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whether the rates and charges are reasonable based on other like operations in the port of entry area, and whether there is uniform treatment under like circumstances among zone users.

(3) The Executive Secretary will review the schedule to determine whether it contains sufficient information for users concerning the operation of the facility and a statement of rates and charges as provided in paragraph (b)(2) of this section. If the Executive Secretary determines that the schedule satisfies these requirements, the Executive Secretary will notify the zone grantee, unless there is a basis for review under paragraph (b)(5) of this section. A copy of the schedule shall be available for public inspection at the offices of the zone grantee and operator. The zone grantee shall send a copy to the Port Director, who may submit comments to the Executive Secretary.

(4) Amendments to the schedule shall be prepared and submitted in the manner described in paragraphs (b)(1) through (b)(3) of this section, and listed in the concluding section of the schedule, with dates.

(5) A zone user or prospective user showing good cause may object to the zone or subzone fee on the basis that it is not reasonable, fair and uniform, by submitting to the Executive Secretary a complaint in writing with supporting information. The Executive Secretary will review the complaint and issue a report and decision, which will be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The factors considered in reviewing reasonableness and fairness, will include:

(i) The going-rates and charges for like operations in the area and the extra costs of operating a zone, including return on investment; and

(ii) In the case of subzones, the value of actual services rendered by the zone grantee or operator, and reasonable out-of-pocket expenses.

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

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

§ 400.43 Restriction and prohibition of certain zone operations.

(a) *In general.* After review, the Board may restrict or prohibit any admission of merchandise into a zone project or operation in a zone project when it determines that such activity is detrimental to the public interest, health or safety.

(b) *Initiation of review.* The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition under paragraph (a) of this section either self-initiated, or in response to a complaint made to the Board by a party directly affected by the activity in question and showing good cause.

§ 400.44 Zone-restricted merchandise.

(a) *In general.* Merchandise which has been given export status by Customs officials ("zone-restricted merchandise"—19 CFR 146.44) may be returned to the Customs Territory of the United States only when the Board determines that the return would be in the public interest. Such returns are subject to the Customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c, 4th proviso).

(b) *Criteria.* In making the determination described in paragraph (a) of this section, the Board will consider:

- (1) The intent of the parties;
- (2) Why the goods cannot be exported;
- (3) The public benefit involved in allowing their return; and
- (4) The recommendation of the Port Director.

(c) *Procedure.* (1) A request for authority to return "zone-restricted" merchandise into Customs territory shall be made to the Executive Secretary in letter form by the zone grantee or operator of the zone in which the merchandise is located, with supporting information and documentation.

(2) The Executive Secretary will investigate the request and prepare a report for the Board.

(3) The Executive Secretary may act for the Board under this section in cases involving merchandise valued at 500,000 dollars or less, provided requests

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are accompanied with a letter of concurrence from the Port Director.

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

§ 400.45 Retail trade.

(a) *In general.* Retail trade is prohibited in zones, except that sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated zone project under permits issued by the zone grantee and approved by the Board, with the further exception that no permits shall be necessary for sales involving domestic, duty-paid or duty-free food and non-alcoholic beverage products sold within the zone or subzone for consumption on premises by persons working therein. The Port Director will determine whether an activity is retail trade, subject to review by the Board when the zone grantee requests such a review with a good cause.

(b) *Procedure.* Requests for Board approval under this section shall be submitted in letter form, with supporting documentation, to the Port Director, who is authorized to act for the Board in these cases, subject to the concurrence of the Executive Secretary.

(c) *Criteria.* In evaluating requests under this section, the Port Director and the Executive Secretary will consider:

(1) Whether any public benefits would result from approval; and

(2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

[56 FR 50798, Oct. 8, 1991; 57 FR 2319, Jan. 21, 1992, as amended at 62 FR 53535, Oct. 15, 1997]

§ 400.46 Accounts, records and reports.

(a) *Zone accounts.* Zone accounts shall be maintained in accordance with generally accepted accounting principles, and in compliance with the requirements of Federal, State or local agencies having jurisdiction over the site or operation.

(b) *Records and forms.* Zone records and forms shall be prepared and maintained in accordance with the requirements of the Customs Service and the Board, and the zone grantee shall retain copies of applications it submits to the Board.

(c) *Maps and drawings.* Zone grantees or operators, and Port Directors, shall keep current layout drawings of approved sites as described in § 400.24(d)(5), showing activated portions, and a file showing required approvals. The zone grantee shall furnish necessary maps to the Port Director.

(d) *Annual reports.* (1) Zone grantees shall submit annual reports to the Board at the time and in the format prescribed by the Executive Secretary, for use by the Executive Secretary in the preparation of the Board's annual report to the Congress.

(2) The Board shall submit an annual report to the Congress.

(Approved by the Office of Management and Budget under control number 0625-0109)

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

§ 400.47 Appeals to the Board from decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

(a) *In general.* Decisions of the Assistant Secretary for Import Administration and the Executive Secretary made pursuant to §§ 400.22(d)(2)(ii), 400.32(b)(1), 400.44(c)(3), and 400.45(b)(2) may be appealed to the Board by adversely affected parties showing good cause.

(b) *Procedures.* Parties appealing a decision under paragraph (a) of this section shall submit a request for review to the Board in writing, stating the basis for the request, and attaching a copy of the decision in question, as well as supporting information and documentation. After a review, the Board will notify the complaining party of its decision in writing.

Subpart F—Notice, Hearings, Record and Information

§ 400.51 Notice and hearings.

(a) *In general.* The Executive Secretary will publish notice in the FEDERAL REGISTER inviting public comment on applications docketed for Board action (see, § 400.27(c)), and with regard to other reviews or matters considered under this part when public comment is necessary. Applicants shall