

§ 111.58

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§ 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