regarding a place of business and regarding the exercise of responsible supervision and control over the customs business conducted in each broker district extends to all broker districts (rather than just to those broker districts in which the broker has received an additional permit); and (3) in the introductory text of § 111.19(f), inclusion of a specific statement to clarify what was only implied in § 111.19(a), that is, that a broker must have a district permit in order to obtain a national permit (see also the comment discussion below regarding § 111.19(f) for other changes to this introductory text).

Comment: Two commenters addressed § 111.19(b)(6), which requires applicants for additional district permits to include the place of storage of brokerage records and the names of the applicant's recordkeeping officer and back-up recordkeeping officer in the application. One of the commenters questioned the need for brokers to have a recordkeeping officer at all, and both commenters challenged the back-up recordkeeping officer requirement. Finally, one of these commenters asked why the designated recordkeeper has to be an officer of the broker.

Customs response: Customs notes that the proposed text in question was not consistent with the cross-referenced substantive regulatory provision (that is, § 111.21 which, in paragraph (c), contains no mention of a recordkeeping officer and back-up recordkeeping officer but instead simply requires the existence of a knowledgeable company employee recordkeeping contact). Accordingly, § 111.19(b)(6) has been modified in this final rule to more accurately reflect the terms of § 111.21(c) in this regard. As regards the need for a recordkeeping contact, this requirement was adopted in connection with the revision of the Customs recordkeeping regulations (see T.D. 98–56 which was published in the **Federal Register** at 63 FR 32916 on June 16, 1998) and should be retained.

Comment: One commenter raised a specific issue with regard to the national permit requirements of § 111.19(f) and then posed a more general question on the entire permit system, as follows:

1. The commenter first asked why national permits would be issued only to NCAP participants.

2. The commenter then asked why individuals who are licensed brokers and who serve as ''licensed consultants'' need permits at all.

Customs response: 1. Although Customs originally envisioned that applicants for a national permit would have to have NCAP capabilities and therefore included that requirement in proposed § 111.19(f), as indicated in the comment discussion above regarding proposed § 111.2(b)(2), it has since become apparent that the existence of other customs business activities outside of NCAP, for which national permits would be necessary, renders making the application contingent upon NCAP capability impractical. Accordingly, Customs now believes that an applicant for a national permit should simply have to meet certain basic requirements for the permit. Once the national permit has been secured, the national permit holder might then have to separately qualify for a specific program under which the national permit would be used, such as the filing of entries from a remote location, but that would be a function of the specific program at issue rather that a requirement under § 111.19(f). Accordingly, § 111.19(f) has been modified in this final rule by removing all references to NCAP from the introductory text and by removing paragraph (f)(4).

2. A similar question was raised earlier in this document, to which Customs simply responded that permits are required by law. However, ''licensed consultants'' will be able to represent clients on post-entry matters under § 111.2(b)(2) as modified in this final rule without having to obtain numerous district permits, provided they have a national permit secured by one district permit.

Section 111.23

Comment: One commenter noted that the word ''papers'' (rather than

''records'') is used in the last sentence of § 111.23(a)(2).

Customs response: Customs agrees that ''records'' is the proper term to be used in this context. Accordingly, the text in question has been modified in this final rule by replacing the words ''copies of papers'' with ''records.''

Comment: Two commenters addressed the provision in § 111.23(b)(1) which states that ''the option of maintaining records on a consolidated basis is generally available to brokers who have been granted permits to do business in more than one district.'' They stated that the use of the word ''generally'' undermines brokers'' absolute right to consolidate their records.

Customs response: Although in connection with the revision of the Customs recordkeeping regulations (see T.D. 98–56 mentioned above) it was decided to dispense with the requirement that brokers obtain approval from Customs before consolidating records, Customs does not agree with these commenters that the consolidation of broker records is an absolute right. This is because, if the consolidation involves going to an alternative method of storage and any of the records to be consolidated are required to be maintained under 19 U.S.C. 1508, some restrictions on the right to consolidate may apply under 19 CFR 163.5(b). Since use of the word ''generally'' does not adequately clarify this point, § 111.23(b)(1) has been modified in this final rule by removing ''generally'' and adding an exception clause regarding the application of a restriction under § 163.5(b).

Comment: A commenter stated that brokers should be allowed to retain records of their customs transactions at sites that are accessible to the broker business locations that created them, instead of within the broker districts that cover the Customs ports to which they relate. This commenter argued that brokers holding permits in multiple broker districts may prepare the customs documents at different locations than the ports or even the districts in which the transactions occur, and that it would serve no beneficial purpose to create duplicate sets of records.

Customs response: Customs believes that the consolidation provisions of § 111.23 as proposed would afford brokers the necessary flexibility to store their records at locations that are most convenient to their business operations. Therefore, no further amendment to § 111.23 appears necessary.

Section 111.24

Comment: Two commenters expressed general support for the proposed amendment which allows brokers to disclose client information to sureties. One of these commenters, however, expressed concern over the statement in the preamble portion of the April 27, 1999, document that disclosure to a surety ''will not automatically constitute a violation,'' because the statement implied that in some instances disclosure might constitute a violation. Both of these commenters also objected to the fact that disclosure would be discretionary on the part of the broker.

Customs response: As regards the first point, use of the word ''automatically'' was not intended to imply that a broker may be subject to sanction if client records are turned over to a surety. Rather, the intent was simply to point out that, in contrast to the former provision, disclosure would no longer constitute a violation. With regard to the second issue, the Customs position continues to be that, absent a subpoena, the disclosure of client records to a surety is at the option of the broker.

Comment: One commenter urged Customs to publish a ''positive statement encouraging brokers to provide information to sureties, and for Customs to develop guidelines indicating the situations in which disclosure is most clearly appropriate.''

Customs response: Customs has no intention of taking the suggested actions at this time. Customs remains of the view that these are matters to be worked out between sureties and brokers.

Comment: A commenter stated that the term ''or other duly accredited officers or agents of the United States'' should be more clearly defined, or eliminated entirely. This commenter asserted that, in the absence of a subpoena, brokers should only be required to turn over client records to officers under the jurisdiction of the Commissioner of Customs. By way of explanation, the commenter related an incident in which there was confusion when state tax authorities requested importer records from a broker.

Customs response: Customs believes that it is commonly understood that ''an officer or agent of the United States'' refers to employees of the federal government, and not to state or local authorities. Consequently, no change to the regulatory text is necessary in this regard.

Section 111.25

Comment: One commenter stated that part 111 should advise brokers of their right to refuse access to records unless served with an administrative summons. This commenter stated that this right is conferred by the general recordkeeping regulations of 19 CFR part 163.

Customs response: Customs disagrees with the observations of this commenter for two basic reasons. First, part 163 does not give a broker an unconditional right to refuse access to records unless served with an administrative summons. In the case of entry records required to be maintained and made available by a broker under 19 U.S.C. 1508 and 1509 and under part 163, if the broker fails to timely produce any of those records following receipt of a written, oral or electronic demand for the records from Customs pursuant to § 163.6(a), the broker may be subject to monetary penalties as provided in § 163.6(b). In addition, in the case of records of a broker that are not entry records but that are nevertheless subject to the retention and examination requirements of 19 U.S.C. 1508 and 1509 and part 163 (see § 163.6(c)), or if a broker fails to produce demanded entry records but no monetary penalty action is taken under part 163, the broker may be subject to disciplinary action under part 111. In both cases the sanctions that may be applied do not depend on the issuance of a Customs summons which is a separate procedure having its own enforcement mechanism (see §§ 163.7 through 163.10). Second, whereas the provisions of part 163 apply specifically to records (including those of brokers) that relate to activities listed in 19 U.S.C. 1508, there are other records that brokers must maintain outside the part 163 context, that is, records that are unique to the conduct of a brokerage business under 19 U.S.C. 1641 and part 111 (for example, powers of attorney and financial records regarding clients' accounts). This distinction is noted in § 163.2(d), which provides that ''(e)ach customs broker must also make and maintain records and make such records available in accordance with part 111 of this chapter,'' and in the last sentence of § 111.25 which states that ''(r)ecords subject to the requirements of part 163 of this chapter shall be made available to Customs in accordance with the provisions of that part.'' Section 111.25, the substance of which relates to records that arise in a part 111 context, provides that the records be made available ''upon reasonable notice'' but does not require the issuance of a summons, and a failure to make those records available to Customs could result in disciplinary action under part 111.

Section 111.28

Comment: The following comments were made regarding the employee information reporting provisions of § 111.28(b):

1. A commenter stated that the lists of current and new employees required by § 111.28(b) should be provided to the port director at the ''lead'' port, and not at every port within the broker district where the broker does business.

2. Several commenters questioned the requirement in proposed § 111.28(b)(1)(i) for an updated list of current employees to be submitted with the triennial status report. If Customs decides to retain the requirement, it was suggested that the list should only contain information on name, current address, date and place of birth, and social security number. One of these commenters argued that it would be administratively burdensome for brokers to have to keep track of their employees' last prior home addresses and of which employees had been employed for 3 years or less. Since that information would have been reported initially to Customs, it was suggested that it would be unnecessary to do so again.

3. A commenter questioned why updated lists should be sent to the port director of the port where the license was issued, instead of to the ports in which the broker is permitted to conduct customs business.

4. Another commenter observed that § 111.28 makes no provision for the reporting of transferred employees of brokers.

Customs response: 1. Customs disagrees. One of the main purposes behind this requirement is for the local customs officers to be familiar with the local brokerage community. This can best be accomplished by notification at the port at which the employee of the broker will be working.

2. Customs agrees in part with the concerns expressed by these commenters. While it remains the position of Customs that updated employee lists are necessary, upon reconsideration Customs now believes that some of the information proposed to be required in the updated reports is superfluous. Accordingly, the last sentence of § 111.28(b)(1)(i) has been modified in this final rule to list the specific information that must be included in the updated employee list (which does not include the last prior home address or the prior employment information on an employee employed by the broker for less than 3 years).

3. Updated employee lists are sent to the port through which the license was delivered simply because they are submitted with the triennial status report (see also the comment discussion regarding § 111.30(d) below). Customs will then route the lists to the various ports identified in the updated lists as being the ports in which the broker employees are working.

4. While there is no specific reference to the reporting of a transfer of an employee, Customs believes that a broker employee who is transferred from one port to another would have to be reported under § 111.28(b)(1)(i) either upon the opening of a new office or as an inclusion in the update list submitted with the triennial report.

Comment: The following comments were submitted regarding § 111.28(d), which requires the reporting of ownership changes in a broker to Customs:

1. Several commenters asked why brokers are required to send a copy of the notice of change in ownership to the directors of each port through which a permit has been granted. They stated that notice to Customs headquarters should suffice.

2. Another commenter stated that § 111.28(d) would require a broker to notify Customs whenever there is a five percent or greater change in ownership of a broker and the ownership shares are not publicly traded. This commenter then went on to say that it would be very difficult for a broker whose shares are not publicly traded and are owned by another publicly traded firm, to keep track of and report changes of ownership in the parent firm. The commenter asked that an exception to the reporting requirement be made if the owner of the not-publicly-traded shares of the brokerage is a large publicly traded company.

3. Another commenter questioned the statutory authority of Customs to force a broker to divest itself of a new principal who does not pass a background investigation. This commenter also claimed that applying this rule only to non-publicly-traded brokers is discriminatory.

Customs response: 1. Customs disagrees. One of the purposes behind this regulation is to enable Customs to better monitor who participates in the customs brokerage industry. Local Customs officials will in some instances have a greater familiarity than their counterparts at Customs headquarters with the reputations of persons acquiring all or part of an established brokerage firm. Therefore, the notification requirement at both the port and headquarters levels must remain in place.

2. Customs would first point out that this comment appears to read the regulatory text as providing that at least a five percent interest must change hands before the reporting requirement is triggered. This reading of the text is incorrect. The proposed regulation states that a broker shall immediately provide written notice to Customs ''(i)f the ownership of a broker changes and ownership shares in the broker are not publicly traded.'' It does not attach a percentage threshold below which an ownership change is not required to be reported. The five percent figure comes into play in identifying whether a change of ownership results in the addition of a new principal. This is because a principal is defined as ''any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in a broker or in the business of a broker.'' The addition of a principal is significant for purposes of § 111.28(d) because Customs reserves the right to conduct background investigations of new principals and to require their removal if the results of the investigation are unsatisfactory. However, the five percent figure does not directly relate to the change of ownership reporting requirement. With respect to the concern expressed that it will be difficult to monitor and report trades in the shares of the parent firm, when such a firm exists, it is Customs intent that only changes in the ownership of the broker, and not of the broker's parent firm, be reported to Customs.

3. The authority to force a broker to divest itself of a new principal who does not pass a background investigation stems from 19 U.S.C. 1641(f), which permits the Secretary of the Treasury to prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary ''considers necessary to protect importers and the revenue of the United States * * *.'' As regards the issue of discrimination, it is not the intent of Customs to discriminate among classes of brokers because of their business structure. Indeed, Customs wants to reserve the right to investigate all new principals, regardless of how they obtained their ownership interest in the broker. The reporting onus falls on non-publicly-traded companies simply because information about publicly-traded corporations is widely available from other sources. However, Customs agrees that the proposed regulation could be read to restrict investigation and removal to new principals of non-publicly-traded companies. Therefore, § 111.28(d) has been modified in this

final rule to ensure that the investigation and removal processes apply equally to new principals of publicly-traded brokers and to new principals of non-publicly-traded brokers.

Section 111.29

Comment: A commenter requested that proposed § 111.29(a) be changed to require the broker to remit overdue payments received from a client within 5 working days from the funds being confirmed as paid by the client's bank, instead of within 5 working days from receipt by the broker. This request was made to protect brokers in situations where there are insufficient funds to cover the client's check.

Customs response: Customs does not believe that an amendment to the regulatory text is required to accommodate this commenter's concern because, under a proper interpretation of § 111.29(a), ''receipt'' by a broker would mean actual receipt of the funds following their clearance from the client's bank.

Comment: One commenter referred to the requirement in § 111.29(b)(2)(i) that importers must be provided with written notification that payment to a broker will not relieve the importer of liability for Customs charges if the charges are not paid by the broker and that the notification must be on, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982. This commenter stated that the ''September 27, 1982'' effective date must be removed and replaced with ''the effective date of these regulations;'' otherwise, any power of attorney issued after September 27, 1982, would be invalid if it did not have the required notification.

Customs response: The commenter's observation about powers of attorney without the notification being invalid is correct. This is because this regulation, and its notification requirement, have been in effect since the effective date of Treasury Decision 82–134 (September 27, 1982). The current revision of part 111 does not nullify the notification requirement that has been in place since that date, nor does it render post-1982 powers of attorney without the requisite notification suddenly valid. Consequently, Customs declines to adopt the change suggested by this commenter.

Section 111.30

Comment: One commenter requested clarification of the requirement in proposed § 111.30(b)(2) that an organization report any other change in the legal nature of the organization, particularly as regards the meaning of ''change in the legal nature.'' Absent clarification, this commenter argued, Customs could be inundated with irrelevant paperwork, and brokers could unwittingly be sanctioned for lack of compliance.

Customs response: Customs agrees that some clarification would be useful. Although it is not possible to come up with an all-inclusive list of potential changes in legal nature, the § 111.30(b)(2) text has been modified in this final rule by the inclusion of several illustrative examples.

Comment: Another commenter referred to the triennial status report of § 111.30(d). This commenter first stated that Customs should devise a specific form to be used as a status report. The commenter then questioned the need in § 111.30(d)(2)(iii) for individual brokers to have to make a statement that they continue to meet the requirements of § 111.11 and § 111.19 and have not engaged in any conduct that could constitute grounds for suspension or revocation.

Customs response: Regarding the first point, Customs already provides a specific form to be used as a status report; Customs sends this form to license holders at their last known address prior to the filing date of the report. With regard to the second issue, Congress has vested Customs with authority to protect importers and the revenue through regulation of customs brokers. Requiring the statement is an exercise of that authority. Customs considers this to be far less onerous on brokers than requiring them to submit to periodic background reinvestigations. Therefore, Customs believes that the requirement is appropriate and should be retained in the regulations.

Comment: One commenter suggested that proposed § 111.30(d)(1) be amended to require submission of the triennial status report to the port director through which the application for the broker's license was made, instead of to the director of the port through which the broker's license was issued. Two reasons were given for this request. First, the actual license, printed on Customs Form 3131, states that licenses are issued in Washington, D.C. Second, there has been confusion when individuals have applied for a license in one port and have received their license at another following a job transfer or move.

Customs response: While a broker's license is always issued out of Customs Headquarters, § 111.15 provides for delivery of the license to the broker through a port director's office (normally the port where the license application was filed and processed). In order to avoid any confusion on the points raised by this commenter, § 111.30(d)(1) has been modified in this final rule to provide that the status report must be addressed to the director of the port ''through which the license was delivered to the licensee (see § 111.15).'' For purposes of consistency, similar language has been included in § 111.19(a) as set forth below regarding concurrent issuance of an initial district permit.

Section 111.36

Comment: The following comments were submitted on § 111.36(a) which concerns obligations of a broker when the broker is employed by an unlicensed person other than the importer:

1. Two commenters stated that the broker should be required to send a copy of the entry to the actual importer in situations where the broker has been hired by another person (the proposed regulatory text requires the broker to send a copy of the entry or of his bill for services rendered but allows the importer to waive transmittal of both in writing). One of these commenters asserted that the importer needs to see the entry to satisfy ''reasonable care'' requirements. This commenter also urged that the provision be structured to require that the ''actual importer'' be notified in advance of the entry being filed of who the broker will be.

2. A commenter stated that the issue of fee sharing remains vague. This commenter asked for clarification regarding how this rule would apply to several specific factual situations.

Customs response: 1. Customs disagrees. Giving the broker the option of sending either a copy of his bill for services rendered or a copy of the entry (rather than specifying only a copy of the entry) is intended to strike an appropriate balance between the important principles of disclosure and confidentiality. As regards reasonable care, if the broker is hired by a party other than the actual importer, no obligation to exercise reasonable care devolves upon the actual importer. Moreover, the entry law allows the nominal consignee to appoint a broker, so Customs has no right to interfere in that choice. The primary function of the regulation is to enable the actual importer to have access to information which can be used to protect the actual importer's rights in the importation process, such as by filing a protest.

2. The questions presented by this commenter raise issues that are not proper for resolution in the regulations but rather would be more appropriately

addressed through the issuance of either a binding ruling or a response to an internal advice request. Consequently, Customs invites the commenter to write in for a binding ruling or to request internal advice on the matters in question in accordance with the requirements and procedures set forth in 19 CFR part 177.

Modification of § 111.36(a)

Upon further internal review of the proposed § 111.36(a) text, Customs has determined that the words ''purchased for delivery on an all-free basis (duty and brokerage charges paid by the unlicensed person)'' should be replaced by the words ''purchased on a delivered duty-paid basis,'' to bring the text in line with modern terms of sale phraseology. The text in this final rule has been modified accordingly.

Comment: A commenter questioned the need for the special rules governing a broker's relations with freight forwarders in § 111.36(c). The commenter expressed the view that the prohibition against brokers sharing fees with unlicensed persons should apply to all unlicensed persons, including freight forwarders. This same commenter also stated that the definition of ''freight forwarder'' contained in § 111.1 is out-of-date and should be changed to take into account new entities such as ocean transport intermediaries, consolidators, and freight brokers.

Customs response: While these comments raise some new and interesting points, these issues are not appropriate for this final rule document but rather should be the subject of separate consideration with a view to possible further regulatory changes at a later date.

Section 111.42

Comment: One commenter requested that the term ''notoriously disreputable'' be more clearly defined in the regulations.

Customs response: Customs is of the view that the term is self-explanatory and therefore requires no further elaboration.

Section 111.96

Comment: One commenter objected to the requirement that the permit user fee be collected by Customs on an annual basis, stating that it places an unnecessary administrative burden on brokers and on Customs. A suggested alternative would be to pay the fee in advance every three years, at the same time as the submission of the triennial status report and the status report fee.

Customs response: For two reasons, it would be inappropriate for Customs to adopt this suggestion. First, it would in effect create a triennial fee when the statute (19 U.S.C. 58c(a)(7)) refers to an annual fee and this, in turn, would lead to potential complications in complying with the mandate of the statute (19 U.S.C. 58c(d)(4)(A)) regarding publication of notice of the permit fee 60 days before the due date. Second, even if the permit fee statute were no bar to this suggestion, Customs believes that adoption of this change would create new administrative burdens, such as having to set up a refund system to reimburse brokers who close operations in a particular broker district within the three-year period.

Additional Changes to the Regulations

In addition to the changes to the proposed regulatory texts identified and discussed above in connection with the public comments, Customs has included the following regulatory changes in this document:

1. Some minor, editorial wording or punctuation changes have been made to the Part 111 texts to enhance their clarity, readability and application but without the intention of substantively affecting the texts. In addition, throughout the part 111 texts, an attempt has been made, wherever practicable, to replace legalistic wording with simple or more direct phraseology, consistent with prevailing plain English drafting principles. Thus, for example, the word ''shall'' has been replaced with either ''must'' or ''will'' depending on the context, the word ''such'' has been either removed or replaced, and, except where it forms part of a defined term, the word ''thereof'' has been removed in favor of repeating the actual words to which it relates.

2. In § 24.1(a)(3)(i) of the Customs Regulations (19 CFR 24.1(a)(3)(i)), the third sentence refers to ''* * * a customhouse broker, not licensed in the district (see definition of ''district'' at § 111.1) where an entry is filed * * *.'' This text is outdated in that it uses the old ''customhouse'' (rather than ''customs'') broker terminology and in that it does not reflect the fact that under the present statute and regulations brokers are licensed on a national, rather than district, basis. The regulatory text has been modified as set forth below to address these points.

3. Finally, this document includes an appropriate update of the list of information collection approvals (see the Paperwork Reduction Act portion of this document below) contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes as discussed above and as set forth below.

Executive order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. The regulatory amendments primarily represent a clarification of existing statutory and regulatory requirements. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1515–0076 and 1515–0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collections of information reviewed and approved under control number 1515–0076 are in §§ 111.12, 111.13, 111.17, 111.19, and 111.28. The information to be collected is necessary for the issuance of customs broker licenses and permits and for monitoring the performance of brokers in the conduct of customs business. The collections of information reviewed and approved under control number 1515–0100 are in §§ 111.30, 111.36, 111.60, and 111.76. The information to be collected is necessary for monitoring the performance of brokers in the conduct of customs business and in connection with the institution of disciplinary actions against brokers. The likely respondents to the collections of information in this final rule are individuals, partnerships, associations, and corporations, including individuals and organizations that are licensed brokers.

The estimated average annual burden associated with the collections of information reviewed and approved

under control number 1515–0076 is 1 hour per respondent or recordkeeper. The estimated average annual burden associated with the collections of information reviewed and approved under control number 1515–0100 is 1 hour per respondent or recordkeeper. Comments concerning the accuracy of these burden estimates and suggestions for reducing these burdens should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting information. The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, 19 CFR Ch. I is amended, as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648;

* * * * *

2. In § 24.1(a)(3)(i), the third sentence is amended by removing the words ''a customhouse broker, not licensed in the district (see definition of ''district'' at § 111.1) where an entry is filed,'' and adding, in their place, the words ''a customs broker who does not have a permit for the district (see the definition of ''district'' in § 111.1 of this chapter) where the entry is filed''.

3. Part 111 is revised to read as follows:

PART 111—CUSTOMS BROKERS

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

Section 111.3 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

§ 111.0 Scope.

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

assessment of monetary penalties, and the revocation or suspension of licenses and permits.

Subpart A—General Provisions

§ 111.1 Definitions.

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

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

Broker. ''Broker'' means a customs broker.

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

Customs business. ''Customs business'' means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of 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 Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, ''customs business'' does not include the mere electronic transmission of data received for transmission to Customs.

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

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

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

Officer. ''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. ''Permit'' means any permit issued to a broker under § 111.19.

Person. ''Person'' includes individuals, partnerships, associations, and corporations.

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

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

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

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

§ 111.2 License and district permit required.

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

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

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

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

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

(*B*) *Broker supervision; withdrawal of authority.* Where an employee has been given authority under paragraph (a)(2)(ii) of this section, the broker must exercise sufficient supervision of the employee 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 under paragraph (a)(2)(ii) of this section is withdrawn. The withdrawal of authority will be effective upon receipt by the port director.

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

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

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

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

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

(2) *Exceptions to district permit rule*—(i) *National permits.* 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:

(A) *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 Customs, the broker need not obtain a permit for the district within which the client's facility is located;

(B) *Electronic drawback claims.* A broker may file electronic drawback claims in accordance with the electronic filing procedures set forth in part 143 of this chapter even though the broker does not have a permit for the district in which the filing is made;

(C) *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

(D) *Representations after entry summary acceptance.* After the entry summary has been accepted by Customs, 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 Customs on any issue arising out of that entry or concerning the merchandise covered by that entry even though the broker does not have a permit for the district within which those representations are made, provided that, if requested by Customs, the broker submits appropriate evidence of his right to represent the client on the matter at issue.

(ii) *Filing of drawback claims.* A broker granted a permit for one district may file drawback claims manually or electronically at the drawback office that has been designated by Customs 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.

§ 111.3 [Reserved]

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, 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 this part.

§ 111.5 Representation before Government agencies.

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

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

Subpart B—Procedure To Obtain License or Permit

§ 111.11 Basic requirements for a license.

(a) *Individual.* In order to obtain a broker's license, an individual must:

(1) Be a citizen of the United States on the date of submission of the application referred to in § 111.12(a) and not an officer or employee of the United States Government;

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

(3) Be of good moral character; and

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

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

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

(1) Be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and

(2) Have at least one officer who is a broker.

§ 111.12 Application for license.

(a) *Submission of application and fee.* 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 Customs Form 3124. The application must be accompanied by the $200 application fee prescribed in § 111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each 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 written examination referred to in §§ 111.11(a)(4) and 111.13. The port director may require an individual applicant to provide a copy of the notification that he passed the written examination (see § 111.13(e)) and will require the applicant to submit fingerprints on Standard Form 87 at the time of filing the application. The port director may reject an application as improperly filed if the application, on its face, demonstrates that one or more of the basic requirements set forth in

§ 111.11 have not been met at the time of filing, in which case the application and fee will be returned to the filer without further action.

(b) *Posting notice of application.* Following receipt of the application, the port director 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.

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

§ 111.13 Written examination for individual license.

(a) *Scope of examination.* The written examination for an individual broker's license 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 Customs Headquarters, Washington, DC.

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

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

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

(e) *Notice of examination result.* Customs will provide to each examinee written notice of the result of the examination taken under this section. A failure of an examinee to attain a passing grade on the examination will preclude the submission of an application under § 111.12 but will not preclude the examinee from taking an examination again at a later date in accordance with paragraph (b) of this section.

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

§ 111.14 Investigation of the license applicant.

(a) *Referral of application for investigation.* The port director 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.

(b) *Scope of investigation.* 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:

(1) The accuracy of the statements made in the application;

(2) The business integrity of the applicant; and

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

(c) *Referral to Headquarters.* The port director 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.

(d) *Additional investigation or inquiry.* 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.

§ 111.15 Issuance of license.

If the Assistant Commissioner finds that the applicant is qualified and has

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

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Assistant Commissioner determines that the application for a license should be denied for any reason, notice of denial 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.

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

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

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

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

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

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

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

§ 111.17 Review of the denial of a license.

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

(b) *By the Secretary.* Upon the decision of the Assistant Commissioner affirming the denial of an application for a license, the applicant may file with the Secretary of the Treasury, in writing, a request for 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.

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

§ 111.18 Reapplication for license.

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

§ 111.19 Permits.

(a) *General.* Each person granted a broker's license under this part will be concurrently issued a permit for the district in which the port through which the license was delivered to the licensee (see § 111.15) is located and without the payment of the $100 fee required by § 111.96(b), if it is shown to the satisfaction of the port director that the person intends to transact customs business within that district and the person otherwise complies with the requirements of this part.

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

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

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

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

(4) The name of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;

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

(6) The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact (see §§ 111.21 and 111.23); and

(7) 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.

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

(d) *Responsible supervision and control*—(1) *General.* The applicant for a 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 otherwise provided in paragraph (d)(2) of this section, 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.

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

(e) *Action on application; list of permitted brokers.* The port director who receives the application will issue a written decision on the permit

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

(f) *National permit.* A broker who has a district permit issued under paragraph (a) or paragraph (e) of this section may apply for a national permit for the purpose of transacting customs business in any circumstance described in § 111.2(b)(2)(i). An application for a national permit under this paragraph must be in the form of a letter addressed to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, and must:

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

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

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

(4) 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 (see § 111.15).

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

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

Subpart C—Duties and Responsibilities of Customs Brokers

§ 111.21 Record of transactions.

(a) Each broker 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.

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

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

§ 111.22 [Reserved]

§ 111.23 Retention of records.

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

(2) *Period.* The records described in paragraph (a)(1) of this section, other than powers of attorney, 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 § 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.

(b) *Notification of consolidated records*—(1) *Applicability.* Subject to the requirements of paragraph (b)(2) of this section and except when a restriction applies under § 163.5(b) of this chapter, 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.

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

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

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

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

§ 111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker 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.

§ 111.25 Records must be available.

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

§ 111.26 Interference with examination of records.

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

§ 111.27 Audit or inspection of records.

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

§ 111.28 Responsible supervision.

(a) *General.* Every individual broker operating as a sole proprietor and every licensed member of a partnership that is a broker and every licensed officer of an association or corporation that is a broker must exercise responsible supervision and control (see § 111.1) over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation.

(b) *Employee information.*

(1) *Current employees*—(i) *General.* 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 under § 111.19, or upon the opening of an office at a port within a district for which the broker already has a permit, and before the broker begins to transact customs business as a broker at the port. For each 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 status report required by § 111.30(d).

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

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

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

(c) *Termination of qualifying member or officer.* In the case of an individual broker who is a qualifying member of a partnership for purposes of § 111.11(b) or who is a qualifying officer of an association or corporation for purposes of § 111.11(c)(2), 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.

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

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* 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.

(b) *Notice to client of method of payment*—(1) 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 Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the ''U.S. Customs Service'' which will be delivered to Customs by the broker.

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

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

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

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

(a) *Change of address.* When a broker changes his business address, he 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 status report required by paragraph (d) of this section.

(b) *Change in an organization.* 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:

(1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of § 111.11(b) or (c)(2), and the name of the broker who will succeed as the qualifying member or officer; and

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (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).

(c) *Change in name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he has been granted a permit and is authorized by State law to do so, must submit to the Office of Field Operations, U.S. Customs Service, 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.

(d) *Status report*—(1) *General.* Each broker must file a written status report with Customs 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 (see § 111.15). A report received during the month of February will be considered filed timely. No form or particular format is required.

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

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

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

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

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

(4) *Failure to file timely.* If a broker fails to file the report required under paragraph (d)(1) of this section by March 1 of the reporting year, the broker's license is suspended by operation of law on that date. By March 31 of the reporting year, the port director will transmit written notice of the suspension to the broker by certified mail, return receipt requested, at the address reflected in Customs records. If the broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, the license 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.

(e) *Custody of records.* Upon the permanent termination of a brokerage business, written notification of the name and address of the party having legal custody of the brokerage business records 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:

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

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

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

§ 111.31 Conflict of interest.

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

(b) *Relations with former officer or employee of U.S. Government.* A broker 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 the Treasury Department or any representative of the Treasury Department 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.

(c) *Importations by broker or employee.* 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.

§ 111.32 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 Treasury Department or any representative of the Treasury Department.

§ 111.33 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.

§ 111.34 Undue influence upon Treasury Department employees.

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

§ 111.35 Acceptance of fees from attorneys.

With respect to customs transactions, a broker 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.

§ 111.36 Relations with unlicensed persons.

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

(b) *Service to others not to benefit unlicensed person.* Except as otherwise provided in paragraph (c) of this section, 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.

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

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

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

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

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

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

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

§ 111.37 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.

§ 111.38 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 Treasury Department or any representative of the Treasury Department.

§ 111.39 Advice to client.

(a) *Withheld or false information.* 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.

(b) *Error or omission by client.* If a broker knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires the client to execute, he must advise the client promptly of that noncompliance, error, or omission.

(c) *Illegal plans.* 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.

§ 111.40 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 part 174 of this chapter.

§ 111.41 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.

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

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

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

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

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

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

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

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

§ 111.43 [Reserved]

§ 111.44 [Reserved]

§ 111.45 Revocation by operation of law.

(a) *License.* If a broker that is a partnership, association, or corporation fails to have, during any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who

holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and any permits issued to the partnership, association, or corporation. The Assistant Commissioner or his designee will notify the broker in writing of an impending revocation by operation of law under this section 30 calendar days before the revocation is due to occur.

(b) *Permit.* If a broker who has been granted a permit for an additional district fails, for any continuous period of 180 days, to employ within that district (or region, as defined in § 111.1, 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 this part, result in the revocation of the permit by operation of law.

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

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

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation

§ 111.50 General.

This subpart sets forth provisions relating to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu 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 this part.

§ 111.51 Cancellation of license or permit.

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

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

§ 111.52 Voluntary suspension of license or permit.

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

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

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

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

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

(1) Involved the importation or exportation of merchandise;

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

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

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

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

(e) 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;

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

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

§ 111.54 [Reserved]

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action 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.

§ 111.56 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.

§ 111.57 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.

§ 111.58 Content of statement of charges.

Any statement of charges referred to in this subpart 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), but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed. A statement of charges which fairly informs the broker of the charges against him so that he is able to prepare his response 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.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* 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.

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

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

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

(3) Informs the broker that sections 554 and 558, Title 5, United States Code, will be applicable if formal proceedings are necessary;

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

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

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

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

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

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

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request 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.

§ 111.61 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.

§ 111.62 Contents of notice of charges.

The notice of charges must inform the broker that:

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

(b) The broker may be represented by counsel;

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

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

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

§ 111.63 Service of notice and statement of charges.

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

(1) By delivery to the broker personally;

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

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (a)(1) through (a)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

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

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any member of the partnership or to any officer of the association or corporation, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (b)(1) through (b)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

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

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* After service of the notice and statement of charges, the port director will serve upon the broker and his attorney if known, by one of the methods set forth in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing will be scheduled to take place within 30 calendar days after service of the notice of hearing.

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

§ 111.65 Extension of time for hearing.

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

§ 111.66 Failure to appear.

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

§ 111.67 Hearing.

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

(b) *Rights of the broker.* 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.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing 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.

(d) *Transcript of 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.

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

§ 111.68 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).

§ 111.69 Recommended decision by hearing officer.

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

§ 111.70 Additional submissions.

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

§ 111.71 Immaterial mistakes.

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

§ 111.72 Dismissal subject to new proceedings.

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

§ 111.73 [Reserved]

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

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base a suspension, 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 the Treasury, in the exercise of his discretion and based solely on the record, issues an order suspending a broker's license or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in § 111.53(b)(3), assessing a monetary penalty in lieu of suspension or revocation, the Assistant Commissioner 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 (see § 111.75), 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.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit, or assessing a monetary penalty, 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.

§ 111.76 Reopening the case.

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

important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application 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.

(b) *Procedure.* The Assistant Commissioner will forward the application, together with his recommendation for action thereon, to the Secretary of the Treasury. The Secretary may grant or deny the application to reopen the case and may order the taking of additional testimony before the Assistant Commissioner. The Assistant Commissioner 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 under § 111.77.

§ 111.77 Notice of vacated or modified order.

If, pursuant to § 111.76 or for any other reason, the Secretary of the Treasury issues an order vacating or modifying an earlier order under § 111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty, 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.

§ 111.78 Reprimands.

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

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation ''with prejudice'' of a license, the ex-broker may petition the Assistant Commissioner for authorization to assist, or accept employment with, a broker. 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 that loss.

§ 111.80 [Reserved]

§ 111.81 Settlement and compromise.

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

Subpart E—Monetary Penalty and Payment of Fees

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

Customs may assess a monetary penalty or penalties as follows:

(a) In the case of a broker, in an amount not to exceed an aggregate of $30,000 for one or more of the reasons set forth in §§ 111.53 (a) through (f) other than those listed in § 111.53(b)(3), and provided that no license or permit suspension or revocation proceeding has been instituted against the broker under subpart D of this part for any of the same reasons; or

(b) In the case of a person who is not a broker, in an amount not to exceed $10,000 for each transaction or violation referred to in § 111.4 and in an amount not to exceed an aggregate of $30,000 for all those transactions or violations.

§ 111.92 Notice of monetary penalty.

If assessment of a monetary penalty under § 111.91 is contemplated, Customs 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 calendar days of the date of mailing of the notice. The port director has discretion to provide additional time for good cause.

§ 111.93 Petition for relief from monetary penalty.

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

§ 111.94 Decision on monetary penalty.

Customs will follow the procedures set forth in part 171 of this chapter in considering any petition for relief filed under § 111.93. After Customs has considered the allegations or complaints set forth in the notice issued under § 111.92 and any timely response made 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, Customs will refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

§ 111.95 Supplemental petition for relief from monetary penalty.

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

§ 111.96 Fees.

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to § 111.12 must pay a fee of $200 to defray the costs to Customs in processing the application. Each individual who intends to take the written examination provided for in § 111.13 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 Customs fingerprint processing fee, the total of which must be paid to Customs

before further processing of the application will occur.

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

(c) *User fee.* Payment of an annual user fee of $125 is required for each permit, including a national permit under § 111.19(f), granted to an individual, partnership, association, or corporate broker. The user fee is payable when an initial district permit is issued concurrently with a license under § 111.19(a), or upon filing the application for the permit under § 111.19 (b) or (f), and for each subsequent calendar year at the port through which the broker was granted the permit or at the port referred to in § 111.19(f)(4) 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 § 24.22(i) of this chapter. When a broker submits an application for a permit or is issued an initial district permit under § 111.19, the full $125 user fee 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.

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

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

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

4. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

5. In § 178.2, the table is amended by revising the listing for Part 111 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	* * * * *	* *
Part 111	Issuance of customs broker licenses and permits, monitoring performance of brokers in conducting customs business, and institution of disciplinary action against brokers.	1515–0076 and 1515–0100.
*	* * * * *	* *

Raymond W. Kelly,

Commissioner of Customs.

Approved: March 6, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–6175 Filed 3–14–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Milbemycin Oxime Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for veterinary prescription use of milbemycin oxime solution to treat ear mite infestations in cats and kittens 8 weeks of age and older.

DATES: This rule is effective March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 18300, Greensboro, NC 27419–8300, filed NADA 141–163 that provides for veterinary prescription use of MILBEMITE™ Otic Solution (0.1 percent milbemycin oxime) for the treatment of ear mite (*Otodectes cynotis*) infestations in cats and kittens 8 weeks of age and older. Effectiveness is maintained throughout the life cycle of the ear mite. The NADA provides for use of one 0.25-milliliter tube per ear as a single treatment. NADA 141–163 is approved as of February 2, 2000, and the regulations are amended in 21 CFR part 524 by adding new § 524.1446 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for non-food-producing animals qualifies for 3 years of marketing exclusivity beginning February 2, 2000, because the application contains substantial evidence of effectiveness of the drug involved or any studies of animal safety required for approval of the application and conducted or sponsored by the applicant.

FDA has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.