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15 CFR Ch IV (1-1-04 Edition)

(D) The examiners report in a situation under paragraph (d)(2)(v)(A) of this section shall be completed and submitted to the Executive Secretary within 30 days after receipt of additional evidence or notice from the applicant that there will be none; except that, if paragraph (d)(2)(v)(B) of this section applies, the report will be submitted within 30 days of the close of the period for public comment.

(3) *Examiners reviews—cases involving manufacturing or processing activity.* Examiners shall conduct a review taking into account the factors enumerated in § 400.23, § 400.31, and other appropriate sections of this part, which shall include:

(i) Conducting or participating in hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in § 400.31;

(v) Conducting an analysis to include:

(A) An evaluation of policy considerations pursuant to §§ 400.31(b)(1)(i) and 400.31(b)(1)(ii);

(B) An evaluation of the economic factors enumerated in §§ 400.31(b)(1)(iii) and 400.31(b)(2), which shall include an evaluation of the economic impact on domestic industry, considering both producers of like products and producers of components/materials used in the manufacture/processing or assembly of the products. The evaluation will take into account such factors as market conditions, price sensitivity, degree and nature of foreign competition, effect on exports and imports, and the net effect on U.S. employment;

(vi) Conducting appropriate industry surveys when necessary; and

(vii) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 150 days of the close of the period for public comment:

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified (in writing or by phone) and

given 45 days from the date of notification in which to respond to the report and submit additional evidence pertinent to the factors considered in the report.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the FEDERAL REGISTER after completion of the review of the response. The new material will be made available for public inspection and the FEDERAL REGISTER notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(e) *Procedure—Completion of review—*

(1) The Executive Secretary will circulate the examiners report with recommendations to Board members for their review and votes (by resolution).

(2) The Treasury and Army Board members will return their votes to the Executive Secretary within 30 days, unless a formal meeting is requested (see, § 400.11(d)).

(3) The Commerce Department will complete the decision process within 15 days of receiving the votes of both other Board members, and the Executive Secretary will publish the Board decision.

(f) *Procedure—Application for minor modification of zone project.* (1) The Executive Secretary, with the concurrence of the Port Director, will make a determination in cases under § 400.26(c)

involving minor changes to zone projects that do not require a Board order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under § 400.26(c).

(2) The Port Director shall provide the decision as to concurrence within 20 days after being notified of the request or application.

[56 FR 50798, Oct. 8, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.28 Conditions, prohibitions and restrictions applicable to grants of authority.

(a) *In general.* Grants of authority issued by the Board for the establishment of zones or subzones, including

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those already issued, are subject to the Act and this part and the following general conditions or limitations:

(1) Approvals from the grantee and the Port Director, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone project; and

(2) Approval of the Board or the Commerce Department's Assistant Secretary for Import Administration pursuant to subpart D of this part is required prior to the commencement of manufacturing beyond the scope of that approved as part of the application or pursuant to reviews under this part (e.g., new end products, significant expansions of plant production capacity), and of similar changes in processing activity which involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower (actual or effective) duty rate (inverted tariff) than any of their foreign components.

(3) *Sourcing changes*—(i) *Notification requirement.* The grantee or operator of a zone or subzone shall notify the Executive Secretary when there is a change in sourcing for authorized manufacturing or processing activity which involves the use of new foreign articles subject to quotas or inverted tariffs, unless—

(A) Entries for consumption are not to be made at the lower duty rate; or

(B) The product in which the foreign articles are to be incorporated is being produced for exportation.

(ii) *Notification procedure.* Notification shall be given prior to the commencement of the activity, when possible, otherwise at the time the new foreign articles arrive in the zone or are withdrawn from inventory for use in production. Requests may be made to the Executive Secretary for authority to submit notification of sourcing changes on a quarterly federal fiscal year basis covering changes in the previous quarter.

(iii) *Reviews.* (A) Upon notification of a sourcing change under paragraph (a)(3)(i) of this section, within 30 days, the Executive Secretary will conduct a preliminary review of the changes in relation to the approved activity to determine whether they could have significant adverse effects, taking into ac-

count the factors enumerated in § 400.31(b), and will submit a report and recommendation to the Commerce Department's Assistant Secretary for Import Administration, who shall determine whether review is necessary. The procedures of § 400.32(b) shall be used in these situations when appropriate.

(B) The Board or the Commerce Department's Assistant Secretary for Import Administration may, based on public interest grounds, prohibit or restrict the use of zone procedures in regard to the change in sourcing, including requiring that items be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone.

(C) The Executive Secretary shall direct reviews necessary to ensure that activity involved in these situations continues to be in the public interest.

(4) Prior to activation of a zone, the zone grantee or operator shall obtain all necessary permits from federal, state and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.

(5) A grant of authority for a zone or a subzone shall lapse unless the zone project (in case of subzones, the subzone facility) is activated, pursuant to 19 CFR part 146, and in operation not later than five years from:

(i) A Board order (authorizing the zone or subzone) issued after November 7, 1991; or

(ii) November 7, 1991.

(6) A grant of authority approved under this subpart includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone project subject to concurrence of the Port Director.

(7) Zone grantees, operators, and users shall permit federal government officials acting in an official capacity to have access to the zone project and records during normal business hours and under other reasonable circumstances.

(8) A grant of authority may not be sold, conveyed, transferred, set over, or assigned (FTZ Act, section 17; 19 U.S.C. 81q). Private ownership of zone land and facilities is permitted provided the zone grantee retains the control necessary to implement the approved zone

project. Should title to land or facilities be transferred after a grant of authority is issued, the zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of a zone site or facility for more than its fair market value without zone status could, depending on the circumstances, be subject to section 17 of the Act.

(9) A grant of authority will not be construed to make the zone grantee automatically liable for violations by operators, users, or other parties.

(b) *Additional conditions, prohibitions and restrictions.* Other requirements, conditions or restrictions under Federal, State or local law may apply to the zone or subzone authorized by the grant of authority.

(c) *Revocation of grants of authority.*

(1) *In general.* As provided in this section, the Board can revoke in whole or in part a grant of authority for a zone or subzone whenever it determines that the zone grantee or, in the case of subzones, the subzone operator, has violated, repeatedly and willfully, the provisions of the Act.

(2) *Procedure.* When the Board has reason to believe that the conditions for revocation, as described in paragraph (a) of this section, are met, the Board will:

(i) Notify the zone or subzone grantee in writing stating the nature of the alleged violations, and provide the grantee an opportunity to request a hearing on the proposed revocation;

(ii) Conduct a hearing, if requested or otherwise if appropriate;

(iii) Make a determination on the record of the proceeding not earlier than 4 months after providing notice to the zone grantee under paragraph (b)(1) of this section; and

(iv) If the Board's determination is affirmative, publish notice of revocation of the grant of authority in the FEDERAL REGISTER.

(3) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the zone or subzone grantee may appeal an order of the Board revoking the grant of authority.

[56 FR 50798, Oct. 8, 1991; 56 FR 65833, Dec. 19, 1991, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.29 Application fees.

(a) *In general.* This section sets forth a uniform system of charges in the form of fees to recover some costs incurred by the Foreign-Trade Zones staff of the Department of Commerce in processing the applications listed in paragraph (b) of this section. The legal authority for the fees is 31 U.S.C. 9701, which provides for the collection of user fees by agencies of the Federal Government.

(b) *Uniform system of user fee charges.* The following graduated fee schedule establishes fees for certain types of applications and requests for authority based on their average processing time. Applications combining requests for more than one type of approval are subject to the fee for each category.

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| (1) Additional general-purpose zones (§ 400.24; § 400.21(a)(2)) | \$3,200 |
| (2) Special-purpose subzones (§ 400.25): | |
| (i) Non-manufacturing/processing or less than three products | 4,000 |
| (ii) Manufacturing/processing—three or more products | 6,500 |
| (3) Expansions (§ 400.26(b)) | 1,600 |

(c) Applications submitted to the Board shall include a check drawn on a national or state bank or trust company of the United States or Puerto Rico in the amount called for in paragraph (b) of this section. Uncertified checks must be acceptable for deposit by a Federal Reserve bank or branch.

(d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If applications are found deficient under § 400.27(b)(1), or withdrawn by applicants prior to formal filing, refunds will be made.

Subpart D—Manufacturing and Processing Activity—Reviews

§ 400.31 Manufacturing and processing activity; criteria.

(a) *In general.* Pursuant to section 15(c) of the Act (19 U.S.C. 81o(c)), the Board has authority to restrict or prohibit zone activity "that in its judgment is detrimental to the public interest." When evaluating zone and subzone manufacturing and processing activity, either as proposed in an application, in a request for manufacturing/