

the Federal Aviation Administration was considering an amendment to Part 75 of the Federal Aviation Regulations that would realign J-35 between Memphis, Tenn., and St. Louis, Mo.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., August 20, 1970, as hereinafter set forth.

Section 75.100 (35 F.R. 2359) is amended as follows:

In Jet Route No. 35 the phrase "Memphis, Tenn.; St. Louis, Mo.;" is deleted and the phrase "Memphis, Tenn.; Farmington, Mo.; St. Louis, Mo.;" is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348 and sec. 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on June 4, 1970.

H. B. HELSTROM,
Chief, Airspace and Air
Traffic Rules Division.

[F.R. Doc. 70-7393; Filed, June 12, 1970;
8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter X—Office of Foreign Direct Investments, Department of Commerce

PART 1000—FOREIGN DIRECT INVESTMENT REGULATIONS

Miscellaneous Amendments

EDITORIAL NOTE: The Foreign Direct Investment Regulations (the "regulations") appear in Title 15, Chapter X, Part 1000 of the Code of Federal Regulations ("CFR"). Thus, all sections of the regulations contained in CFR are preceded by the designation "1000" (e.g., § 1000.201). The "1000" prefix has, for convenience, been eliminated from the section references contained in this notice. The term "part" when used in the regulations means Part 1000 of CFR. The abbreviations "DI" and "AFN" are used in this notice to refer to "direct investor" and "affiliated foreign national."

Notice is hereby given that the Office of Foreign Direct Investments (the "Office") has made certain miscellaneous amendments to §§ 324 and 1002 of the Foreign Direct Investment Regulations (the "regulations"). Except for technical changes of a clarifying nature, these amendments are the same as those contained in the notice of proposed rule making published in the FEDERAL REGISTER on May 7, 1970 (35 F.R. 7183).

The amendments hereby adopted apply to borrowings made on or after May 1, 1970. These amendments also affect the refinancing on or after May 1, 1970 of preexisting long-term foreign borrowing.

The definition of long-term foreign borrowing contained in § 324 has been amended to provide DIs with greater flexibility in making borrowings qualifying as long-term foreign borrowing which may be offset against direct investment. The new definition of long-term foreign borrowing applies to borrowings made by a DI on or after May 1, 1970. Under former § 324(a), a borrowing could not qualify as long-term foreign borrowing unless there was a stated maturity of at least 12 months in the debt instrument or there existed express provisions for renewal, extension or continuance of the borrowing for at least 12 months and the DI reasonably expected that there would be no repayment within 12 months. This "original maturity" test has been eliminated. Long-term foreign borrowing now means any borrowing by a DI satisfying the conditions of new § 324(a)(1) (which includes the requirements of former § 324(e)) if the borrowing, including refinancing, is in fact outstanding for an uninterrupted period of not less than 12 months. Accordingly, DIs will now be able to obtain qualified long-term foreign borrowing by means of different short-term borrowings from various lenders. Also, a short-term borrowing that is renewed, extended or continued for a total period of at least 12 months will qualify as long-term foreign borrowing despite the absence of express provisions for renewal, extension or continuance. However, a borrowing that is not in fact continuously outstanding for 12 months will not qualify as a long-term foreign borrowing, notwithstanding a stated maturity of at least 12 months and notwithstanding provision for renewal, extension or continuance and the DI's expectation not to repay within 12 months.

In addition, with respect to borrowings that would be subject to the Interest Equalization Tax, the 3-year original maturity requirement imposed by former § 324(e)(3) has been abolished. See new § 324(a)(1)(iii). As a result, DIs that borrow long-term through issuance of debentures by an international finance subsidiary (see § 323) or an overseas finance subsidiary (see Subpart N) will be able to provide for sinking fund payments to redeem debentures within 3 years after the date of issuance.

The amendments are described in greater detail as follows:

1. *Long-term foreign borrowing as defined in § 324(a).* New § 324(a)(2) provides that a foreign borrowing (defined in § 324(a)(1)) by a DI will qualify as long-term foreign borrowing if the foreign borrowing (including refinancing thereof as described in § 324(b)(1)) is not repaid within 12 months after its original date. The definition of foreign borrowing contained in § 324(a)(1) incorporates the requirements formerly set forth in § 324(e), which is revoked. (As stated above, the 3-year original maturity requirement formerly contained in

§ 324(e)(3) has been eliminated for borrowings made on or after May 1, 1970.)

Borrowings made prior to May 1, 1970 will continue to be governed by the provisions of former § 324(a) and (e) as in effect on April 30, 1970. See new § 324(a)(3).

A DI may qualify a short-term foreign borrowing made on or after May 1, 1970 as long-term foreign borrowing by making another foreign borrowing simultaneously with or prior to repayment of the immediately preceding borrowing so long as the borrowing as refinanced remains continuously outstanding for at least 12 months. The individual foreign borrowings constituting qualified long-term foreign borrowing may differ as to lender, amount and maturity.

DI may take a deduction under § 306 (e) or § 313(d)(1) for allocation or expenditure of proceeds of foreign borrowing before the required 12-month period has elapsed. A DI that does so, however, should be certain of its ability to keep the borrowing outstanding for the prescribed 12 months, because deductions with respect to borrowings that subsequently fail to satisfy § 324(a)(2) are retroactively disallowed. On the other hand, failure to qualify the full principal amount of a borrowing as long-term foreign borrowing will not result in disqualification of the entire borrowing; DI will have qualified proceeds of long-term foreign borrowing in any principal amount of the borrowing ultimately satisfying the requirements of § 324(a)(2).

Example 1. On May 1, 1970, DI borrows \$1 million from a foreign bank (X) on a 3-month note with no provision for renewal or extension. The borrowing is a foreign borrowing under § 324(a)(1)(i). On August 1, 1970, DI repays the note and borrows \$1 million from another foreign bank (Y) on a 6-month note. On February 1, 1971, DI repays the loan from Y and borrows \$1 million from foreign bank (Z), which DI repays on May 1, 1971. As of May 1, 1970, DI has available proceeds of long-term foreign borrowing of \$1 million, which DI could expend or allocate in accordance with § 313(d)(1) or § 306(e), if reported in accordance with § 324(c). Under amended § 324, the initial 3-month foreign borrowing qualifies as long-term foreign borrowing because such borrowing, as refinanced by successive foreign borrowings, was continuously outstanding for 12 months.

Example 2. On May 1, 1970, DI borrows \$200,000 from a foreign bank (X) on a 6-month note. On November 1, 1970, DI repays X and purchases all of the stock of a French corporation from an unaffiliated foreign national (Y) for \$300,000, consisting of \$100,000 in cash at the closing and DI's 6-month promissory note for the balance as to which Y provides the agreement specified in § 324(a)(1)(iv). On May 1, 1971, DI makes payment on its promissory note. Under § 324, the \$200,000 borrowed on May 1, 1970, constituted proceeds of long-term foreign borrowing. The initial borrowing from the bank was not deemed repaid within 12 months because such borrowing, refinanced by the borrowing from Y, was continuously outstanding for 12 months.

Example 3. On May 1, 1970, DI makes a public offering to non-Canadian foreign nationals through its international finance

subsidiary of \$10 million principal amount of debentures maturing in 1980. Acquisition of the debentures by U.S. residents or nationals will be subject to the Interest Equalization Tax. The financing documents provide for sinking fund payments of \$1 million each on November 1, 1970 and November 1, 1971, to be used by a New York trustee to purchase an equivalent amount of the debentures for redemption. The borrowing constitutes a foreign borrowing under § 324(a)(1)(iii). To qualify the entire \$10 million as long-term foreign borrowing under § 324(a)(2), DI must refinance the November 1, 1970, sinking fund payment for an additional 6 months in accordance with § 324(b)(1), as described below in section 2 of this notice. If DI does not refinance, it will still have \$9 million of available proceeds of long-term foreign borrowing. The remaining \$1 million of proceeds is not available proceeds and, if held in the form of liquid foreign balances, is subject to § 203(c). The sinking fund payment on November 1, 1971, will not affect qualification of the portion of the borrowing that was outstanding for 12 months as of such date. Compare the former rule illustrated in 1969 General Bulletin § B324-5, Example 14.

Repayment through conversion of convertible debt instruments or accelerated repayment upon default occurring within the first 12 months of a borrowing will not prevent its qualification as long-term foreign borrowing. A conversion or accelerated repayment is deemed to occur as of the maturity specified in the debt instrument involved. See proviso in new § 324(a)(2). Transfers of capital, repayment charges under § 1003, and reductions of proceeds, on the other hand, are determined in accordance with the rules otherwise applicable to repayment of long-term foreign borrowing. See 1969 General Bulletin § B324-11.

Example 4. On July 1, 1970, DI issues \$5 million principal amount of 5-year convertible debentures through its international finance subsidiary. The entire amount of the issue is converted between February 1 and July 1, 1971. Solely for purposes of determining qualification as long-term foreign borrowing under § 324(a)(2), the conversions are deemed not to have occurred until July 1, 1975, the stated maturity of the debentures. However, transfers of capital are recognized in accordance with the usual rules for repayment upon conversion. Accordingly, DI would have a charge to its allowables under § 1003 in 1972 for the conversions that took place in 1971. See § 1002(a)(3).

Example 5. On February 1, 1971, DI makes a public offering of \$10 million principal amount of convertible debentures maturing in 1980. Sinking fund payments in the amount of \$1 million are due January 15, 1972 and January 15, 1973. In March 1971, DI expends \$6 million of the proceeds of the offering in making a transfer of capital, for which a deduction is taken under § 313(d)(1). In December 1971, the entire amount of the offering is converted. Under § 324, \$9 million is qualified as long-term foreign borrowing. One million dollars of the borrowing is deemed repaid for purposes of § 324(a)(2) on the due date of the first sinking fund payment (Jan. 15, 1972) and does not qualify under § 324 because such payment is within 12 months. Assuming no other relevant transactions, the conversion will result in a transfer of capital of \$6 million, which will constitute a repayment charge under § 1003 in 1972, and a reduction of available proceeds (\$3 million) to zero in 1971.

2. Refinancing under § 324(b)(1). Under certain circumstances, satisfaction of a foreign borrowing will not be deemed a repayment if such borrowing is refinanced in the manner provided in § 324(b)(1). The refinancing borrowing must be made either prior to or simultaneously with the repayment of the initial borrowing. A borrowing drawn down on any day shall be deemed made simultaneously with a repayment occurring on the same day. On the other hand, for example, if DI repaid a foreign borrowing on July 1, 1970, and made a new foreign borrowing in the same amount from the same lender on July 2, 1970, the second borrowing would not constitute a refinancing of the first borrowing regardless of any underlying arrangement relating to the two borrowings.

DI is required to identify borrowings being refinanced and the corresponding refinancing borrowings on its books and records kept under § 203(b). If DI repays more than one initial borrowing and makes more than one refinancing borrowing on the same day, DI must determine (by appropriate entries on its books and records) the extent to which each new borrowing refinances each of the initial borrowings.

If a refinancing borrowing is for a lesser amount than the initial borrowing, the amount of proceeds of long-term foreign borrowing as of the date of the initial borrowing may not exceed the amount so refinanced. The amount of proceeds of an initial borrowing failing to qualify as proceeds of long-term foreign borrowing is not exempt from § 203(c), and any deductions taken for expenditure or allocation of such proceeds are disallowed. If a DI treats proceeds of a foreign borrowing as proceeds of long-term foreign borrowing on its Annual Report Form FDI-102F for any year, and the borrowing does not thereafter meet the requirements of § 324(a)(2) by reason of a repayment within 12 months DI must file an amended Form FDI-102F within 30 days after such repayment showing revised direct investment and liquid foreign balance entries.

If the refinancing borrowing is for a greater amount than the initial borrowing, DI may treat the excess as an additional foreign borrowing which may qualify as separate long-term foreign borrowing; however, if the excess does not qualify as separate long-term foreign borrowing, the additional proceeds may not be treated as available proceeds.

DI may refinance a foreign borrowing by making another foreign borrowing prior to and in anticipation of refinancing the initial borrowing and at a time reasonably proximate to the date of repayment of the initial borrowing. The proceeds of the refinancing borrowing in such case may not be treated as available proceeds of long-term foreign borrowing until the refinancing occurs, but the proceeds of the refinancing borrowing are, nevertheless, exempt from the liquid foreign balance restrictions of § 203(c) if the initial borrowing as refinanced qualifies as long-term foreign borrowing under § 324(a)(2).

DI should request advice of the Office with respect to the effect of any currency revaluation or devaluation on refinancings made on or after May 1, 1970, of foreign borrowings or long-term foreign borrowings denominated in foreign currencies that have been subject to such revaluation or devaluation.

Example 6. On May 1, 1970, DI borrows \$2 million from a foreign bank for 6 months. On November 1, 1970, DI repays the borrowing in full and borrows a total of \$1,500,000 from three other foreign banks for 6 months. Under § 324, DI has made long-term foreign borrowing in the amount of \$1,500,000 as of May 1, 1970. If the unrefinanced portion (\$500,000) of the May 1 borrowing was held in the form of liquid foreign balances, DI will be required to report such amount as liquid foreign balances for purposes of § 203(c).

If DI had borrowed \$2,500,000 on November 1, 1970 for 6 months, DI would have made long-term foreign borrowing of \$2 million as of May 1, 1970. The additional \$500,000 constitutes a new foreign borrowing, which will qualify as long-term foreign borrowing if it is not repaid for 12 months, i.e., until November 1, 1971.

Example 7. On May 1, 1970, DI borrows \$1 million from foreign bank (W) for 3 months and expends the proceeds in making transfers of capital to Schedule A, for which a deduction is taken under § 313(d)(1). On August 1, 1970, DI repays the borrowing from W and borrows \$1 million from foreign bank (X) and \$1 million from foreign bank (Y) for 9 months. DI records the borrowing from X as a refinancing of the borrowing from W and the borrowing from Y as a new borrowing the proceeds of which DI expends in Schedule C, for which a deduction is taken under § 313(d)(1). On May 1, 1971, DI repays the borrowings from X and Y and borrows \$1 million from foreign bank (Z) for 3 months. DI records the borrowing from Z as a refinancing of the borrowing from Y, which is necessary to qualify the borrowing from Y under § 324(a)(2). DI also records a transfer of capital to Schedule A under § 312(a)(7) resulting from the repayment of the borrowing from X which was a refinancing of the borrowing from W. On August 1, 1971, DI repays the borrowing from Z and correctly records a transfer of capital to Schedule C under § 312(a)(7).

Example 8. On May 1, 1970, DI borrows \$1 million from a foreign national (X), who provides the agreement specified in § 324(a)(1)(iv). DI expends the proceeds in Schedule B, for which a deduction is taken under § 313(d)(1). On August 1, 1970, DI repays the borrowing from X and borrows \$2 million from foreign national (Y), who provides the agreement specified in § 324(a)(1)(iv). DI records \$1 million of the borrowing from Y as a refinancing of the borrowing from X and \$1 million as a new borrowing which DI expends in Schedule C. On August 1, 1971, DI repays \$1 million of the borrowing from Y. In this case, DI must elect whether such repayment is attributable to the part of the Y borrowing used to refinance the X borrowing (chargeable to Schedule B) or to the part constituting new borrowing (chargeable to Schedule C).

Example 9. On May 1, 1970, DI borrows \$1 million from foreign bank (X) on a 3-month note. On July 1, 1970, DI borrows \$1 million from foreign bank (Y) for 10 months in anticipation of using the proceeds to refinance the borrowing from X, which must be repaid on August 1, 1970. In this case, DI may not treat the proceeds of the borrowing from Y as available proceeds until used to repay the X borrowing; however, the proceeds

of the borrowing from Y are not subject to the limitation of § 203(e). On August 1, 1970, DI repays the borrowing from X and indicates on its books and records that the borrowing from Y is to refinance the borrowing from X as of that date. On May 1, 1971, DI repays the borrowing from Y. Accordingly, the borrowing from X is qualified as long-term foreign borrowing.

Example 10. On September 1, 1970, DI borrows \$1 million on a 12-month note from a foreign bank and allocates the proceeds under § 306(e) to Schedule C positive direct investment for 1970 and so reports on its Annual Report Form FDI-102F for such year. DI repatriates the proceeds as of December 31, 1970, and thereafter holds them in accordance with § 306(e) (2). On August 1, 1971, DI repays the borrowing and does not refinance. Since the borrowing was not outstanding for 12 months, DI's deduction under § 306(e) for 1970 is disqualified, and DI must file an amended Form FDI-102F for 1970. Such amended report will show a decrease of \$1 million in outstanding long-term foreign borrowing and in deductions for expenditure and allocation of available proceeds. If the proceeds were held in the form of liquid foreign balances, the amended report must also show a corresponding increase in such balances. If the amended Form FDI-102F for 1970 shows positive direct investment or liquid foreign balances in excess of DI's allowables, DI will be in noncompliance for 1970.

3. Related provisions. Section 1002(e) (2) has been amended to conform to the change in § 324(b) (1). Refinancing as described in § 324(b) (1) is pertinent both for determining whether a foreign borrowing qualifies under § 324(a) (2) and whether certification may be made under § 1002(b) (1). In Item 8.A of the standard certificate Form FDI-106 (i.e., in the statements that there will be refinancing of the borrowing for a period of 7 years after the date thereof) the term "refinancing" has the same meaning with respect to DI borrowings as provided in amended § 324(b) (1).

Example 11. On May 1, 1970, DI's international finance subsidiary issues to non-Canadian foreign nationals debentures in the principal amount of \$10 million, maturing on November 1, 1976. DI intends to refinance the borrowing on November 1, 1976 by making a 6-month borrowing from a foreign bank. DI may certify under § 1002(b) (1) by checking the box opposite Statement A of Item 8 on Form FDI-106 and the third reason therefor, because DI believes that the borrowing can be refinanced for a total period of 7 years.

Until the Office has issued a revised version of the standard certificate Form FDI-106, DI's filing such certificate with respect to borrowings made on or after May 1, 1970, should make the following changes: (i) In the first, second and fourth categories of Item 6, substitute the phrase "that will not be repaid within 12 months after the original date thereof" for the phrase "with an original maturity of at least 12 months or with provision for renewal, extension or continuance for a total term of at least 12 months;" and (ii) in the third category of Item 6, substitute the phrase "that will not be repaid within 12 months after the original date thereof" for the phrase "with an original maturity of at least 3 years".

4. Effect on long-term foreign borrowing made prior to May 1, 1970. A long-term foreign borrowing made prior to May 1, 1970, that satisfied the requirements of § 324 as then in effect, refinanced on or after May 1, 1970 with a foreign borrowing as defined in § 324(a) (1) shall not be deemed to have been repaid. See amended § 324(b) (1). Similarly, a certificate filed with respect to a pre-May 1, 1970 long-term foreign borrowing, as to which category 2 or 3 of Item 8.A on Form FDI-106 was checked, will be deemed a certification that DI will refinance such borrowing as provided in amended § 324(b) (1).

Example 12. On July 1, 1969, DI made a \$1 million borrowing for 2 years from foreign bank (X), which qualified as a long-term foreign borrowing under § 324 as then in effect. On July 1, 1970, DI prepays the borrowing in full and on the same day makes a \$1 million borrowing for 3 months from foreign bank (Y), which constitutes a foreign borrowing under new § 324(a) (1). Under § 324(b) (1), the long-term foreign borrowing from X is deemed not to have been repaid for purposes of the regulations because it was refinanced by a foreign borrowing.

5. Effect on 1969 General Bulletin. The 1969 General Bulletin published in the FEDERAL REGISTER on November 5, 1969 (34 F.R. 17806-68) interprets the regulations as in effect for 1969, and will continue to do so for 1970 to the extent not affected by these amendments. Material in the Bulletin relating to long-term foreign borrowing should be used carefully in view of these amendments.

The text of the amendments, effective with respect to transactions occurring on or after May 1, 1970, is as follows:

1. Paragraph (e) of § 1000.324 is revoked, and paragraphs (a) and (b) (1) of that section are revised, to read as follows:

§ 1000.324 Long-term foreign borrowing.

(a) (1) "Foreign borrowing" means a borrowing made by a direct investor on or after May 1, 1970 from any foreign national (other than an affiliated foreign national and except as provided in § 1000.1106), including, but not by way of limitation, an extension of credit by any such foreign national to the direct investor in connection with the purchase of property (including securities) by the direct investor from such foreign national: *Provided*, That (i) the borrowing is from a foreign bank; or (ii) the borrowing is from or is guaranteed by a foreign country or any agency thereof; or (iii) at the time of the borrowing, the debt obligations resulting therefrom would, if purchased by nationals or residents of the United States, be subject to the Interest Equalization Tax (Internal Revenue Code, Chapter 41, sections 4911-4931); or (iv) the lender agrees in writing that, for a period of 3 years from the original date of the borrowing or until final maturity, whichever first occurs, it will not sell or otherwise transfer the debt obligation resulting from the borrowing to a resident or national of the United States (other

than a foreign bank described in § 1000.317(b) (2)) or a Canadian person (as defined in § 1000.1101(d)) or to any person who the lender has reason to believe will sell or otherwise transfer the debt obligation to any such U.S. resident or national or Canadian person.

(2) In the case of borrowings made on or after May 1, 1970, "long-term foreign borrowing" means a foreign borrowing (as defined in subparagraph (1) of this paragraph) to the extent that such foreign borrowing is not repaid within 12 months after the original date of the borrowing: *Provided*, That solely for purposes of this subparagraph, a borrowing that is repaid in whole or in part pursuant to provisions in a debt instrument for acceleration upon default or that is repaid by reason of the conversion of convertible debt instruments shall be deemed to have been repaid in accordance with the maturities otherwise provided in such instruments.

(3) In the case of borrowings made prior to May 1, 1970, "long-term foreign borrowing" shall be as defined by paragraphs (a) and (e) of this section as in effect on April 30, 1970.

(b) (1) The refinancing in whole or in part of a foreign borrowing or a long-term foreign borrowing (by renewal, extension, or continuance of such borrowing or by making a foreign borrowing from the same or another lender) shall not, to that extent, be deemed a repayment of the borrowing or the making of a new borrowing.

(e) [Revoked]

2. Section 1000.1002(e) (2) is amended to read as follows:

§ 1000.1002 Transfers of capital in connection with repayment of borrowings.

(e) * * *

(2) The refinancing by a direct investor of a foreign borrowing or a long-term foreign borrowing in accordance with the provisions of § 1000.324(b) (1), or the refinancing of a borrowing by an affiliated foreign national (by renewal, extension or continuance of such borrowing or by making a subsequent borrowing from the same or another lender), shall not be deemed a repayment of the original borrowing or the making of a new borrowing.

3. The amendments hereby adopted shall be effective as of the date of publication in the FEDERAL REGISTER and shall apply to all affected transactions occurring on or after May 1, 1970.

(Sec. 5, Act of Oct. 6, 1917, 40 Stat. 415, as amended, 12 U.S.C. 95a; E.O. 11387, Jan. 1, 1968, 33 F.R. 47)

RICHARD P. URFER,
Director, Office of
Foreign Direct Investments.

JUNE 10, 1970.

[F.R. Doc. 70-7400; Filed, June 12, 1970; 8:47 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs

[T.D. 70-134]

MISCELLANEOUS AMENDMENTS TO CHAPTER

In the course of the general revision of the Customs Regulations now in progress, a complete rearrangement of material and parts is contemplated. In order to facilitate this undertaking, part numbers 101 through 199 have been assigned for use in the revision. In accordance with this plan, it has been decided to redesignate those parts of the Customs Regulations which have been revised or were published originally in the format of the revision.

Accordingly, Chapter I of Title 19 of the Code of Federal Regulations is amended by redesignating Parts 26, 30, 31, 32, 33, and 53 as follows:

PART 26—AVAILABILITY OF INFORMATION

1. Part 26 is redesignated as Part 103.

PART 30—FOREIGN TRADE ZONES

2. Part 30 is redesignated as Part 146.

PART 31—CUSTOMHOUSE BROKERS

3. Part 31 is redesignated as Part 111.

PART 32—TRADE FAIRS

4. Part 32 is redesignated as Part 147.

PART 33—CARNETS

5. Part 33 is redesignated as Part 114.

PART 53—ANTIDUMPING

6. Part 53 is redesignated as Part 153. The text of the redesignated parts is set forth below. Since this amendment merely redesignates existing regulatory material, notice and public procedure thereon are unnecessary, and good cause exists for making it effective on publication.

Effective date. This amendment shall be effective upon the date of publication in the FEDERAL REGISTER.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: May 28, 1970.

WILLIAM L. DICKEY,
Acting Assistant Secretary
of the Treasury.

PART 103—AVAILABILITY OF INFORMATION

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| Sec. | |
| 103.4 | Application for inspection, copying, or otherwise obtaining copy of Customs documents. |
| 103.5 | Deletion of identifying details from documents. |
| 103.6 | Public facilities for inspection and copying—Customs Reading Rooms. |
| 103.7 | Classes of Customs documents exempt from disclosure. |
| 103.8 | Information for the press and associations. |
| 103.9 | Sanction for improper disclosure by Customs officer or employee. |
| 103.10 | Statements for publication. |
| 103.11 | Testimony or the production of documents in court. |

AUTHORITY: The provisions of this Part 103 issued under 5 U.S.C. 301, 552 as amended.

§ 103.1 Scope.

This part contains the regulations governing the inspection, copying, or otherwise obtaining copies of Customs opinions, orders made in the adjudication of cases, rulings, and records. It also contains the general rules covering the release of certain information to the press and the giving of testimony or the production of Customs documents in court.

§ 103.2 Availability of Customs documents.

(a) *Administrative manuals and instructions to staff.* Except as exempted by § 103.7, all administrative staff manuals and instructions to staff that affect any member of the public and indices thereto, are available for public inspection and copying in the Bureau of Customs Reading Rooms (§ 103.6). The following are some of the administrative manuals or instructions to staff which will be available:

Catalogue of Customs Forms.
Customs Laboratory Methods.
Marking Digest.
Monthly Checklists of Bureau of Customs Circular Letters.

(b) *Opinions, orders, rulings of precedential significance, statements of policy, and interpretations.* An index to the Bureau of Customs opinions, orders made in the adjudication of cases, rulings which are relied upon, used, or cited as precedents, statements of policy and interpretations not published in the FEDERAL REGISTER, if any (except opinions, orders, rulings, statements of policy and interpretations which are exempted from the requirement for disclosure under § 103.7), is available for public reference in the Bureau of Customs Reading Rooms (§ 103.6). For the most part such opinions, orders, rulings, and interpretations are in the form of letters addressed to regional commissioners or district directors of Customs or to parties in interest, ruling upon questions arising under Customs and navigation laws, and other related laws. Abstracts of such opinions, orders, or rulings are published in the Customs Bulletin. Copies of the abstracted documents are available for public inspection and copying in the Bureau of Customs Reading Room at Washington, D.C. (§ 103.6). Copies of such opinions, orders, or rulings addressed to Customs field officers or promulgated by

Customs field officers and relied upon, used, or cited as precedents also are available in the Reading Rooms serving the respective Customs offices to which they relate (§ 103.6).

(c) *Fee for copies.* A fee for copies furnished under paragraphs (a) and (b) of this section will be charged in accordance with § 24.12 of this chapter.

§ 103.3 Other Customs records.

(a) *General.* In general, all other documents issued by the Secretary of the Treasury, the Commission of Customs, or other officials of the Treasury Department or the Bureau of Customs in matters administered by the Bureau of Customs, if sufficiently identified, and unless exempted from disclosure under § 103.7, are available for inspection. Copies thereof may be obtained by request in person, or by correspondence. (§§ 103.4 and 103.6.) However, documents contained in files on pending matters may be withheld from inspection or copying in the interest of effective operation.

(b) *Classes of records available for inspection and copying.* The following classes of records of the Bureau of Customs may be inspected and copied, upon request. Individual documents in certain records may be exempt from disclosure under § 103.7, or may be made available with identifying details deleted. The list does not purport to be exhaustive:

- (1) Records relating to—
 - (i) Comments submitted by private parties in response to a published notice of proposed rule making and of proposed changes in tariff classification, unless the submitter states clearly that the information is privileged or confidential, giving reasons therefor, and the Commissioner of Customs agrees that the information contained therein is entitled to exemption from disclosure under § 103.7.
 - (ii) Advisory committees on Customs matters.
 - (iii) Rosters of licensed customhouse brokers.
 - (iv) Names of individual licensed customhouse brokers.
 - (v) Names and titles of all Customs personnel.
 - (vi) Performance awards.
 - (vii) Suggestion awards.
 - (viii) Proceedings under the countervailing duty provision of the Tariff Act of 1930, after publication of notice or order to countervail.
 - (ix) The administration of and decisions concerning import quotas.
 - (x) Proceedings under the Antidumping Act, 1921 (19 U.S.C. 160, et seq.), as provided for in § 153.23 of this chapter.

(2) Records relating to decisions concerning—

- (i) Matters arising under the Tariff Schedules of the United States.
- (ii) Whether or not specific items, articles, or merchandise qualify for entry under the Trade Fair Act of 1959 (19 U.S.C. 1751 et seq.), and decisions concerning disposition of articles previously entered under the Trade Fair Act; Customs participation and assistance at Trade Fairs.

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|-------|------------------------------------|
| Sec. | |
| 103.1 | Scope. |
| 103.2 | Availability of Customs documents. |
| 103.3 | Other Customs records. |

(iii) The dutiable status of gifts pursuant to section 321, Tariff Act of 1930 (19 U.S.C. 1321).

(iv) The eligibility of vehicles used in international traffic pursuant to section 322(a), Tariff Act of 1930 (19 U.S.C. 1322 (a)) and other instruments of international traffic generally for duty-free entry.

(v) Prohibition from entry of merchandise produced by convict, forced, or indentured labor.

(vi) The entry or valuation of merchandise.

(vii) Liens in cases arising under section 564, Tariff Act of 1930 (19 U.S.C. 1564).

(viii) Bills of lading, carriers' certificates, or rights in respect of merchandise, cases arising under section 483 or 484 (c), (h), or (i), Tariff Act of 1930 (19 U.S.C. 1483, 1484).

(ix) Trademarks, trade names, copyrights, patents, and related matters.

(x) Country of origin marking requirements of section 304, Tariff Act of 1930 (19 U.S.C. 1304), as amended.

(xi) Psittacine or other birds, bird feathers, bird skins, monkeys, dogs, cats, and other animals and pets prohibited entry or subject to restrictions and controls on entry.

(xii) Entry of articles admitted temporarily free of duty under bond as provided in Schedule 8, Part 5C, Tariff Schedules of the United States.

(xiii) Tonnage taxes (regular, special, and discriminatory) and light money.

(xiv) The entry, clearance, and use of vessels and permits for them to proceed coastwise.

(xv) The regulation of vessels in the foreign, coastal, fishing, and other trades of the United States.

(xvi) The limitation of the use of foreign vessels in waters under the jurisdiction of the United States.

(xvii) Salvage operations by vessels within the territorial waters of the United States.

(xviii) The assessment and collection of duties on equipment or repairs of vessels or aircraft under section 466, Tariff Act of 1930 (19 U.S.C. 257, 258) and decisions regarding the remission or refund of such duties.

(xix) Requirements for entry, clearance, and use of aircraft.

(xx) The arrival or departure and the use of motor vehicles, railway trains, or other vehicles.

(xxi) Adequacy of premises at Customs bonded warehouses and control of the merchandise stored therein.

(xxii) Use of protective Customs seals and labels.

§ 103.4 Application for inspection, copying, or otherwise obtaining copy of Customs documents.

(a) *Where to apply.* Permission to inspect or to obtain copies of Customs documents which are not exempted from disclosure under § 103.7 may be obtained by application in person or by correspondence. Application in person may be made at the Bureau of Customs Reading Rooms (§ 103.6); application in writing should be addressed to:

Assistant Commissioner of Customs, Office of Regulations and Rulings, Bureau of Customs, 2100 K Street NW., Washington, D.C. 20226.

or if a record desired to be inspected is in a Customs regional or district office the application shall be addressed to the Regional Commissioner or District Director of Customs.

(b) *Description of document requested.* An application to inspect or copy a document must provide such a reasonably specific description of the particular document sought as will reasonably enable the record clerk to locate it. The burden of identification is that of the applicant.

(c) *Processing of application.* Upon receipt of a request to inspect, copy, or purchase a copy of any Customs document, the applicant will be advised whether the information, or any part thereof, may be released to the applicant, with or without the deletion of identifying details. If it is concluded that the document or any part thereof may be released to the applicant he will be advised of the cost of securing the information or a copy of the document and the manner of making payment. Upon receipt of this amount, or of a guarantee of payment, the information or copy will be made available.

(d) *Grant of request.* If the document may be inspected, copied, or otherwise released the applicant shall be so advised. If it is decided that the document may be released, but that certain identifying details should be deleted to prevent the disclosure of information exempted from disclosure under § 103.7, the applicant shall be advised and the reason for the deletion shall be stated (§ 103.5). In either case the applicant will be advised of the fee charged for securing the files and cost of copying the material (§ 24.12 of this chapter).

(e) *Denial of request.* Any decision that a document should not be inspected, copied, or otherwise released, shall be reviewed by the Commissioner of Customs, except cases clearly covered by a previous decision made by the Commissioner. The Commissioner of Customs will promptly advise the applicant of the result of his review. If the Commissioner finds that the request should be denied such denial will state the reason therefor.

§ 103.5 Deletion of identifying details from documents.

(a) *General.* Where an opinion, order, ruling, or other Customs document contains information of the type described in paragraph (b) of this section but the actual opinion, order, ruling, or substance of the document can be separated from the exempted matter, partial copies containing only such parts as can properly be disclosed will be furnished insofar as practicable.

(b) *Reasons for deletion.* Ordinarily, information will be deleted which:

(1) Relates to details of business transactions of private parties the disclosure of which may be detrimental to the interests of the parties involved.

(EXAMPLE: The name of the importer or exporter, or other member of the public di-

rectly concerned, generally will be deleted from any document if its inclusion in the document would disclose trade secrets, the operations of his business or other commercial or financial information.)

(2) Was submitted in reliance upon a long-established assurance that such information will be kept in confidence and used only for official purposes, or

(3) Is prohibited from disclosure by law.

(c) *Decision to delete.* Any document from which identifying details have been deleted must be accompanied by a statement in writing expressing the reason for the deletion.

§ 103.6 Public facilities for inspection and copying—Customs Reading Rooms.

Facilities for locating, inspecting, and copying Bureau of Customs indexed rulings will be located in the Bureau of Customs Reading Rooms. The Reading Room in the Bureau of Customs at Washington, D.C., is located at:

2100 K Street NW., Washington, D.C. 20226.

The Reading Rooms outside the Washington area are located at the headquarters offices for each Customs region:

Region I—Boston, 24th Floor, John F. Kennedy Building, Government Center, Boston, Mass. 02203.

Region II—New York, 220 Customhouse, Bowling Green, New York, N.Y. 10004.

Region III—Baltimore, 40 South Gay Street, U.S. Customhouse, Baltimore, Md. 21202.

Region IV—Miami, 51 Southwest First Avenue, Room 1804, Miami, Fla. 33130.

Region V—New Orleans, Room 13036, Federal Building, 701 Loyola Avenue, New Orleans, La. 70113.

Region VI—Houston, Room 7208, New Federal Building, 515 Rusk Avenue, Post Office Box 61149, Houston, Tex. 77061.

Region VII—Los Angeles, New Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

Region VIII—San Francisco, New Federal Building, 450 Golden Gate Avenue, Box 36117, San Francisco Calif. 94102.

Region IX—Chicago, 623 South Wabash Avenue, Chicago, Ill. 60605.

The Reading Rooms are open to the public from 9 a.m. to 4:30 p.m. unless other hours are posted, Monday through Friday of each week, exclusive of national holidays. A fee for copies of requested material will be charged. (§ 24.12 of this chapter.)

§ 103.7 Classes of Customs documents exempt from disclosure.

Bureau of Customs opinions, orders, rulings, statements of policy, interpretations, and records generally may be inspected, copied or otherwise obtained unless they relate to the following:

(a) Matters specifically required by Executive order to be kept secret in the interest of national defense or foreign policy. This includes:

(1) Special category export shipments the disclosure of which might endanger the security of the United States. Such restriction upon disclosure is in effect during any period covered by a finding by the President under section 1 of the Act of August 9, 1950, as amended (50 U.S.C. 191). Such a finding was made by Executive Order No. 10173, October 18, 1950

(3 CFR 1949-1953 Comp. p. 356; 15 F.R. 7005).

(2) Material classified as "Top Secret," "Secret," or "Confidential" under Executive Order No. 10501, of November 5, 1953, 18 F.R. 7049, as amended.

(b) Information relating solely to the internal personnel rules and practices. This includes guidelines, operational rules, and procedural manuals for the guidance of Customs officers and employees which relate to such functions as investigation, inspection, auditing, and other functions of a like nature. Examples of this type of information are:

Audit Manual.
Audit Standards and Techniques Manual.
Customs Accounting Manual.
Emergency Planning Manual.
Enforcement and Technical Investigation Manuals.
Inspectors' Manual.
Sampling Guide.

(c) Information specifically exempted from disclosure by statute. This includes information pertaining to trade secrets, business operations, and commercial or financial information of importers, exporters, and other persons who transact Customs business (18 U.S.C. 1905).

(d) Trade secrets and commercial or financial information obtained from any person and privileged or confidential. The information contained in invoices, entries, vessels' manifests, export declarations, official reports of investigating officers, records pertaining to the licensing of and the revocation or suspension of a license of a customhouse broker, and other papers or documents filed with Customs officers for any official purpose which contain trade secrets, or commercial or financial information, is exempt from disclosure, except for the purpose for which such documents are required to be filed. However, information contained in vessels' manifests and summary statistical reports of importations and exportations are available for inspection and copying by certain representatives of the press to the extent permitted by § 103.8. Further, importers and exporters or their duly authorized brokers, attorneys, or agents, may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest. Information obtained in connection with investigations under the Anti-dumping Act, 1921 (19 U.S.C. 160 et seq.), is available for disclosure under the provisions of § 153.23 of this chapter.

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation. This information includes, but is not limited to, memoranda expressing the views of subordinates, comments endorsing or dissenting from conclusions reached in official rulings, work papers,

and other informal expressions of view, certain documents addressed to other Government agencies (unless such documents are released for disclosure by the recipient).

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. These include, but are not limited to, leave records of individual employees, personnel investigative records, personnel security records, personnel financial statements submitted in connection with conflicts of interest and other records which relate to the private, personal, financial, or business affairs of an individual employee or members of his family, unless the person concerned or his duly authorized agent authorizes disclosure, or unless otherwise made available in this part.

(g) Investigatory files compiled for law enforcement purposes except to the extent that they are available by law to a private party. Some examples of records included in this category are investigative reports relating to: The value and classification for tariff purposes of imported merchandise; suspected violations of section 592 of the Tariff Act of 1930 (19 U.S.C. 1952); allegations of the importation of merchandise into the United States in contravention of the countervailing duty provision (19 U.S.C. 1303); the importation of certain books, pictures, or other articles in contravention of the so-called "obscenity statute" (19 U.S.C. 1305). This listing is intended to be illustrative only, and is not intended to be, and is not, an exhaustive listing.

§ 103.8 Information for the press and associations.

(a) *Disclosure to members of the press.* Although the following classes of information are exempt from the requirement of disclosure under the provision of § 103.7, accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications may be permitted to examine vessels' manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data not of a confidential nature, subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the general character, destination, and quantity (or value) of the commodity, name of vessel, and country of destination may be copied and published. Where the manifests show both quantity and value, either may be copied and published, but not both in any instance.

(2) Commercial or financial information, such as the names of the shippers and consignees, marks and numbers, and both quantities and values of commodities shall not be copied from outward manifests or any other papers.

(3) Of the information shown on inward manifests, only the name of the consignee, the general character of the commodity, the quantity (or value), name of vessel, and the country of dispatch shall be copied and published. When an inward manifest shows both

quantity and value of the commodity, either may be copied and published, but not both in any instance.

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to members of associations.* Accredited representatives of regularly established associations, whether incorporated or not, shall be permitted to obtain information from, but not examine, vessels' manifests for the purpose of securing data relative to merchandise of the kind or class in the importation of which the association is interested, subject to the foregoing rules, but this authority does not extend to attorneys, agents, or customhouse brokers acting on behalf of individual importers.

(d) *Suspension of disclosure.* (1) Except as provided in § 103.11, upon written application of a consignee or importer access to the name of such consignee or importer on a manifest will thereafter be refused.

(2) If any individual shall abuse the privilege granted him of examining inward and outward manifest or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

§ 103.9 Sanction for improper disclosure by Customs officer or employee.

The disclosure of the confidential information contained in Customs documents or the disclosure to one importer or exporter of information relative to the business of another importer or exporter acquired by any Customs officer or employee by reason of his official employment shall constitute grounds for dismissal from the Service, suspension, or other disciplinary action, and if done for a valuable consideration will subject such person to criminal prosecution.

§ 103.10 Statements for publication.

District directors of Customs and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until Customs action is completed. The district director of Customs or other authorized Customs officer, may make public information concerning any case involving an offense against the Customs and navigation laws after completion of the investigation and the case has been closed by final Customs action, such as settlement of a civil liability or reference of a case to the U.S. attorney for handling. Field officers shall exercise proper restraint and judgment in disclosing local transactions.

§ 103.11 Testimony or the production of documents in court.

(a) *General.* In answer to a legal process or demand from a court issued in behalf of the United States or an officer thereof, Customs officers or employees shall produce in court in Customs custody, and may testify with respect to,

any official Customs papers or documents demanded. When any such process or demand is issued in behalf of a party other than the United States, it shall be complied with only to the extent that the party in whose behalf the paper or documents are demanded is permitted under these regulations to inspect or copy such papers or documents. Exceptions to this rule shall be made only on the written order of the Commissioner of Customs. When requested, copies may be authenticated pursuant to the provisions of section 1733, title 28, United States Code.

(b) *Request of Customs Court.* Except as stated in § 103.7, nothing in this part shall preclude Customs officers or employees from producing in the U.S. Customs Court in Customs custody any Customs papers or documents or from testifying or otherwise rendering all proper assistance to the court in proceedings before it when request therefor is made by the court; nor from furnishing to counsel for the United States information in, and permitting him to inspect, Customs papers and documents requested by him, nor from testifying on behalf of the United States or otherwise assisting him in the performance of his official duties.

(c) *Subpoena or Subpoena duces tecum.* Upon being served with a subpoena or subpoena duces tecum from a court or officer thereof calling for testimony or the production of papers or documents in cases not covered by paragraphs (a) or (b) of this section, or in cases where the testimony or documents desired would disclose matters the disclosure of which would be contrary to these regulations, the matter shall be referred to the Bureau for instructions, with a report which shall specifically describe the testimony or documents desired; shall set forth the view of the submitting officer whether the giving of the testimony or the furnishing of the documents would disclose information not permitted to be disclosed under these regulations; and shall state in what particulars, if any, the disclosure of the information and work incidental thereto would interfere with the orderly conduct of Customs business. If instructions are not received prior to the date set for appearance or production of documents, or if the Bureau declines to permit their production or the disclosure of the information contained therein or otherwise within the knowledge of the Customs officer or employee whose testimony is requested, the Customs officer or employee shall appear in court or before the officer concerned in answer to the subpoena and respectfully decline to produce the documents called for or to testify, except to the extent specifically authorized elsewhere in this section, citing this regulation as authority for his refusal. If the matter has not already been referred to the Bureau for instructions, the Customs officer or employee shall advise the court or officer that it will be so referred.

PART 111—CUSTOMHOUSE BROKERS

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AUTHORITY: The provisions of this Part 111 issued under R.S. 251, secs. 624, 641, 46 Stat. 759, as amended, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1624, 1641.

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of persons desiring to transact business as customhouse brokers, the qualifications required of applicants, and the procedure for applying for licenses. This part also prescribes the duties and responsibilities of customhouse brokers, the grounds for revocation or suspension of licenses, and the procedures for such revocation or suspension.

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms shall have the meanings indicated: (a) *Person.* "Person" includes individuals, partnerships, associations, and corporations.

(b) *Customhouse broker.* "Customhouse broker" means a person who is licensed under this part to transact Customs business on behalf of others.

(c) *Broker.* "Broker" means "customhouse broker."

(d) *Treasury Department or any representative thereof.* "Treasury Department or any representative thereof" includes any office, officer, or employee of the Treasury Department, wherever located.

(e) *Books and papers.* "Books and papers" includes all books, accounts, records, papers, documents, data processing materials (other than cards, magnetic tapes and discs, and incidental intermediate forms temporary in nature), and correspondence of a broker relating to his Customs business.

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

(g) *Officer of an association or corporation.* "Officer 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, the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

§ 111.2 License required.

A person shall obtain the license provided for in this part in order to transact the business of a broker. A separate license is required for each Customs district.

§ 111.3 Transactions for which license is not required.

A license is not required to engage in the following transactions with the Treasury Department or any representative thereof:

(a) *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.

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

(1) *Authorized to sign Customs documents.* The broker has authorized the employee to sign Customs documents on his behalf, and has filed a power of attorney for that purpose with the district director and at each port within the district where the broker wishes the employee to sign Customs documents. Only employees who are residents of the United States may be authorized to sign Customs documents. Or,

(2) *Authorized to transact other business.* The broker has filed with the district director a statement identifying the employee as authorized to transact business on his behalf. Such statement shall also be filed at each port within the district where the broker wishes the employee to act for him.

Where the employee is given authority under either (1) or (2) of this paragraph, the broker must promptly give notice of the withdrawal of authority of any such employee and must exercise such supervision of his employees as will insure proper conduct on the part of the employees in the transaction of Customs business. Each broker will be held strictly responsible for the acts or omissions of his employees within the scope of their employment, and for acts or omissions of such employees which, in the exercise of reasonable care and diligence, the broker should have foreseen.

(c) *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.

(d) *Transportation in bond by common carrier.* A common carrier transporting merchandise for another may make entry for such merchandise for transportation in bond without being licensed as a broker.

§ 111.4 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 thereof on any matter concerning such merchandise except that he shall not represent the client before Customs officers in a Customs district in which he is not licensed.

(b) *Agencies not within the Treasury Department.* 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.

§ 111.5 Prior licenses.

Licenses issued prior to the effective date of the regulations in this part shall continue in force and effect, subject to cancellation, suspension or revocation as provided in Subpart D of this part.

Subpart B—Procedure to Obtain License

§ 111.11 Basic requirements.

(a) *Individual.* An individual must:

- (1) Be a citizen of the United States, but not an officer or employee of the United States;
- (2) Be at least 21 years of age;
- (3) Be of good moral character; and
- (4) Establish through an examination that he has sufficient knowledge of Customs and related laws, regulations, and procedures to render valuable service to importers and exporters. Satisfactory knowledge is established in part by attaining a grade of at least 75 percent on the examination.

(b) *Partnership.* A partnership must:

- (1) Have two members of the partnership who are licensed brokers, and
- (2) Establish that it will have an office in which its Customs transactions will be performed by a licensed member of the partnership, or a qualified employee under the responsible supervision and control of the licensed members.

(c) *Association or corporation.* An association or corporation must:

- (1) Be empowered under its articles of association or articles of incorporation to transact customhouse brokerage business;
- (2) Have at least two officers who are licensed brokers; and
- (3) Establish that it will have an office in which its Customs transactions will be performed by a licensed officer or a qualified employee under the responsible supervision and control of the licensed officers.

(d) *Special examination.* The Commissioner may authorize a special examination for an applicant when a partnership, association, or corporation has less than two licensed members or officers. He may also authorize a special examination for one who will be authorized to continue the business of an individual broker. Application and a statement of the reasons for the necessity of a special examination shall be filed with the district director in accordance with § 111.12(a).

(e) *Failure to appear for examination.* If the applicant fails to appear for a scheduled examination without notification in advance or explanation of the circumstances which made it impossible or impracticable to give such notification, the district director shall notify him that the application is denied because of failure to appear for examination to establish his qualifications for a license. The district director shall refund to the applicant one-half of the application fee.

§ 111.12 Application for license.

(a) *Submission of application.* An application for a broker's license shall be submitted in duplicate to the district director of the district in which the applicant intends to do business. The application shall be under oath and executed on Customs Form 3123 (individual) or Customs Form 3125 (partnership, association, or corporation). The application shall be accompanied by the fee of \$150 prescribed in § 24.12 of this chapter and one copy of the 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 within the district, evidence of the applicant's authority to use the name in each such State must accompany the application. An application for an individual license must be submitted not later than 30 days before the scheduled examination which the applicant wishes to take.

(b) *Posting notice of application.* Upon receipt of the application the district director shall post a notice that the application has been filed. The notice shall be posted conspicuously for at least 2 weeks in the customhouse at the headquarters port and at the subports where the applicant proposes to maintain an office. The notice shall give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, the names of the members or officers thereof who are licensed as brokers. The notice shall invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* If the applicant advises before the date of an examination that he wishes to withdraw his application, the application shall be treated as withdrawn and the district director shall refund the application fee to the applicant.

§ 111.13 Examination of applicant for individual license.

(a) *Examination.* The written examination shall be designed to determine the applicant's knowledge of Customs and related laws, regulations, and procedures and his fitness to render valuable service to importers and exporters. The examination will be prepared and graded in the Bureau headquarters.

(b) *Date and place of examination.* Examinations will be given at each district office on the first Monday in February, June, and October. The district director shall give the applicant notice of the exact time and place where the examination will be given.

(c) *Special examination.* The Commissioner may authorize a special examination for an applicant when a partnership, association, or corporation has less than two licensed members or officers. He may also authorize a special examination for one who will be authorized to continue the business of an individual broker. Application and a statement of the reasons for the necessity of a special examination shall be filed with the district director in accordance with § 111.12(a).

(d) *Failure to appear for examination.* If the applicant fails to appear for a scheduled examination without notification in advance or explanation of the circumstances which made it impossible or impracticable to give such notification, the district director shall notify him that the application is denied because of failure to appear for examination to establish his qualifications for a license. The district director shall refund to the applicant one-half of the application fee.

(e) *Failure to pass examination.* If the applicant does not obtain a grade of at least 75 percent, the Commissioner will notify him and the district director that the application for a license is denied because of failure to pass the examination. The district director shall refund to the applicant one-half of the application fee.

(f) *Passing grade on examination.* If the applicant obtains a passing grade, the Commissioner will return the application to the district director for further processing of the application.

§ 111.14 Investigation of the applicant.

(a) *Individual license.*—(1) *Applicant passing examination.* If the applicant passes the examination, the district director shall refer the application to the special agent in charge for an investigation and report.

(2) *Applicant licensed in one district.* If the applicant has a license in one district, the district director shall immediately refer the application to the special agent in charge for an investigation and report.

(b) *Partnership, association, or corporation license.* The district director shall immediately refer an application for a partnership, association, or corporation license to the special agent in charge for investigation and report.

(c) *Scope of investigation.* The investigation shall ascertain facts relevant to the question whether the applicant is qualified and shall 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.

(d) *Report and return of the application.* The special agent in charge shall return the application with his report and recommendation to the district director who requested the investigation. The district director shall forward the originals of the application and the agent's report to the Commissioner. The district director shall also submit his recommendation for action on the application.

(e) *Additional investigation or examination.* The Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The 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 Commissioner for the purpose of undergoing additional written or oral examination into the applicant's qualifications for a license.

§ 111.15 Issuance of license.

If the Commissioner finds that the applicant is qualified, 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 is-

sued 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 shall be forwarded to the district director, who shall deliver it to the licensee. The district director shall maintain an alphabetical list of brokers licensed in his district which list shall be available to the public.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Commissioner determines that the application for a license should be denied for any reason, notice of denial shall be given by him to the applicant and to the director of the district in which the application was filed. The notice of denial shall state the reasons why the license was not issued.

(b) *Grounds for denial.* The causes sufficient to justify denial of an application for a license shall 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;

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

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

§ 111.17 Review of the denial of a license.

(a) *By the Commissioner.* At the written request of the applicant, the Commissioner may allow a further opportunity to the applicant to present information or arguments in support of his application by personal appearance or in writing, or both.

(b) *By the Secretary.* A decision of the Commissioner denying a license, upon the written request of the applicant, will be submitted to the Secretary of the Treasury for such review as the Secretary shall deem appropriate.

§ 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 of this part.

§ 111.19 Licenses for additional districts.

A license authorizes the transaction of Customs business only in the district for which issued. Licenses for additional districts may be obtained by:

(a) Filing with the district director of the district for which a license is desired the application prescribed in § 111.12(a). Upon receipt of the application, the district director shall follow the procedure set forth in §§ 111.12(b) and 111.14;

(b) Submitting the fee of \$150 with the application; and

(c) Establishing upon investigation that the applicant is prepared and qual-

ified to render efficient service in the additional district. This includes a showing that the licensed members of a partnership or the licensed officers of an association or corporation will exercise responsible supervision and control of the proposed office. The licensed members of a partnership and the licensed officers of an association or corporation are not required to be licensed as individuals in the district for which the partnership, association or corporation is applying for an additional license. An individual licensed as a broker in one district may or may not, at the discretion of the Commissioner, be required to take another examination when applying for an additional license.

Subpart C—Duties and Responsibilities of Customhouse Brokers

§ 111.21 Record of Transactions.

Each broker shall keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He shall keep and maintain on file a copy of each entry made by him with all supporting papers, except those documents he is required to file with Customs, and copies of all his correspondence and other papers relating to his Customs business.

§ 111.22 Additional record of transactions.

(a) *Additional requirement.* In addition to the regular records of account required by § 111.21 of this part, each broker shall keep current a record of all of his Customs transactions on Customs Form 3079 (Record of Transactions of Licensed Customhouse Broker) in accordance with the instructions printed on the form unless an exemption has been granted under the authority of paragraph (b) of this section. If a transaction has been handled only in part by the broker, he shall fill in only the appropriate parts of the form.

(b) *Exemption.* If the information required on Customs Form 3079 is disclosed in other books and records regularly kept and maintained by a broker and if such information is in a systematic, convenient, and readily available form so that Customs field auditors can make an effective and complete inspection thereof, the district director with the concurrence of the director, field audit, may in writing exempt the broker from the requirements of paragraph (a) of this section. A written request for the exemption shall be addressed to the district director and shall include:

(1) A statement of facts as to the records kept; and

(2) An agreement that, if the exemption is granted, no change in the system of books and records or the manner of keeping and maintaining them will be made without prior written approval of the district director and concurrence in the change by the director, field audit.

(c) *Withdrawal of exemption.* Whenever an audit by a Customs field auditor indicates that a broker to whom an exemption has been granted as provided for in paragraph (b) of this section is not

keeping and maintaining records in conformity with the requirements of paragraph (b) of this section, the exemption of such broker shall be withdrawn by notice in writing from the district director, and such broker shall thereafter keep and maintain records on Customs Form 3079 as required by paragraph (a) of this section.

§ 111.23 Retention of books and papers.

(a) *Period and place of retention.* The books and papers as defined in § 111.1(e) and required by §§ 111.21 and 111.22 to be kept by a broker shall be retained within the Customs district to which they relate for at least 6 years after the date of entry. When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 6 years from the date of withdrawal.

(b) *Microfilming of books and papers.* A customhouse broker may, with the approval of the district director of Customs of the district in which he is licensed, record on microfilm any books and papers, other than books of account, required to be retained under the provisions of paragraph (a) of this section which are not less than 3 years old. A request for approval of the district director shall be accompanied by a description of the system of filing and indexing the spools of microfilm. Retention and availability of the microfilm during the remainder of the period of retention shall satisfy the requirements of paragraph (a) of this section.

§ 111.24 Books and papers confidential.

The books and papers referred to in this part and pertaining to the business of the clients serviced by the broker shall be considered confidential, and the broker shall not disclose their contents or any information connected therewith to any persons other than such clients and the director, field audit, the special agent in charge, or other duly accredited agent of the United States except on subpoena by a court of competent jurisdiction.

§ 111.25 Books and papers shall be available.

During the period of retention, the broker shall maintain his books and papers in such manner that they may readily be examined, and they shall be made available for inspection, copying, reproduction or other official use by Customs field auditors or special agents on demand within the period of retention or within any longer period of time during which they remain in the possession of the broker.

§ 111.26 Interference with examination of books and papers.

A broker shall not refuse access to, conceal, remove, or destroy the whole or any part of any book or paper 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 thereof, nor shall he otherwise interfere, or attempt to inter-

fere, with any proper and lawful efforts to procure or reproduce information contained in such book or paper.

§ 111.27 Audit or inspection of books and papers.

The director, field audit, shall make such audit or inspection of the books and papers required by this subpart to be kept and maintained by a broker as may be necessary to enable the district director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part. Furthermore, the director, field audit, and/or the special agent in charge, may inspect such books and papers to obtain information regarding specific Customs transactions for the purpose of protecting importers or the revenue of the United States. The director, field audit, and the special agent in charge conducting an audit or inspection under this section shall submit a report of the findings to the Commissioner and the district director.

§ 111.28 Responsible supervision.

Every licensed member of a partnership and every licensed officer of an association or corporation, which is licensed as a broker, shall exercise responsible supervision and control over the transaction of the customhouse business of such partnership, association or corporation.

§ 111.29 Diligence in correspondence and paying monies.

Each broker shall exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of documents relating to any matter handled by him as a broker. Funds received by a broker from a client for payment of duty, tax, or other debt or obligation owing to the Government shall be paid to the Government within 30 days from date of receipt or date due, whichever is later. Each broker shall within 60 days account to clients for funds received for them from the Government, or received from a client in excess of the governmental or other charges properly payable in response to the client's business. He shall account to all other persons within 30 days of receipt for all funds advanced by a client for payment of any charges, debts, or obligations due such other persons.

§ 111.30 Change of business address, organization, or name.

(a) *Business address.* When a broker changes his business address, he shall immediately give written notice of his new address to the Commissioner and the district director for the district in which the change of address occurs.

(b) *Organization.* A partnership, association, or corporation shall immediately notify the Commissioner and the district director of the districts where licensed of:

(1) The date on which a licensed member or officer who was one of the qualifying members or officers ceases to

be a member or officer and the name of the broker who will succeed him as a qualifying member or officer; or

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation.

(c) *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 is licensed and is authorized by State law to do so, shall submit evidence of his authority to use such name. The name shall not be used until the approval of the Commissioner has been received. In the case of a trade or fictitious name, the broker shall affix his own name in conjunction with each signature of the trade or fictitious name when signing Customs documents.

§ 111.31 Conflict of interest.

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

(b) *Assisting former officer or employee of U.S. Government.* A broker shall 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 thereof to which matter such person gave personal consideration or gained personal knowledge of the facts or issues thereof while in the Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself shall 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 shall apply if a broker's employee is an importer.

§ 111.32 False information.

A broker shall not file or procure or assist in the filing of any claim, or of any document, affidavit, or other paper, known by such broker to be false; nor shall he 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 thereof.

§ 111.33 Government records.

A broker shall 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 Government employees.

A broker shall 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 thereof by the use of a threat, false accusation, duress, or 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 merchandise imported after March 15, 1962, a broker shall 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) *Service to others not to benefit unlicensed person.* A broker shall 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 except as provided in paragraph (b) of this section. 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 a copy of his bill for services rendered, unless the merchandise was purchased for delivery on an all-free basis (duty and brokerage charges paid by the unlicensed person).

(b) *Employment by a freight forwarder.* A broker may compensate a freight forwarder for services rendered in obtaining brokerage business, providing:

(1) The importer 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:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, 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 thereto, shall forbid or prevent direct communication between the importer and the broker; and

(4) In making the agreement and in all actions taken pursuant thereto, the broker shall be subject to all other provisions of these regulations.

§ 111.37 Misuse of license.

A broker shall not permit his license or his name to be used by or for any

unlicensed person, other than his own employees authorized to act for him, or by or for any broker whose license is under suspension in the solicitation, promotion or performance of any Customs business or transaction.

§ 111.38 False representation to procure employment.

A broker shall not knowingly use false or misleading representations to procure employment in any Customs matter, nor shall he represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative thereof.

§ 111.39 Advice to client.

(a) *Withholding or false information.* A broker shall not withhold information relative to any Customs business from a client who is entitled to the information. He shall exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he shall not knowingly impart to a client false information relative to any Customs business.

(b) *Error or omission by client.* A broker who 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 such client to execute, shall advise his client promptly of the fact of such noncompliance, error, or omission.

(c) *Illegal plans.* A broker shall not suggest to a client or a prospective client a plan known to be illegal for evading payment of any duty, tax, or other debt or obligation owing to the Government.

§ 111.40 Appeals to reappraisal and protests.

A broker shall not act in behalf of any person, or attempt to represent any person, in respect of any appeal for reappraisal or protest, unless he shall previously have been specifically or generally authorized to do so by such person.

§ 111.41 Endorsement of checks.

A broker shall not endorse or accept without authority of his client any Government draft, check, or warrant drawn to the order of such client.

§ 111.42 Relations with person who is notoriously disreputable or whose license has been suspended, canceled "with prejudice," or revoked.

A broker shall not knowingly and directly or indirectly:

(a) Accept employment to effect a Customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose license as broker shall have been revoked for any cause, or whose license is under suspension, or who has had his license canceled "with prejudice;"

(b) Assist the furtherance of any Customs business or transactions of such person;

(c) Employ, or accept such assistance from, any such person, without the approval of the Commissioner (see § 111.79);

(d) Share fees with any such person, or

(e) Permit any such person directly or indirectly to participate, whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker. Nothing herein shall be deemed to prohibit any broker from acting as a broker for any bona fide importer or exporter, notwithstanding such importer or exporter may have had his license as a customhouse broker revoked or suspended, or may be notoriously disreputable.

§ 111.43 Display of license.

Each broker shall display his license in the principal office within the district so that it may be seen by anyone transacting business in the office. Photocopies of the license shall likewise be posted in each branch office within the district.

Subpart D—Cancellation, Suspension, or Revocation of License

§ 111.51 Cancellation of license.

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

(b) *With prejudice.* The Commissioner may cancel a broker's license "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 had been revoked for cause by the Secretary.

§ 111.52 Revocation by operation of law.

A license granted to a partnership, association, or corporation shall be deemed revoked by operation of law, in accordance with the provisions of section 641(a), Tariff Act of 1930, as amended (19 U.S.C. 1641(a)), if for any continuous period of more than 60 days there are not at least two members of such partnership or two officers of such association or corporation who are licensed to transact business as a customhouse broker. When a license is revoked by operation of law, the Commissioner will notify the partnership, association, or corporation of the revocation. A copy of such notice will be sent to the district director.

§ 111.53 Grounds for suspension or revocation.

Failure or refusal to comply with the duties, responsibilities, or requirements specified in Subpart C or elsewhere in this part relating to brokers may be deemed grounds for suspension or revocation of the license of a broker. Such duties, responsibilities, or requirements are not to be considered as exclusive. Conduct not within the purview of any specification of this part may be deemed to be conduct warranting the suspension

or revocation of a license under the authority of section 641(b), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)).

§ 111.54 Chief officer of the Customs.

The district director shall be the chief officer of the Customs within the scope of section 641(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)). In the case of sickness or absence of the district director, the assistant district director designated by the district director shall be the chief officer of the Customs. If the office of district director is vacant or the district director is unable to designate an assistant district director as chief officer of the Customs, the Commissioner shall designate one of the assistant district directors to be the chief officer of the Customs.

§ 111.55 Investigation of complaints.

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

§ 111.56 Review of report on investigation.

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

§ 111.57 Determination by Commissioner.

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

(b) *Determination to prefer charges.* If the Commissioner determines that charges will be preferred, he may also determine that the complaint or charge, supported by the agent's report of investigation, is of so serious a nature that formal proceedings for suspension or revocation of the license shall be instituted immediately without following the preliminary proceedings prescribed in § 111.59. The Commissioner shall notify the district director of his determination and instruct him to prepare a proposed statement of charges for review by the Commissioner if not previously submitted.

§ 111.58 Content of statement of charges.

The statement of charges shall give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license. A statement of charges which fairly informs the accused of the charges against him so that he is

able to prepare his defense shall be deemed sufficient. Different means by which a purpose might have been accomplished or different intents with which acts might have been done so as to constitute grounds for suspension or revocation of license may be alleged in the statement of charges in a single count in the alternative. If the Commissioner has determined that the preliminary proceedings prescribed in § 111.59 shall not be followed, the statement of charges shall recite the Commissioner's determination.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* Unless the Commissioner, under § 111.57, has determined that the preliminary proceedings shall not be followed, the district director shall advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license.

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

- (1) Transmits a copy of the proposed statement of charges;
- (2) Informs him that 5 U.S.C. 554 and 558 will be applicable if formal proceedings are necessary;
- (3) Invites him to show cause, if he so desires, why the formal proceedings should not be instituted;
- (4) Informs him that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;
- (5) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;
- (6) Advises him of his right to be represented by counsel; and
- (7) Specifies the place where and a reasonable time within which the broker may respond in writing and/or orally.

§ 111.60 Request for additional information.

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

§ 111.61 Decision on preliminary proceedings.

The district director shall prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Commissioner together with a copy of each paper filed by the broker. The district director shall also

give to the Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Commissioner determines that the broker has satisfactorily responded to the proposed charges, and that further proceedings are not warranted he shall so inform the district director who shall notify the broker. If the Commissioner determines that the broker has not satisfactorily responded to the proposed charges, he shall so advise the district director and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker, the Commissioner shall instruct the district director to omit those charges from the statement of charges.

§ 111.62 Contents of notice of charges.

The notice of charges shall inform the broker that:

- (a) Sections 554 and 558, title 5, United States Code, are applicable to the formal proceedings;
- (b) He may be represented by counsel;
- (c) He will have the right to cross-examine witnesses;
- (d) He will be notified within 10 days after service of this notice of the time and place of a hearing on the charges; and
- (e) Prior to the hearing on the charges, he may file, in duplicate with the district director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

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

- (1) By delivery to the broker personally;
- (2) By certified mail, with demand for a return card signed solely by the addressee;
- (3) By any other means which the broker may have authorized in a written communication to the district director; or
- (4) If attempts to serve the broker by the above methods are unsuccessful, the district 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 district director shall serve the notice of charges and the statement of charges against a partnership, association, or corporation 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 such member or officer with demand for a return card signed by the addressee;
- (3) By any other means which the broker may have authorized in a written communication to the district director; or
- (4) If attempts to serve the broker by the above methods are unsuccessful, the district 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 is by certified mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* Within 10 days after service of the notice and statement of charges, the district director shall serve upon the broker or his attorney, by one of the methods enumerated in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing shall be scheduled to take place within 5 days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by ordinary mail or by one of the methods set forth in § 111.63 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 on the ground that additional time is necessary to prepare a defense, the district director may reschedule the hearing, notifying the broker or his attorney in writing of the extension and the new time for which the hearing has been scheduled.

§ 111.66 Failure to appear.

When an accused broker or his attorney fails to appear for a scheduled hearing, the district director shall proceed with the hearing as scheduled, and shall hear evidence submitted on behalf of the Government. The regulations of this part shall apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension or revocation if he finds it to be in order.

§ 111.67 Hearing.

(a) *Government representatives.* The hearing shall be before the district director who shall provide a competent reporter to make the record of the hearing. The Commissioner shall designate one or more persons to represent the Government at the hearing. The district director may designate one or more persons to assist in the proceedings.

(b) *Rights of the accused.* The broker or his attorney shall have the right to examine all exhibits offered at the hearing and shall have the right to cross-examine witnesses and to present witnesses who shall be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the district director 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 shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the hearing record.

(d) *Transcript of record.* When the record of the hearing has been transcribed by the reporter, the district director shall deliver a copy to the broker and the Government's representative without charge.

§ 111.68 Proposed findings and conclusions.

The district director shall 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 therefor as contemplated by 5 U.S.C. 557(c).

§ 111.69 Recommended decision by district director.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68 of this part, the district director shall make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The district director's recommended decision shall conform with the requirements of 5 U.S.C. 557.

§ 111.70 Additional submittals.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make such additional submittals as required by 5 U.S.C. 557(c) and 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 the 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 accused'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 district director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedure set forth in this subpart.

§ 111.73 Partial proof of charges.

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 his decision on any remaining charges if the facts alleged in the charges are established by the evidence.

§ 111.74 Decision and notice of suspension or revocation.

If the Secretary of the Treasury in the exercise of his discretion issues an order of suspension or revocation of the license of a broker, the Commissioner of Customs will notify the broker and publish a notice of suspension or revocation in

the FEDERAL REGISTER and in the Customs Bulletin.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license may be taken in accordance with the provisions of section 641(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)). The commencement of such proceedings shall, unless specifically ordered by the court, operate as a stay of the Secretary's order of suspension or revocation.

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Any person whose license has been suspended or revoked may make written application in duplicate to the district director to have the order of suspension or revocation set aside or modified upon the ground of newly discovered evidence or 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 specifically the precise character of the evidence to be relied upon and shall state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The district director shall forward the application with his recommendation to the Secretary of the Treasury. The Secretary may grant or deny the application for reopening of the case and may order the taking of additional testimony before the district director. The district director shall notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the district director shall set a time and place for such hearing and give due notice thereof to the applicant. The procedure governing the additional hearing and recommended decision of the district director shall be the same as that governing the original proceeding.

§ 111.77 Notice of reinstatement.

If the Secretary of the Treasury issues an order vacating or modifying the prior order of suspension or revocation, the Commissioner will notify the broker and publish a notice of the new order in the FEDERAL REGISTER and 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 such failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings the Commissioner or the district director, with the approval of the Commissioner, may serve the broker with a written reprimand. Such reprimand and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted.

§ 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 Commissioner for authorization to accept employment with or to assist a licensed broker. Such petition shall not be approved unless the Commissioner is satisfied that the petitioner has refrained from all activities in any way violative of the provisions of § 114.42 and that petitioner's conduct has been exemplary during the period of disability. The Commissioner shall also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which such misconduct leads to pecuniary loss to the Government or to any person, the Commissioner shall also take into account whether the petitioner has made reimbursement for the losses incurred.

§ 111.80 Saving provision.

Any proceeding for revocation or suspension of a license instituted prior to December 31, 1968, shall be governed by the provisions of 19 CFR Part 31 in force at the time the proceeding was instituted.

PART 114—CARNETS

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AUTHORITY: The provisions of this Part 114 issued under R.S. 251, 77A Stat. 14, secs. 623, 624, 46 Stat. 759, as amended; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1623, 1624.

§ 114.0 Scope.

This part is concerned with the use of international Customs documents known as carnets. It also contains provisions concerning the approval of associations to issue carnets in the United States covering merchandise to be exported and to guarantee carnets issued abroad covering merchandise to be imported. The carnet serves simultaneously as a Customs entry document and as a Customs bond.

Subpart A—General Provisions

§ 114.1 Definitions.

The following are general definitions for the purpose of Part 114:

(a) *Commissioner.* "Commissioner" means the Commissioner of Customs.

(b) *Issuing association.* "Issuing association" means an association approved by the Commissioner for the issue

of carnets in the Customs territory of the United States under a Customs Convention to which the United States has acceded.

(c) *Guaranteeing association.* "Guaranteeing association" means an association approved by the Commissioner to guarantee the payment of obligations under carnets covering merchandise entering the Customs territory of the United States under a Customs Convention to which the United States has acceded.

(d) *A.T.A. carnet.* "A.T.A. carnet" (Admission Temporaire—Temporary Admission) means the document reproduced as the Annex to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods.

(e) *E.C.S. carnet.* "E.C.S. carnet" (Echantillons Commerciaux—Commercial Samples) means the document reproduced as the Annex to the Customs Convention on the E.C.S. Carnets for Commercial Samples.

§ 114.2 Customs Conventions.

The regulations in this part relate to carnets provided for in the following Customs Conventions:

(a) Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (hereinafter referred to as A.T.A. Convention).

(b) Customs Convention on the E.C.S. Carnets for Commercial Samples (hereinafter referred to as E.C.S. Convention).

§ 114.3 Carnets.

A carnet issued in conformity with the provisions of a Convention identified in § 114.2 and of the regulations in this part shall serve as an entry document within the scope contemplated by the applicable Convention and as a bond for the performance of acts in compliance with the provisions of such Convention and the Customs statutes and regulations which are involved. Such carnet shall:

(a) Show the period for which it is valid.

(b) Be fully completed in accordance with the provisions of the Convention which provides for its issuance, and

(c) Include an English translation whenever the goods covered by a carnet are described in another language.

Subpart B—Issuing and Guaranteeing Associations

§ 114.11 Approval.

(a) *Document to be furnished.* Before an association may be approved to serve as issuing association or guaranteeing association in the United States with respect to carnets authorized under a Customs Convention to which the United States has acceded, such association shall furnish the Commissioner a written undertaking, in a form satisfactory to the Commissioner, to perform the functions and fulfill the obligations specified in the Convention under which carnets are to be issued or guaranteed.

(b) *Publication of notice of approval.* Notice of the approval of an issuing association or a guaranteeing association with respect to a Customs Convention to

which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

§ 114.12 Termination of approval.

(a) *For cause.* The Commissioner may suspend or revoke the approval previously given to any issuing association or guaranteeing association for failure or refusal to comply with the duties, obligations, or requirements set forth in its written undertaking on which the approval was based; in the applicable Customs Convention; or in the Customs Regulations. Before such suspension or revocation, the Commissioner shall give the association a reasonable opportunity to refute the alleged failure of compliance.

(b) *Withdrawal.* To be relieved by future obligations, an approved guaranteeing association must notify the Commissioner, in writing, not less than 6 months in advance of a specified termination date that it will not guarantee the payment of obligations under carnets accepted by district directors of Customs after the specified date. The receipt of such notice by the Commissioner will in no way affect the responsibility of the guaranteeing association for payment of claims on carnets accepted by district directors before the designated termination date.

(c) *Notice.* Notice of the suspension or revocation of the approval of an issuing association or a guaranteeing association with respect to a Customs Convention to which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

Subpart C—Processing of Carnets

§ 114.21 Acceptance.

A carnet executed in accordance with § 114.3 shall be accepted provided that when the carnet is presented an association for the guaranteeing of such carnets has been approved in accordance with § 114.11 and such approval has not been terminated as provided for in § 114.12.

§ 114.22 Coverage of carnets.

(a) *A.T.A. carnet.* The A.T.A. carnet is acceptable for goods to be temporarily entered under:

(1) The Customs Convention on the Temporary Importation of Professional Equipment, or

(2) The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material.

(b) *E.C.S. carnet.* The E.C.S. carnet is acceptable for:

(1) Commercial samples, or

(2) Motion-picture advertising films not exceeding 16 mm. consisting essentially of photographs (with or without sound track) showing the nature or operation of products or equipment whose qualities cannot be adequately demonstrated by samples or catalogues, provided that the films:

(i) Relate to products or equipment offered for sale or for hire by a person established in the territory of another contracting party;

- (ii) Are of a kind suitable for exhibition to prospective customers but not for general exhibition to the public; and
- (iii) Are imported in a packet which contains not more than one copy of each film and which does not form part of a larger consignment of films.

There shall be presented with each E.C.S. carnet covering motion-picture advertising films a statement showing how each of the foregoing requirements is met.

§ 114.23 Maximum period.

No A.T.A. or E.C.S. carnet with a period of validity exceeding 1 year from date of issue shall be accepted.

§ 114.24 Additions.

When an A.T.A. or E.C.S. carnet has been issued, no extra item shall be added to the list of goods enumerated on the reverse of the cover of the carnet or on any continuation sheet annexed thereto.

§ 114.25 Replacement of carnets.

In the case of destruction, loss, or theft of an A.T.A. or E.C.S. carnet while the goods which it covers are in the Customs territory of the United States, the district director of Customs at the port where such goods were imported may, upon request of the association which issued the carnet abroad, accept a replacement document, the validity of which expires on the same date as that of the carnet which it replaces, provided the district director determines that the description of merchandise in the replacement document fully corresponds to the description set forth in the importation voucher from the carnet to be replaced.

§ 114.26 Discharge of carnets.

When a district director of Customs has unconditionally discharged a carnet by completion of the appropriate certificate, no claim may be brought against the guaranteeing association for payment under the carnet, unless it can be established that the discharge was obtained improperly or fraudulently, or that there had been a breach of the conditions of temporary importation.

Subpart D—Miscellaneous

§ 114.31 Mail importations.

Carnets shall not be accepted for importations by mail.

§ 114.32 Samples for taking orders.

E.C.S. carnets may be accepted for unaccompanied samples and samples imported by a natural person resident in the Customs territory of the United States, as well as for samples imported by a natural person resident in the territory of another contracting party to the E.C.S. Convention.

§ 114.33 Action against carnet user.

In the event of fraud, violation, or abuse of the privileges of a Convention, action may be taken against the users of carnets for applicable duties and charges or liquidated damages, as the case may be. Penalties to which such persons have thereby rendered themselves liable may also be imposed.

PART 146—FOREIGN-TRADE ZONES

Sec.

146.0 Scope.

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- 146.48 Treatment of merchandise not elsewhere provided for in this subpart.

AUTHORITY: The provisions of this Part 146 issued under R.S. 251, secs. 1-21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759; 19 U.S.C. 86, 81a-81u, 1202 (Gen. Hdnote 11), 1624.

§ 146.0 Scope.

Foreign-trade zones are established under the Foreign-Trade Zones Act and the general regulations and rules of procedure of the Foreign-Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign-trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

Subpart A—General Provisions

§ 146.1 Definitions.

The following are general definitions for the purposes of this part:

(a) *Act*. "Act" means the Foreign-Trade Zones Act of June 18, 1934, as

amended (48 Stat. 998-1003; 19 U.S.C. 81a-81u).

(b) *Board*. "Board" is the Foreign-Trade Zones Board established by the Foreign-Trade Zones Act to carry out the provisions of the Act.

(c) *Customs territory*. "Customs territory" is the territory of the United States in which the general tariff laws of the United States apply but which is not included in any zone. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (Gen Hdnote 2, Tariff Schedules of the United States.)

(d) *Grantee*. "Grantee" is a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board.

(e) *Merchandise*. "Merchandise" includes goods, wares, and chattels of every description, except prohibited articles.

(1) *Domestic merchandise*. "Domestic merchandise" is that which has been (i) produced in the United States and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

(2) *Foreign merchandise*. "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(f) *Zone*. "Zone" is a foreign-trade zone established under the Foreign-Trade Zones Act.

§ 146.2 Designation of District Director as Board Representative.

The district director in whose district the zone is located shall be in local charge of the zone as the resident representative of the Board.

§ 146.3 Assignment of Customs Officers.

The district director in whose district the zone is located shall assign the necessary Customs officers and guards to maintain appropriate Customs control over merchandise in the zone and to protect the revenue.

§ 146.4 Reimbursement of Customs expenses.

The cost of providing the additional Customs services required under the Act or the regulations in this part shall be reimbursed to the Government by the grantee, payment to be made monthly to the district director.

§ 146.5 Permission of grantee required.

(a) *Written concurrence necessary*. Applications for permission to transfer merchandise into a zone, to do anything involving merchandise in a zone, or to remove merchandise from a zone shall show the written concurrence of the grantee, except where the regulations in this part provide for the making of applications by the grantee itself or permit the grantee to file a separate specific or blanket approval.

(b) *Questioning grantee's concurrence*. Government officers acting in their official capacities may question the grantee's concurrence if in their opinion it was improperly given.

§ 146.6 Authority to examine merchandise.

The district director may cause any merchandise in a zone to be examined at the time of admission, or at any time thereafter, if the examination is deemed necessary to facilitate the proper administration of any law, regulation, or instruction which the Customs Service is authorized to enforce.

§ 146.7 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be brought directly to a zone from any place outside Customs territory.

(b) *Through Customs territory; foreign merchandise.* Foreign merchandise destined to a zone and transported in bond through Customs territory shall be subject to the laws and regulations applicable to other merchandise transported in bond between two places in Customs territory.

(c) *From Customs territory; domestic merchandise.* Domestic merchandise may be brought to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

§ 146.8 Use of zone by carriers.

(a) *Primary use; lading and unlading.* The water area, docking facilities, and any loading and unloading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by the Secretary of the Treasury if found to endanger the revenue or by the Board if found to impede the primary uses of the zone.

(b) *Carriers in zone not exempt from law or regulation.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other pertinent law or regulation.

Subpart B—Admission of Merchandise to a Zone

§ 146.11 Merchandise permitted in a zone.

Merchandise of every description, including over-quota merchandise, may be brought into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* Prohibited merchandise is merchandise which is prohibited by law on the grounds of policy or morals, such as books or pictures urging treason or insurrection against the United States, obscene books or pictures and lottery matter. District directors are required to exclude this class of articles and shall not permit them to be transferred to a zone if aware of their prohibited status. If there is a question as to whether the merchandise is prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited

merchandise which is found within a zone shall be disposed of in the manner provided for in the laws and regulations applicable to such merchandise.

(b) *Conditionally admissible merchandise.* Conditionally admissible merchandise is merchandise which may be imported under certain conditions, for example, articles which are subject to permits or licenses or which may be reconditioned to bring them into compliance with the laws administered by various Federal agencies. The admission of articles of this class into a zone is subject to any requirements of the Federal agency concerned.

§ 146.12 Application and permit for admission of merchandise.

(a) *Application on zone Form D and permit.* Except in the case of entered merchandise brought into a zone for manipulation (§ 146.13) and merchandise transiting a zone (§ 146.14), merchandise may be admitted into a zone only upon application on zone Form D, Application to Admit Merchandise into Foreign-Trade Zone, and the issuance of a permit by the district director.

(b) *Documents in support of application—(1) Merchandise transported through Customs territory.* For foreign merchandise arriving at a zone after transportation through Customs territory the application shall be supported by:

(i) *Release order.* A release order on the application or another document executed by the carrier which brought the goods to the port where the zone is located authorizing the transfer of the merchandise to the zone; and

(ii) *Evidence of right to make entry.* A document or documents like those which would be required of the applicant as evidence of his right to make entry for merchandise in Customs territory (see section 8.6 of this chapter).

(2) *Merchandise unladen directly from the importing carrier.* For merchandise unladen in the zone directly from the importing carrier the application on zone Form D shall be supported by an application to unlade on Customs Form 3171 (§ 146.14(a)).

(c) *Conditions for issuance of a permit.* Merchandise for which an application to admit merchandise to a zone is made shall be admitted when:

(1) The application is properly executed and includes an indication of the desired zone status of the merchandise (i.e., privileged foreign, privileged domestic, nonprivileged foreign, nonprivileged domestic, or zone-restricted merchandise as provided for in Subpart C of this part);

(2) The grantee's approval appears either on the application or in a separate specific or blanket approval (§ 146.5); and

(3) The permit is granted by the district director as the representative of the Board.

§ 146.13 Temporary admission for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody

may be admitted temporarily to a zone for manipulation and return to Customs territory under Customs supervision pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562) and § 19.11 of this chapter. Such merchandise shall not be considered within the purview of the Act but shall be treated as though remaining in Customs territory. No zone form or procedure shall be considered applicable, but the merchandise shall remain subject in the zone to such requirements as are necessary for the enforcement of section 562 and other pertinent Customs laws.

§ 146.14 Merchandise transiting a zone.

The following procedures are applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade shall be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or made the subject of an application for zone status on zone Form D in accordance with § 146.12.

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade or unlade, the merchandise shall not be considered within the purview of the Act but shall be treated as though the lading or unlading were in Customs territory.

(d) *Failure to lade merchandise without delay.* Merchandise brought into a zone for lading on a carrier but not laden without a delay which will endanger the revenue must be made the subject of an application for zone status on zone Form D in accordance with § 146.12 or be removed from the zone.

§ 146.15 Certificate of arrival of merchandise.

Whenever a certificate as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the certificate, properly describing and identifying the merchandise involved.

Subpart C—Status of Merchandise in a Zone

§ 146.21 Privileged foreign merchandise.

(a) *Merchandise subject to the provisions of this section.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification shall be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status shall be made on zone Form B at the time of filing the application on zone Form D (see § 146.12) for admission of the merchandise into a zone or

at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Zone Customs entry.* Each applicant for such status shall file a zone Customs entry on Customs Form 7502 with his application.

(1) *Evidence of right to make entry.* The original of a properly approved application on zone Form B is acceptable as the equivalent of a bill of lading or carrier's certificate to identify the applicant on such Form B as the consignee of the merchandise and its owner for Customs purposes, except that such person may transfer the right to withdraw such merchandise from the zone to Customs territory in accordance with Subpart E of this part.

(2) *Preparation, filing, and processing of the entry.* The procedure in connection with the preparation, filing, and processing of the entry, including the making of notations on invoices, the preparation of Customs Form 6417, the designation of examination packages or quantities, and the examination and appraisal of the merchandise shall be the same as that prescribed in the case of an entry for warehouse made in Customs territory (see Part 8 of this chapter), except that no bond shall be required.

(3) *Procedure upon acceptance of the entry.* Upon acceptance of the entry the district director shall have the merchandise appraised, classified, taxes determined, and duties liquidated promptly.

(i) *Appraisal and tariff classification.* The merchandise shall be subject to appraisal and tariff classification according to its condition and quantity, and to the rates of duty and tax in force, on the date of filing, in complete and proper form, the request for privileged foreign status on zone Form B and the zone Customs entry which is required to accompany it.

(ii) *Basis of valuation.* The value of the merchandise shall be determined in accordance with sections 402, 402a, and 503 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402, 1503), and related provisions of law. For all Customs purposes, the date of exportation of the merchandise from the country whence it was exported to the United States is the date of its final departure from that country, in accordance with § 14.3(b) of this chapter.

(iii) *Amendment of value.* The value declared in any zone Customs entry for merchandise may be amended in accordance with the provisions of section 487, Tariff Act of 1930 (19 U.S.C. 1487), and the regulations thereunder (see § 8.16 of this chapter).

(iv) *Merchandise subject to tariff-rate import quotas.* Entries for merchandise subject to tariff-rate import quotas shall be liquidated only at the higher or non-quota rate.

(v) *Determination of taxes.* The taxes to be determined are those of the same nature as are indicated in the liquidation of entries of imported merchandise in Customs territory.

(d) *Status as privileged foreign merchandise binding.* A status as privileged

foreign merchandise and the consequent determination of taxes and liquidation of duties cannot be abandoned. The taxes and duties remain applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.48), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of the determined taxes and liquidated duties, in accordance with §§ 146.41, 146.42, and 146.45(d).

(e) *Appeals and protests.* The requirements, privileges, and procedures of notices of appraisal, appeals to reappraisal, posting of liquidations, and protests against decisions of the district director are the same as those prescribed in the case of merchandise covered by an entry for warehouse in Customs territory.

(f) *Permission to manipulate, manufacture, or exhibit.* Application may be made pursuant to § 146.32 for permission to manipulate, manufacture, or exhibit the merchandise before taxes have been determined and duties liquidated thereon, but in such case the examination for purposes of appraisal must be completed, or the packages or samples required for such examination must be segregated, before the district director approves the application.

§ 146.22 Privileged domestic merchandise.

(a) *Merchandise subject to the provisions of this section.* Privileged domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the United States on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and/or tax has been paid; or

(3) Previously admitted free of duty and tax.

(b) *Application.* Application for privileged domestic status shall be included in the application on zone Form D (§ 146.12) to transfer the merchandise into the zone, but the documents in support of the application described in § 146.12(b) are not required.

(c) *Domestic packing and repair materials.* If the district director is satisfied that the revenue will be protected, and the rights of importers will not be prejudiced, he may permit the transfer to a zone of domestic packing and repair materials and related articles without requiring an application on zone Form D.

(d) *Return of merchandise to Customs territory.* Upon compliance with this section and § 146.44, any of the foregoing merchandise may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.23 Nonprivileged foreign merchandise.

All of the following shall have the status of nonprivileged foreign merchandise:

(a) Foreign merchandise properly in a zone which does not have the status of

privileged foreign merchandise or of zone-restricted merchandise;

(b) Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) Domestic merchandise in a zone which by reason of noncompliance with these regulations has lost its identity as domestic merchandise and will be treated as foreign merchandise if transferred to Customs territory. Any domestic merchandise shall be deemed to have lost its identity if the district director determines that it cannot be identified positively by Customs officers as domestic merchandise on the basis of their examination of the articles and their consideration of any proof that may be submitted promptly by a party in interest.

§ 146.24 Nonprivileged domestic merchandise.

All merchandise which could have obtained the status of privileged domestic merchandise but for which no application for such status has been approved (not including any merchandise within the purview of § 146.23(c) shall have the status of nonprivileged domestic merchandise.

§ 146.25 Zone-restricted merchandise.

(a) *Merchandise subject to the provisions of this section.* Articles taken into a zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be given zone-restricted status on proper application. Such articles may not be returned to Customs territory for domestic consumption except where the Board deems such return to be in the public interest (see § 146.47).

(b) *Application.* Application for zone-restricted status shall be included in the application on zone Form D to transfer the merchandise into the zone as provided for in § 146.12.

(c) *Merchandise considered exported—(1) For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to actual exportations shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the United States. Any declaration or form required for actual exportation shall be modified to show that the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved zone Form D may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before he approves the application on zone Form D.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.13, shall have the status of zone-restricted merchandise when admitted into the zone. The application on zone Form D shall state that zone-restricted status is desired for the merchandise.

Subpart D—Handling of Merchandise in a Zone

§ 146.31 Customs control of merchandise in a zone.

(a) No merchandise shall be removed from a zone in any manner or for any purpose except as provided for in the regulations in this part.

(b) If the district director deems it necessary for the protection of the revenue, he may require segregation of any merchandise he determines to be subject to special risks to the revenue.

(c) The grantee shall keep the district director currently informed as to the location of any merchandise in the zone which is not within the purview of paragraph (b) of this section, and shall notify the district director promptly of any loss or damage that may occur to any merchandise in the zone.

§ 146.32 Manipulation, manufacture, or exhibition in a zone.

(a) *Application.* Permission for manipulation, manufacture, or exhibition of merchandise in a zone may be obtained by filing with the district director an application on zone Form E. No such operation shall be carried on until the district director has approved the application. The application shall include:

(1) A full description of the proposed operation;

(2) A designation of the exact place in the zone where the operation is to be performed;

(3) The identification of the involved merchandise by lot number, marks and numbers of the packages, description, quantity, and zone status; and

(4) In the case of manipulation or manufacture, a statement as to whether articles with one zone status are to be packed, commingled, or combined with articles having a different zone status.

(b) *Approval of application.* The district director shall approve the application unless the proposed operation would be in violation of the fourth or fifth proviso to section 3 of the Foreign-Trade Zones Act, as amended, 19 U.S.C. 81c, or the place designated for its performance is not suitable for preventing confusion as to the identity or status of the merchandise and for safeguarding the revenue.

(1) *Fourth proviso.* The proviso reads as follows:

That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(a) The draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930 as amended, and the regulations thereunder; and

(b) The statutes and bonds exacted for the payment of draw-back, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable.

Such articles may not be returned to Customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: * * *.

(2) *Fifth proviso.* The proviso reads as follows:

That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807 of Title 26 and chapter 15-17, 21, 23-26, or 32 of Title 26, if performed in Customs territory, or involving the manufacture of any article provided for in paragraphs 367 and 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: * * *.

(For current reference to title 19 and 26 of the United States Code, see notes following text of 19 U.S.C. 81c)

(c) *Appeal of adverse ruling.* If the application is denied by the district director for any reason, the applicant or the grantee may appeal the adverse ruling to the Board. If any revenue protection considerations are involved in such an application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

(d) *Records to be maintained—(1) Privileged merchandise.* When any privileged merchandise is to be manipulated in any way or manufactured, the person performing the operation shall maintain records containing the following information:

(i) A full identification, as specified in paragraph (a) of this section, of each lot of privileged merchandise used in the operation;

(ii) The unit and total values of each such lot, the values in the case of privileged foreign merchandise to be those declared in the zone Customs entry (§ 146.21(c)), including any amendment thereof;

(iii) The commercial name or description of the product resulting from the operation, or of each such product if there are more than one;

(iv) The quantity of such product or of each such product, as the case may be;

(v) The commercial name or description and quantity of each kind of waste recovered from the operation; and

(vi) The description (i.e., evaporation, leakage, spillage, dust, etc.) and quantity of each kind of loss resulting from the operation.

(2) *Nonprivileged merchandise.* If any nonprivileged merchandise is to be used in the operation, records shall be maintained containing a full identification, as specified in paragraph (a) of this section, and the unit and total values of each lot of the merchandise used in the operation.

§ 146.33 Destruction of merchandise in a zone.

(a) *Application.* Each application to destroy merchandise in a zone shall be filed with the district director on zone Form E. The application shall include:

(1) A description of the proposed method of destruction;

(2) A designation of the place where the destruction is to be accomplished; and

(3) The identification of the involved merchandise by lot number, marks and numbers of the packages, description, quantity, and zone status.

(b) *Approval of application and procedure for destruction of merchandise.* The destruction of distilled spirits, wines, and fermented malt liquors having a zone-restricted status may not be authorized in view of the exception in the fourth proviso to section 3 of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81c). In any other case, if the district director is satisfied that the destruction will be effective and that the revenue will be adequately protected, he shall approve the application. If proper destruction cannot be effectively accomplished within the zone, the district director may permit it to be done elsewhere, in whole or in part, under such conditions as he shall specify for protecting the revenue. Any residue of destruction which is entirely worthless may be removed to Customs territory for disposal.

Subpart E—Removal of Merchandise From a Zone

§ 146.41 Direct exportation from a zone.

Regardless of its zone status, any merchandise in a zone may be exported directly therefrom upon compliance with the procedure prescribed in § 146.44 for the transfer of privileged domestic merchandise to Customs territory.

§ 146.42 Supplies, equipment, and repair material for vessels or aircraft.

(a) *Applicability.* Any article which may be withdrawn duty and tax free in Customs territory under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317) and §§ 10.59 through 10.65 of this chapter may similarly be withdrawn from a zone, regardless of its zone status, under said statutes and regulations. Privileged domestic merchandise is not subject to the provisions of this section and may be withdrawn from a zone in accordance with the provisions of § 146.44.

(b) *Articles for delivery within zone where withdrawn.* The withdrawal of articles provided for in paragraph (a) of this section for delivery within the zone where withdrawn to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, shall be on

Customs Form 7512 (see § 10.60 of this chapter).

(1) *Who may make the withdrawal.* The withdrawal of articles composed in whole or in part of privileged foreign merchandise shall be made by the person identified on zone Form B as the consignee (see § 146.21(c)(1)). The withdrawal of all other articles under this section shall be made by the person designated as the consignee by the written authorization of the grantee.

(2) *Supporting documents.*—(1) *Description.* The withdrawal shall be supported by a description of the articles similar to that provided for in § 146.44 (a).

(2) *Bond.* A bond on Customs Form 7557, 7559, or 7595 shall be required with the withdrawal.

(3) *Release of articles.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery to the qualified vessel or aircraft in the zone.

(c) *Articles for delivery outside zone where withdrawn.* The withdrawal of articles provided for in paragraph (a) of this section for delivery at a place outside the zone to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, shall be on Customs Form 7512. (See § 10.60 of this chapter.)

(1) *Who may make the withdrawal.* The withdrawal of privileged foreign merchandise which has not been mixed, combined, or repacked in the zone or of a product of a manipulation or manufacture in a zone composed of or derived from privileged merchandise only, whether all foreign, or partly foreign and partly domestic, shall be made by the person named on zone Form B as the consignee or by a transferee designated on the withdrawal and approved by the grantee. (See § 146.45(b)(2).) The withdrawal of other articles under this section shall be made by the person designated by the grantee on zone Form C as the consignee. Except for articles described in the first sentence of this paragraph the provisions of § 146.47 (b) through (f) and § 146.48(b) relating to constructive transfer are applicable, whether or not the merchandise is zone restricted.

(2) *Bond.* The withdrawal shall be supported by a bond on Customs Form 7557, 7559, or 7595.

(3) *Acceptance of withdrawal and release of merchandise.* Upon acceptance of the withdrawal the district director shall note thereon the status of the merchandise and shall release the merchandise to the grantee for delivery to the bonded cartman, lighterman, or carrier.

§ 146.43 Transfer of merchandise from one zone to another.

(a) *Privileged domestic merchandise.* The transfer of privileged domestic merchandise from one zone to another is not subject to Customs control except that the removal of the merchandise from the first zone and its admission into the zone of destination shall be in accordance with §§ 146.44 and 146.12.

(b) *Other merchandise.*—(1) *Procedure.* The transfer of merchandise, other than privileged domestic merchandise, from a zone at one port of entry to a zone at another port shall be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry for immediate transportation shall bear a notation that the merchandise is being taken from the first zone for the purpose of transfer to the second zone. Privileged foreign merchandise which has not been mixed, combined, or repacked in the zone and products of a manipulation or manufacture in a zone composed of or derived from privileged merchandise, whether all foreign, or partly foreign and partly domestic, shall be transferred from the zone in accordance with § 146.45(c)(1)–(4) and admitted to the second zone in accordance with § 146.12. The transfer of other merchandise from the first zone into Customs territory and its admission into the zone of destination shall be in accordance with §§ 146.48(b) and 146.12.

(2) *Forwarding of history of the merchandise.* Upon removal of merchandise as specified in paragraph (b)(1) of this section from the first zone, the district director of the port where such zone is located shall immediately forward to the district director of the port where the zone of destination is located a history of the merchandise as shown by the records of the first zone.

§ 146.44 Transfer of privileged domestic merchandise into Customs territory.

(a) *Submission of description of transaction.* When privileged domestic merchandise which has not been mixed, combined or repacked in a zone with merchandise having a different zone status is to be transferred from the zone to Customs territory, the grantee shall submit to the district director, in triplicate, a description of the proposed transaction signed by him which shall include:

- (1) The proposed date of transfer;
- (2) The identification of the carrier;
- (3) The destination of the shipment;
- (4) Identification of the merchandise by zone storage location, lot number, marks and numbers of packages, description, quantity, and zone status; and
- (5) A notation as to any shortage or damage.

If a form of tally prepared by the grantee for its own purposes contains the necessary information, it may be accepted in lieu of the required description.

(b) *Permit of delivery.* If the transfer is approved by the district director, the original of the description shall be so stamped to serve as a permit of delivery. The original and one copy shall be returned to the grantee. No document other than the permit of delivery shall be required to release the merchandise to the grantee and authorize its transfer into Customs territory.

§ 146.45 Transfer of privileged foreign merchandise into Customs territory.

(a) *Merchandise subject to the provisions of this section.* The provisions of

this section are applicable to privileged foreign merchandise which has not been mixed, combined, or repacked in a zone.

(b) *Withdrawal for consumption at port where zone is located.*—(1) *Application for transfer.* When merchandise subject to the provisions of this section is to be transferred to Customs territory for consumption, a zone withdrawal shall be made on Customs Form 7505 as an application for the transfer.

(2) *Who may make the withdrawal.* The withdrawal shall be made by the person identified on zone Form B as the consignee (see § 146.21(c)(1)) or by a transferee designated by an endorsement on Customs Form 7505 and approved by the grantee.

(3) *Bond.* The zone withdrawal shall be supported by a bond on Customs Form 7551, 7553, or other appropriate form. A bond shall not be required when all the merchandise to be transferred to Customs territory has been inspected, examined, and appraised, has been found to comply with all laws and regulations governing its admission into the commerce of the United States, and there have been produced all documents for the production of which a bond is required by law or regulations if not filed at the time of entry.

(4) *Payment of duties and taxes.* The applicant shall pay the liquidated duties and determined taxes, as assessed in the liquidation of the zone Customs entry (§ 146.21(c)), on the quantity of merchandise to be transferred. If the pertinent zone Customs entry has not been liquidated, estimated duties and taxes shall be deposited.

(5) *Release of merchandise.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery.

(c) *Withdrawal for transportation to another port for withdrawal for consumption.*—(1) *Application for transfer.* When merchandise subject to the provisions of this section is to be transferred to Customs territory for transportation to another port for withdrawal for consumption, a zone withdrawal for transportation clearly indicating the status of the merchandise shall be made on Customs Form 7512 as an application for the transfer.

(2) *Who may make the withdrawal for transportation.* The withdrawal shall be made by the person identified on zone Form B as the consignee (see § 146.21(c)(1)) or by transferee designated by an endorsement on Customs Form 7512 and approved by the grantee.

(3) *Certification by district director at zone port.* The district director at the zone port shall issue a certificate, in triplicate, describing the merchandise in its present condition and certifying the amount of duties and taxes applicable to the shipment. The duplicate copy of such certificate shall be given to the withdrawer.

(4) *Release of merchandise for transportation.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery to the bonded carrier.

(5) *Withdrawal for consumption at port of destination.* A withdrawal for consumption shall be made at the port of destination on Customs Form 7519 by the person identified on zone Form B as the consignee (see § 146.21(c)(1)) or by a transferee designated on the withdrawal and approved by the grantee. The withdrawal for consumption shall be supported by the duplicate copy of the certificate described in paragraph (c)(3) of this section and also by a bond on Customs Form 7551, 7553, or other appropriate form, when required, pursuant to paragraph (b)(3).

(6) *Payment of duties and taxes.* The applicant shall pay the liquidated duties and determined taxes, as assessed in the liquidation of the zone Customs entry (§ 146.21(c)), on the quantity of merchandise being withdrawn. If the zone Customs entry has not been liquidated, estimated duties and taxes shall be deposited.

(d) *Withdrawal for transfer into Customs territory for exportation.* When merchandise subject to the provisions of this section is to be transferred to Customs territory for exportation, a withdrawal for exportation, or for transportation and exportation, shall be made on Customs Form 7512 by the person identified on zone Form B as the consignee (see § 146.21(c)(1)) or by a transferee designated by an endorsement on Customs Form 7512 and approved by the grantee. Upon acceptance of the withdrawal the district director shall note the status of the merchandise on the document, and release the merchandise to the grantee for delivery to the carrier.

§ 146.46 Transfer of products of manipulation or manufacture of privileged merchandise into Customs territory.

(a) *Merchandise subject to the provisions of this section.* The provisions of this section are applicable to products of manipulation or manufacture in a zone composed of or derived from privileged merchandise only, whether all foreign, or partly foreign and partly domestic.

(b) *Withdrawal for consumption at port where zone is located.* When products subject to the provisions of this section are to be transferred to Customs territory for consumption, a zone withdrawal shall be made on Customs Form 7505 as an application for the transfer, and the requirements of this paragraph and of § 146.45(b) shall be applicable.

(1) *Documents required in support of the withdrawal.*—(i) *Statement.* A statement in the form of an invoice containing the information required by § 146.32 (d)(1) shall be filed with the withdrawal.

(ii) *Certificate of identification.* When necessary to support the withdrawal, application may be made to the district director for a certificate on zone Form F covering identification, as shown by Customs records, of the privileged merchandise used in the manipulation or manufacture.

(2) *Conditions for acceptance of withdrawal.* The district director shall not accept zone withdrawals for products of manipulation or manufacture of privi-

leged foreign merchandise until he has definitely established that the merchandise actually exists in the zone in its final form as described in the withdrawal and that all other documents required to be submitted with the withdrawal have been received.

(c) *Withdrawal for transportation to another port for withdrawal for consumption.* When products subject to the provisions of this section are to be transferred to Customs territory for transportation to another port for withdrawal for consumption, a zone withdrawal for transportation clearly indicating the status of the merchandise shall be made on Customs Form 7512 as an application for the transfer. The provisions of paragraph (b)(1) and (2) of this section and the procedure prescribed in § 146.45(c)(2) through (6) shall be applicable.

(d) *Withdrawal for transfer into Customs territory for exportation.* When products subject to the provisions of this section are to be transferred to Customs territory for exportation, the procedure prescribed in § 146.45(d) shall be applicable.

(e) *Articles produced or manufactured in a zone returned to Customs territory after exportation.* Articles produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation shall, on their return to Customs territory, be subject to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that they were produced or manufactured exclusively with the use of privileged domestic merchandise, the identity of which was maintained in accordance with the pertinent provisions of these foreign-trade zone regulations, in which case they shall be subject to the pertinent provisions of schedule 8, part 1 of the Tariff Schedules of the United States.

§ 146.47 Transfer of zone-restricted merchandise into Customs territory.

(a) *Types of entry.* Zone-restricted merchandise may be returned to Customs territory only for entry for exportation, for entry for transportation and exportation, for destruction (except destruction of distilled spirits, wines, and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317 of the Tariff Act of 1930, as amended, unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. If the return of zone-restricted merchandise to Customs territory for domestic consumption has been ruled by the Board to be in the public interest, it may be entered for consumption, for warehousing, or for immediate transportation without appraisement, unless the Board has specified which of these forms of entry shall be made.

(b) *Application for constructive transfer to Customs territory.* When

zone-restricted merchandise is to be transferred to Customs territory, the grantee shall file an application with the district director on zone Form C naming the person who will be deemed the consignee of the merchandise with the right to make entry or withdrawal therefor upon its transfer to Customs territory. The application shall include a complete identification of the merchandise as it entered the zone, including lot numbers, marks and numbers of the packages, status of each lot, description, and quantities. If any change in respect of any of these items of identification occurred while the merchandise was in the zone, the current information with respect to each such item shall also be stated. The district director shall not accept a term application on Form C.

(c) *Constructive transfer.* Upon the approval by the district director of an application on zone Form C, the merchandise shall be deemed to have been transferred to Customs territory but without physical removal from the zone. For all Customs purposes the merchandise shall be considered to have been imported into Customs territory at the time of this constructive transfer. The district director shall note on the application the date of constructive transfer and the zone status of the merchandise. The constructively transferred merchandise shall be marked or labeled with the initials "C.T."

(d) *Restoration to zone status.* The merchandise may be restored to zone status after it has been constructively transferred to Customs territory and before the expiration of the time within which entry or withdrawal must be made (see paragraph (e)(2) of this section), if:

(1) A new zone Form D is filed and the same procedure followed as if the merchandise had then first arrived in the zone from or through Customs territory (see § 146.12). The zone grantee shall be deemed the carrier which brought the merchandise into the port; or

(2) The applicant arranges for the redelivery to the district director, prior to the filing of a Customs entry or withdrawal, of the grantee's copy of the zone Form C with a request that it be canceled.

(e) *Customs entry or withdrawal and time limitation.* (1) The original of zone Form C, when approved by the district director and endorsed by him with the date of constructive transfer and the zone status of the merchandise, shall be accepted as the equivalent of a bill of lading or carrier's certificate to identify the person named in such Form C as the consignee of the merchandise and its owner for Customs purposes with the right to make entry or withdrawal.

(2) A Customs entry or withdrawal shall be filed in proper form before 5 p.m. of the second working day after the date of constructive transfer of the merchandise. The time may be extended for such longer period as may be specified in a lay-order issued by the district director upon the filing of a written application on Customs Form 3189 by the

grantee, or by the named consignee if approved by the grantee. If a Customs entry or withdrawal in proper form is not filed within the time limit, the merchandise shall be considered as having been returned from constructive Customs territory to the zone.

(3) If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of schedule 8, part 1 of the Tariff Schedules of the United States. Upon acceptance of an entry or withdrawal for any other zone-restricted merchandise, the entry shall be endorsed by a Customs officer to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, and the withdrawal endorsed to require delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317 of the Tariff Act of 1930, as amended. (See § 146.42.)

(f) *Release of merchandise.* When a consumption entry is accepted for zone-restricted merchandise the district director shall release the merchandise to the grantee for delivery to the consignee. When any other entry or withdrawal is accepted for such merchandise, the release of the merchandise by the district director for physical removal to the designated destination in Customs territory or for direct exportation shall be in accordance with the Customs Regulations as to merchandise imported into Customs territory, the zone grantee to be considered as the importing carrier.

§ 146.43 Treatment of merchandise not elsewhere provided for in this subpart.

(a) *Merchandise not elsewhere provided for in this subpart includes:* Merchandise not elsewhere provided for in this subpart includes the following:

(1) Articles composed entirely of, or derived entirely from, nonprivileged merchandise, foreign or domestic.

(2) Articles composed in part of, or derived in part from, nonprivileged merchandise, domestic or foreign, and in part of or from privileged merchandise, domestic or foreign.

(3) Recoverable waste resulting from the manipulation or manufacture in a zone of privileged foreign merchandise.

(b) *Constructive transfer.* When articles subject to the provisions of this section are to be transferred from a zone to Customs territory, the procedure provided for in § 146.47 (b) through (f) shall be followed, except that if the entry has not been filed in proper form before the expiration of the time allowed for entry in § 146.47(e) (2), the merchandise shall be deposited in general order storage in Customs territory.

(c) *Entry for consumption or warehousing.* Articles subject to the provisions of this section may be transferred from a zone for entry for consumption or, except in the case of articles com-

posed of or derived in part from privileged foreign merchandise, for entry for warehousing subject to the treatment specified in paragraph (e) of this section.

(d) *Supporting statement and certificate.* There shall be filed with each entry for articles described in paragraph (a) (2) of this section a statement in the form of an invoice containing the information specified in § 146.32(d) (1). When necessary to support the entry, application may be made for a certificate on zone Form F covering identification as shown by the Customs records of any privileged domestic or privileged foreign merchandise in the articles.

(e) *Appraisal and tariff classification.* Merchandise subject to the provisions of this section, upon transfer from a zone and entry for consumption or for warehousing, either immediately or after transportation in bond, shall be subject to appraisal and tariff classification in accordance with its character and condition at the time of its constructive transfer to Customs territory and, except for any different rates applicable to any privileged foreign merchandise therein, to the rate or rates of duty and tax in force at the time entry for consumption or withdrawal from warehouse for consumption is made (see § 8.4 (d) and (g) of this chapter). The value of such products shall be determined in accordance with sections 402, 402a, and 500 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402, 1500), and the related provisions of law.

(f) *Liquidation.* The consumption or warehouse entry covering a product provided for in paragraph (a) of this section shall be liquidated in accordance with part 16 of this chapter, except that in the case of articles described in paragraph (a) (2) of this section adjustment shall be made for that part of the product which consists of or has been derived from privileged merchandise.

PART 147—TRADE FAIRS

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AUTHORITY: The provisions of this Part 147 issued under R.S. 251, secs. 623, 624, 46 Stat. 759, as amended, secs. 2-7, 73 Stat. 18, 19; 19 U.S.C. 66, 1623, 1624, 1751-1756.

§ 147.0 Scope.

This part governs the entry of merchandise intended for exhibition or for use in constructing, installing or maintaining foreign exhibits at trade fairs which have been so designated by the Secretary of Commerce. It also contains provisions concerning Customs supervision of the merchandise, and the disposition of the merchandise after the fair has closed. The entry of articles which may be admitted free of duty under other provisions of this chapter may be governed by those provisions rather than the regulations in this part.

Subpart A—General Provisions

§ 147.1 Definitions.

The following are general definitions for the purposes of Part 147:

(a) *The Act.* "The Act" means the Trade Fair Act of 1959. (Secs. 2-7, 73 Stat. 18, 19; 19 U.S.C. 1751-1756.)

(b) *Fair.* "Fair" means a fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to the Trade Fair Act. (For regulations governing designation as a trade fair, see 15 CFR Part 364.)

(c) *Fair operator.* "Fair operator" means the party named by the Secretary of Commerce as the operator of the fair.

(d) *Port.* "Port" means the port at which the fair is to be held, or if the fair is not to be held within the limits of a port, the port nearest to the location of the fair which is in the same Customs district as the fair.

(e) *Closing date.* "Closing date" means the date designated by the Secretary of Commerce as the date when the fair will close, including any extension granted by the Secretary of Commerce, or, if the fair closes earlier, the date on which the fair actually closes.

(f) *Articles for a fair.* "Articles for a fair" includes, but is not limited to:

- (1) Actual exhibit items;
- (2) Pamphlets, brochures, and explanatory material in reasonable quantities relating to foreign exhibits at a fair;
- (3) Material for use in constructing, installing, or maintaining foreign exhibits at a fair.

§ 147.2 Articles which may be entered for a fair.

(a) *General.* Any article imported or brought into the United States may be

entered under bond under the regulations of this part for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair, if no duty or internal revenue tax has been paid, and the article is:

- (1) In a foreign-trade zone; or
- (2) Covered by a Customs exhibition bond provided for in Schedule 8, Part 5B, Tariff Schedules of the United States; or
- (3) In continuous Customs custody, including but not limited to articles:
 - (i) Imported or brought into the United States for the purpose of direct entry at a particular fair;
 - (ii) In Customs bonded warehouses;
 - (iii) Unentered under the Customs laws and held in general order pending entry or exportation;
 - (iv) On exhibition at another fair designated by the Secretary of Commerce.
- (b) *Exception.* Articles which have been entered under Schedule 8, Part 5C, Tariff Schedules of the United States, may not be entered under the regulations of this part.

§ 147.3 Bond required.

The fair operator shall furnish for the approval of the district director a bond in an amount to be determined by the district director. No other bond shall be required at the time of making entry for a fair. The bond shall be in the following form:

TRADE FAIR BOND

Know All Men by These Presents, That _____ of _____, as principal, and _____ of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars (\$_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals this _____ day of _____, 19____.

Whereas, pursuant to the provisions of the Trade Fair Act of 1959, 73 Stat. 18; 19 U.S.C. 1751-1756, the Secretary of Commerce has approved an application by the principal hereon for the operation of a fair to be known as _____

(Insert exact name of fair)

at _____; and _____ (City and State)

Whereas, pursuant to the foregoing Act, imported articles may be imported or brought into the United States without the payment of duties, taxes, fees, charges, or exactions, for purposes of exhibition at the designated fair, or for use in constructing, installing, or maintaining foreign exhibits at such fair, under such regulations as the Secretary of the Treasury shall prescribe;

Now, therefore, the condition of this obligation is such, That—

(1) If the above-bounden principal shall comply in all respects with the provisions of the foregoing Act and the regulations issued by the Secretary relating to the exhibition or use of any article imported or brought into the United States for the designated fair; and shall receive for exhibition or use at such fair only such articles as may be permitted by law and regulations to be deposited therein; and shall safely keep or use the same therein

all in accordance with the purposes authorized by law, and shall not remove, nor suffer to be removed, any article from the fair premises without lawful permit and without the presence of the Customs officer in charge;

(2) And if the above-bounden principal shall pay to the district director of Customs, when demanded by him, all unpaid duties, taxes, fees, charges, or exactions found legally due in connection with all articles entered or brought into the United States for the fair under the provisions of the designated Act and charged against this bond; and if in respect of any of the articles released from Customs custody shall redeliver or cause to be redelivered to the order of the district director of Customs, upon proper demand made at any time, any and all articles found not to comply with the law and regulations governing their admission into the commerce of the United States, and shall, after proper notice, mark, label, clean, fumigate, destroy, export, and do any and all other things in relation to said articles that may be required to secure the protection of the revenue and compliance with the Trade Fair Act referred to in the recital clause of this obligation and with all applicable Customs and related laws; it being expressly understood and agreed that the liability under this bond shall extend to all cases where any of the articles entered for exhibition or use are lost or stolen, whether or not the said loss or theft shall result from the fault of said principal;

(3) And if the above-bounden principal shall pay on demand to the district director of Customs, the actual and necessary Customs charges for labor, services, and other expenses in connection with the entry, examination, appraisement, release, or custody of the imported articles, together with the compensation of the Customs officers and employees on duty at or assigned to the fair premises in connection with the accounting for, custody of, and supervision over, the articles entered pursuant to the designated Act, including overtime compensation of Customs officers and employees assigned to duty at night or on Sunday or a holiday;

(4) And if the above-bounden principal, when an article is entered from the Fair for exportation, shall cause the said article to be actually exported from the United States and not relanded therein, and if proof of exportation from the United States be furnished to the said district director in the form and within the time required by law or regulations, or within any lawful extension of such time; or in lieu of exportation, if the said article shall be destroyed or abandoned within the period fixed by law, or, in default thereof, if the obligors shall pay to the district director the full amount of duties, taxes, fees, charges, and exactions which may be found legally due on the said articles;

(5) And if the said principal shall deliver to the district director of Customs all the documents and evidence as may be required in connection with the entry of the articles at the designated fair, and in the form and

within the time required by law or regulations, or any lawful extensions thereof, and shall comply with all other requirements of law and regulations;

Then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name)	(Address)
(Name)	(Address)
(Principal)	
(Name)	(Address)
(Name)	(Address)
(Surety)	
(Name)	(Address)
(Name)	(Address)
(Surety)	

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ (*) _____ of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of the said corporation; that I know his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

(May be executed by the secretary, assistant secretary, or other corporate officer.)

Subpart B—Procedure for Importation

§ 147.11 Entry.

(a) *Made in name of fair operator.* All entries of articles for a fair shall be made at the port in the name of the fair operator which shall be deemed for Customs purposes the sole consignee of the merchandise entered under the Act and responsible to the Government for all duties and charges due the United States on account of such entries.

(b) *Merchandise arriving at port other than port of the fair.* Articles to be entered under this subpart which arrive at ports other than the port of the fair shall be entered for immediate transportation without appraisement to the latter port in the manner prescribed in Part 18 of this chapter.

(c) *Form of entry.* Articles shall be entered upon arrival at the port of the fair on a special form of entry to read substantially as follows:

ENTRY FOR EXHIBITION

Entry No. _____

Entry at the port of _____ of articles consigned or transferred to _____ under _____ I.T. No. _____ ex

(Fair operator)

S.S. _____ from _____ on the _____ day of _____ 19____, for exhibition purposes under the Trade Fair Act of 1959.

Mark	Number	Package and contents	Quantity	Invoice value
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(Fair operator)

By _____

(d) *Supersedes previous entry.* When entry for a fair is made under this part, such entry shall supersede any previous entry.

§ 147.12 Invoices.

Articles intended for a fair under the provisions of the Act and valued at over \$500 are subject to the special Customs invoice requirements if of a class for which such invoices are required under the Tariff Act of 1930, as amended, and the regulations in this chapter (see Part 8). The invoice shall be on Customs Form 5515 and shall contain the information prescribed under section 481 of the Tariff Act of 1930. In all other cases the ordinary invoicing requirements apply.

§ 147.13 Transfer to fair building.

(a) *Immediate delivery.* The provisions governing immediate delivery in § 8.59 of this chapter are applicable to articles for a fair.

(b) *After entry.* Upon the entry being made, a permit may be issued by the district director for the transfer of the articles covered thereby to the buildings in which they are to be exhibited or used, or, in his discretion, to the public stores for examination and subsequent delivery to the buildings in which they are to be exhibited or used.

§ 147.14 Articles not to be immediately entered and delivered to a fair.

(a) *Placed in bonded warehouses.* If for any reason articles imported for a fair are not to be entered and delivered to a fair upon their arrival, the fair operator should request the district director, in writing, to cause such articles to be placed in a bonded warehouse under a "general order permit" at the risk and expense of the fair operator. If no request is made and the articles remain unentered after 5 days from the date of arrival, they will be placed in general order.

(b) *Entry within 1 year.* At any time within 1 year from the date such articles are imported or brought in, they may be entered under this part for a fair or entered under the general tariff law, or for exportation.

(c) *Abandonment.* If not entered within such period, they will be regarded as abandoned to the Government.

§ 147.15 Tentative appraisal.

All articles entered for a fair shall be tentatively appraised prior to exhibition or use.

Subpart C—Requirements of Other Laws

§ 147.21 Marking under the Tariff Act of 1930.

The marking requirements of the Tariff Act of 1930, as amended, and the regulations thereunder will not apply to articles for a fair, except when such articles are entered for consumption. When entered for consumption, such articles shall be released from Customs custody only upon a full compliance with these marking requirements.

§ 147.22 Compliance with the internal revenue laws and Federal Alcohol Administration Act.

The packaging, marking, and labeling requirements of the internal-revenue laws, and of the Federal Alcohol Administration Act (27 U.S.C. 201 to 212), will not apply to articles entered under this part, but any article failing to comply with such requirements shall be conspicuously marked prior to exhibition "Not labeled or packaged as required by law—not for sale". When any such article is withdrawn for consumption, it shall be released from Customs custody only upon a full compliance with such packaging, marking, and labeling requirements.

§ 147.23 Compliance with Plant Quarantine Act and Federal Food, Drug, and Cosmetic Act.

(a) *Plant Quarantine Act.* The entry of plant material subject to restriction under the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151-164a, 167), shall not be permitted except under permits issued by the Plant Quarantine Division of the Agricultural Research Service, Department of Agriculture, and in accordance with the plant quarantine regulations.

(b) *Federal Food, Drug, and Cosmetic Act.* The entry of food products shall conform to the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.), and the regulations issued thereunder.

§ 147.24 Merchandise subject to licensing.

Merchandise, the importation of which is subject to the licensing regulations of any agency of the U.S. Government, may be entered for a fair only upon the presentation of the required license, or a waiver of such license.

Subpart D—Customs Supervision

§ 147.31 Articles to be kept separate.

Articles for exhibit at a fair shall be segregated from domestic articles and from imported articles entered under the provisions of the general Customs laws and released from Customs custody.

§ 147.32 Detail of officers to protect the revenue.

The district director shall detail an officer to act as his representative at the fair and shall station inside the buildings as many additional Customs officers and employees as may be necessary to properly protect the revenue.

§ 147.33 Reimbursement by fair operator.

All actual and necessary charges for labor, services, and other expenses in connection with the entry, examination, appraisal, custody, abandonment, destruction, or release of articles entered under the regulations of this part, together with the necessary charges for salaries of Customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed by the

fair operator to the Government, payment to be made on demand to the district director for deposit to the appropriation from which paid.

Subpart E—Disposition of Articles Entered for Fairs

§ 147.41 Removal or disposition pursuant to regulation.

Articles for a fair entered under this part shall not be removed from the fair premises, or otherwise disposed of, except in accordance with this subpart.

§ 147.42 Disposition generally.

(a) *Kinds of disposition.* Any article entered for a fair under this part may be entered for consumption, for warehouse, or under any other provision of the Customs laws, or for another fair, or may be transferred to other Customs custody status or to a foreign-trade zone, or abandoned to the Government, or destroyed under Customs supervision, or exported, at any time before, or within 3 months after, the closing date of the fair.

(b) *Appraisal.* Upon entry under any provision of the Customs laws, or at the expiration of 3 months after the closing date of the fair in the case of articles not previously entered or transferred, articles entered for fairs shall be appraised. Such appraisal shall be final in the absence of an appeal to re-appraisal, as provided in section 501 of the Tariff Act of 1930, as amended.

(c) *Period for performance of certain acts.* In the case of any article entered under a provision of the Customs laws, or for another fair, or transferred to other Customs custody status, or to a foreign-trade zone, the period prescribed for the performance of any act required by the provision governing the status under which the article is entered, or to which it is transferred, shall be computed from the date of such entry or transfer.

§ 147.43 Entry under the Customs laws.

(a) *Payment of duties and taxes.* Any applicable duties and internal revenue taxes on any article entered under any provision of the Customs laws must be paid on such article in its condition and quantity, and at the rate in effect, at the time of such entry.

(b) *Person to make entry.* Entry of merchandise under the Customs laws from a fair may be made in the name of any person duly authorized in writing by the fair operator to make such entry.

§ 147.44 Entry for another fair.

Articles entered for a fair which are to be entered for another fair under the provisions of this part shall be retained in continuous Customs custody.

§ 147.45 Merchandise from a foreign-trade zone.

Articles entered for a fair from a foreign-trade zone status of "zone restricted merchandise" and afterwards entered for consumption from a fair are subject to the provisions of item 804.00, Tariff Schedules of the United States.

§ 147.46 Voluntary abandonment or destruction.

At any time before or within 3 months after the closing date of the fair any article entered for a fair may be abandoned to the Government or destroyed under Customs supervision, upon compliance with § 15.4 of this chapter.

§ 147.47 Mandatory abandonment.

Any article entered for a fair, and not disposed of under the provisions of this subpart prior to the expiration of 3 months after the close of the fair shall be regarded as abandoned to the Government, and subject to sale or destruction. Proceeds of sale shall be disposed of in the manner provided in sections 491, 492, and 493, Tariff Act of 1930, as amended, and the regulations thereunder. Any duties or internal revenue taxes on such article shall be computed on the basis of its condition and quantity at the time it becomes subject to sale.

PART 153—ANTIDUMPING

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AUTHORITY: The provisions of this Part 153 issued under secs. 201-212, 407, 42 Stat. 11 et seq., as amended, sec. 5, 72 Stat. 585, secs. 406, 407, 42 Stat. 18; 5 U.S.C. 301, 19 U.S.C. 160-173. Other authorities are cited to text in parentheses.

§ 153.1 Scope.

This part sets forth procedures and rules applicable to proceedings under the Antidumping Act, 1921, as amended, the assessment of the special dumping duty, appeals for reappraisement, applications for review of reappraisements, and protests relating to matters under the Antidumping Act, 1921, as amended.

Subpart A—Fair Value

§ 153.2 Fair value; definition.

For the purposes of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the fair value of the imported merchandise shall be determined in accordance with §§ 153.3 to 153.5 of this chapter.

§ 153.3 Fair value based on price in country of exportation; the usual test.

(a) *General.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be sold, at less than fair value if the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for consumption in the country of exportation on or about the date of purchase or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or

about the date of exportation thereof if exporter's sales price applies.

(b) *Restricted sales.* When home market sales form the appropriate basis of comparison, they will be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the home market price will be made.

§ 153.4 Fair value based on sales for exportation to countries other than the United States.

(a) *General.* If it is demonstrated that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States will ordinarily be deemed to have been sold, or to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for exportation to countries other than the United States on or about the date of purchase or of agreement to purchase the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(b) *Twenty-five percent rule.* Generally, the quantity of such or similar merchandise sold for consumption in the country of exportation will be considered to be an inadequate basis for comparison if it is less than 25 percent of the quantity sold other than for exportation to the United States.

(c) *Restricted sales.* When third country sales form the appropriate basis of comparison, they will be used for this purpose whether or not they are restricted. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the third country price will be made.

§ 153.5 Fair value based on constructed value.

(a) *General.* If the information available is deemed by the Secretary insufficient or inadequate for a determination under § 153.3 or § 153.4 he will determine fair value on the basis of the constructed value as defined in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165).

(b) *Merchandise from controlled economy country.* Ordinarily, if the information available indicates that the economy of the country from which the merchandise is exported is controlled to an extent that sales or offers of sales of

such or similar merchandise in that country or to countries other than the United States do not permit a determination of fair value under § 153.3 or § 153.4, the Secretary will determine fair value on the basis of the constructed value of the merchandise determined on the normal costs, expenses, and profits as reflected by the prices at which such or similar merchandise is sold by a non-State-controlled-economy country either (1) for consumption in its own market; or (2) to other countries, including the United States.

§ 153.6 Calculation of fair value.

In calculating fair value under section 201(a), Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the criteria in §§ 153.7 through 153.16 shall apply.

§ 153.7 Fair value; differences in quantities.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with such applicable criteria as sales or offers, on which a determination of fair value is to be based, reasonable allowances will be made for differences in quantities if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade.

(b) *Criteria for allowances.* Allowances for price discounts based on sales in large quantities ordinarily will not be made unless:

(1) *Six-month rule.* The exporter during the 6 months prior to the date when the question of dumping was raised or presented (or during such other period as investigation shows is more representative) had been granting quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise which he sold in the home market (or in third country markets when sales to third countries are the basis for comparison) and that such discounts had been freely available to all purchasers; or

(2) *Cost justification.* The exporter can demonstrate that the discounts are warranted on the basis of savings specifically attributable to the quantities involved.

(c) *Price lists.* In determining whether a discount has been given, the presence or absence of a published price list reflecting such a discount is not controlling. In certain lines of trade, price lists are not commonly published and in others although commonly published they are not commonly adhered to.

§ 153.8 Fair value; circumstances of sale.

(a) *General.* In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a reasonably direct relationship to the sales which are under consideration.

(b) *Examples.* Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less.

(c) *Relation to market value.* In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, where appropriate, may also consider the cost of such differences to the seller, as contributing to an estimate of market value.

§ 153.9 Fair value; similar merchandise.

In comparing the purchase price or exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States, in the case of similar merchandise described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)), due allowance shall be made for differences in the merchandise. In this regard the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, when

appropriate, he may also consider differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences.

§ 153.10 Fair value; offering price.

In the determination of fair value, offers will be considered in the absence of sales, but an offer made in circumstances in which acceptance is not reasonably to be expected will not be deemed to be an offer.

§ 153.11 Fair value; sales agency.

If such or similar merchandise is sold or, in the absence of sales, offered by sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Antidumping Act, 1921 (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

§ 153.12 Fair value; fictitious sales.

In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

§ 153.13 Fair value; sales at varying prices.

Where the prices in the sales which are being examined for a determination of fair value vary (after allowances provided for in §§ 153.7, 153.8, and 153.9), determination of fair value will take into account the prices of a preponderance of the merchandise thus sold or weighted averages of the prices of the merchandise thus sold. Unless there is a clear preponderance of merchandise sold at the same price, weighted averages of the prices of the merchandise sold normally will be used.

§ 153.14 Fair value; quantities involved and differences in price.

Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price or exporter's sales price, as the case may be, and the fair value, is more than insignificant.

§ 153.15 Fair value; revision of prices or other changed circumstances.

(a) *Discontinuance of investigation.* Whenever the Secretary of the Treasury is satisfied during the course of an antidumping investigation that either

(1) Price revisions have been made which eliminate the likelihood of sales at less than fair value and that there is no likelihood of resumption of the prices which prevailed before such revision; or

(2) Sales to the United States of the merchandise have terminated and will not be resumed;

or whenever the Secretary concludes that there are other changed circumstances on the basis of which it may no

longer be appropriate to continue an antidumping investigation, the Secretary may publish a notice to this effect in the FEDERAL REGISTER.

(b) *Notice.* The notice shall state the facts relied on by the Secretary in publishing the notice and that those facts are considered to be evidence that there are not and are not likely to be sales at less than fair value. The notice shall also state that unless persuasive evidence or argument to the contrary is presented within 30 days the Secretary will determine that there are not and are not likely to be sales at less than fair value. The acceptance of assurances to revise prices or the termination of sales at less than fair value will not prevent the Secretary from making a determination of sales at less than fair value in any case where he considers such action appropriate or if the exporters have requested such action.

§ 153.16 Fair value; shipments from intermediate country.

If the merchandise is not imported directly from the country of origin, but is shipped to the United States from another country, the price at which such or similar merchandise is sold in the country of origin will be used in the determination of fair value if the merchandise was merely transshipped through the country of shipment.

Subpart B—Availability of Information

NOTE: For Bureau of Customs general provisions relating to availability of information see Part 103 of this chapter.

§ 153.23 Availability of information in antidumping proceedings.

(a) *Information generally available.* In general, all information but not necessarily all documents, obtained by the Treasury Department, including the Bureau of Customs, in connection with any antidumping proceeding will be available for inspection or copying by any person. With respect to documents prepared by an officer or employee of the United States, factual material, as distinguished from recommendations and evaluations, contained in any such document will be made available by summary or otherwise on the same basis as information contained in other documents. Attention is directed to § 24.12 of this chapter relating to fees charged for providing copies of documents.

(b) *Requests for confidential treatment of information.* Any person who submits information in connection with an antidumping proceeding may request that such information, or any specified part thereof, be held confidential. Information covered by such a request shall be set forth on separate pages from other information; and all such pages shall be clearly marked "Confidential Treatment Requested." The Commissioner of Customs or the Secretary of the Treasury or the delegate of either will determine, pursuant to paragraph (c) of this section, whether such information, or any part thereof, shall be treated as confi-

dential. If it is so determined, the information covered by the determination will not be made available for inspection or copying by any person other than an officer or employee of the U.S. Government or a person who has been specifically authorized to receive it by the person requesting confidential treatment. If it is determined that information submitted with such a request, or any part thereof, should not be treated as confidential, or that summarized or approximated presentations thereof should be made available for disclosure, the person who has requested confidential treatment thereof shall be promptly so advised, and, unless he thereafter agrees that the information, or any specified part or summary or approximated presentations thereof, may be disclosed to all interested parties, the information will not be made available for disclosure, but to the extent that it is self-serving it will be disregarded for the purpose of the determination as to sales at less than fair value and no reliance shall be placed thereon in this connection, unless it can be demonstrated from other sources that the information is correct.

(c) *Standards for determining whether information will be regarded as confidential.*—(1) *General.* Information will ordinarily be considered to be confidential only if its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. Further, if disclosure of information in specific terms or with identifying details would be inappropriate under this standard, the information will ordinarily be considered appropriate for disclosure in generalized, summary or approximated form, without identifying details, unless the Commissioner of Customs or the Secretary of the Treasury or the delegate of either determines that even in such generalized, summary or approximated form, such disclosure would still be of significant competitive advantage to a competitor or would still have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information. As indicated in paragraph (b) of this section, however, the decision that information is not entitled to protection from disclosure in its original or in another form will not lead to its disclosure unless the person supplying it consents to such disclosure.

(2) *Information ordinarily regarded as appropriate for disclosure.* Information will ordinarily be regarded as appropriate for disclosure if it—

- (i) Relates to price information;
- (ii) Relates to claimed freely available price allowances for quantity purchases; or
- (iii) Relates to claimed differences in circumstances of sale.

(3) *Information ordinarily regarded as confidential.* Information will ordinarily be regarded as confidential if its disclosure would—

- (i) Disclose business or trade secrets;
- (ii) Disclose production costs;
- (iii) Disclose distribution costs, except to the extent that such costs are accepted as justifying allowances for quantity or differences in circumstances of sale;
- (iv) Disclose the names of particular customers or the price or prices at which particular sales were made. (5 U.S.C. 552)

Subpart C—Procedure Under Antidumping Act, 1921

§ 153.25 Suspected dumping; information from Customs officers.

If any district director of Customs has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the foreign market value (or, in the absence of such value, than the constructed value), as contemplated by section 201(b) Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), or at less than its "fair value" as that term is defined in § 153.2 he shall communicate his belief or suspicion promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in § 153.27, if the district director has such information or if it is readily available to him.

§ 153.26 Suspected dumping; information from persons outside Customs Service.

Any person outside the Customs Service who has information that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act, 1921, as amended, may, on behalf of an industry in the United States, communicate such information in writing to the Commissioner of Customs.

§ 153.27 Suspected dumping; nature of information to be made available.

Communications to the Commissioner pursuant to § 153.26, regarding suspected dumping should, to the extent feasible, contain or be accompanied by the following:

- (a) A detailed description or sample of the merchandise; if no sample is furnished, the Bureau of Customs may call upon the person who furnished the information to furnish samples of the imported and competitive domestic articles, or either;
- (b) The name of the country from which it is being, or is likely to be, imported;
- (c) The name of the exporter or exporters and producer or producers, if known;
- (d) The ports or probable ports of importation into the United States;
- (e) Information indicating that an industry in the United States is being injured, or is likely to be injured, or prevented from being established;

(f) Such detailed data as are available with respect to values and prices indicating that such merchandise is being, or is likely to be, sold in the United States at less than its fair value, within the meaning of the Antidumping Act, 1921, as amended, including information as to any differences between the foreign market value or constructed value and the purchase price or exporter's sales price which may be accounted for by any difference in taxes, discounts, incidental costs such as those for packing or freight, or other items.

(g) Such material as is available indicating the market price for similar merchandise in the country of exportation and in any third countries in which merchandise of the producer complained of is known to be sold.

(h) Such information as is available as to sales made for consumption in the country of exportation or for exportation otherwise than to the United States over a significant period of time prior to the date upon which the information is furnished.

(i) Such suggestions as the person furnishing the information may have as to specific avenues of investigation to be pursued or questions to be asked in seeking pertinent information.

§ 153.28 Adequacy of information.

If any information filed pursuant to § 153.26 in the opinion of the Commissioner does not conform substantially with the requirements of § 153.27, the Commissioner shall return the communication to the person who submitted it with detailed written advice as to the respects in which it does not conform.

§ 153.29 Initiation of antidumping proceeding; summary investigation.

Upon receipt of information pursuant to § 153.25 or § 153.26 in a form acceptable to the Commissioner, the Commissioner shall conduct a summary investigation. If he determines that the information is patently in error, or that merchandise of the class or kind is not being and is not likely to be imported in more than insignificant quantities, or for other reasons determines that further investigation is not warranted, he shall so advise the person who submitted the information and the case shall be closed.

§ 153.30 Antidumping Proceeding Notice.

If the case has not closed under § 153.29, the Commissioner shall publish a notice in the FEDERAL REGISTER that information in an acceptable form has been received pursuant to § 153.25 or § 153.26. This notice, which may be referred to as the "Antidumping Proceeding Notice," will specify—

(a) Whether the information relates to all shipments of the merchandise in question from an exporting country, or only to shipments by certain persons or firms; in the latter case, the names of such persons and firms will be specified.

(b) The date on which information in an acceptable form was received and that date shall be the date on which the question of dumping was raised or presented for purposes of § 201(b) and § 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b) and 161(a)).

(c) The fact that there is some evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

(d) A summary of the information received. If a person outside the Customs Service raised or presented the question of dumping, his name may be included in the notice unless a determination under § 153.23 requires that his name not be disclosed.

§ 153.31 Full scale investigation.

(a) *Initiation of investigation.* Upon publication of an Antidumping Proceeding Notice the Commissioner shall proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 153.32. In order to verify the information presented, or to obtain further details, investigations will, where appropriate, be conducted by Customs Representatives in foreign countries, unless the country concerned objects to the investigation. If an adequate investigation is not permitted, or if any necessary information is withheld, the Secretary will reach a determination on the basis of such facts as are available to him.

(b) *Termination of investigation.* If at any time during an investigation the Commissioner determines that further investigation is not warranted by the facts of the case, he may recommend to the Secretary that the case be closed by a determination of no sales at less than fair value.

§ 153.32 Determination as to fact or likelihood of sales at less than fair value.

(a) *Fair value determination.* Upon receipt from the Commissioner of Customs of the information referred to in § 153.31, the Secretary of the Treasury will proceed as promptly as possible to determine whether or not the merchandise in question is in fact being, or is likely to be, sold in the United States or elsewhere at less than its fair value.

(b) *Submission of views.* During the course of an antidumping proceeding interested persons may make such written submissions as they desire. Appropriate consideration will be given to any new or additional information submitted. The Secretary or his delegate also may at any time invite any person or persons to supply him orally with information or argument.

§ 153.33 Negative determination.

(a) *Notice of Tentative Negative Determination.* If it appears to the Secre-

tary that on the basis of information before him a determination of sales at not less than fair value may be required, he will publish in the FEDERAL REGISTER a "Notice of Tentative Negative Determination," which will include a statement of the reasons upon which the tentative determination is based.

(b) *Opportunity to present views—*
(1) *Written.* Interested persons may make such written submissions as they desire, within a period which will be specified in the notice, with respect to the contemplated action. Appropriate consideration will be given to any new or additional information or argument submitted.

(2) *Oral.* If any person believes that any information obtained by the Bureau of Customs in the course of the antidumping proceeding is inaccurate or that for any other reason the tentative determination is in error, he may request in writing that the Secretary of the Treasury afford him an opportunity to present his views in this regard. Upon receipt of such a request, the Secretary will notify the person who supplied any information, the accuracy of which is questioned and such other person or persons, if any, as he in his discretion may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all such persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view and to supply such further information or argument as may be of assistance in leading to a conclusion as to the accuracy of the information in question. The Secretary or his delegate may at any time invite any person or persons to supply him orally with information or argument.

(c) *Final determination.* As soon as possible thereafter, the Secretary will make a final determination and publish his determination in the FEDERAL REGISTER.

(d) *Negative determination after issuance of a withholding of appraisement notice.* The procedure specified in paragraphs (a), (b), and (c) of this section will not apply if the decision to issue a negative determination is made by the Secretary after a withholding of appraisement notice has been issued and thereafter he has afforded interested parties an opportunity to be heard pursuant to the provisions of § 153.37. In lieu thereof a final negative determination will be published setting forth the statement of reasons.

§ 153.34 Withholding of appraisement.

(a) *Three-month period.* If the Commissioner determines during the course of his investigations that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) under the

Antidumping Act, and if there is evidence on record concerning injury or likelihood of injury to or prevention of establishment of an industry of the United States, he shall publish notice of these facts in the FEDERAL REGISTER in a "Withholding of Appraisal Notice," indicating:

- (1) That the belief or suspicion relates only to certain shippers or producers, if this is the case and that the investigation is limited to the transactions of such shippers or producers.
- (2) The expiration date of the notice (which shall be no more than 3 months from the date of publication of the notice in the FEDERAL REGISTER, unless a longer period of withholding of appraisal has been requested by the importer and the exporter pursuant to paragraph (b) of this section and has been approved by the Commissioner).

This withholding of appraisal notice will be issued concurrently with the Secretary's determination pursuant to § 153.35, unless appraisal is being withheld pursuant to paragraph (b) of this section.

(b) *Six-month period.* At any time prior to the issuance of the withholding of appraisal notice referred to in paragraph (a) of this section, importers and exporters concerned may request that the period of withholding of appraisal extend for a period longer than 3 months, but in no case longer than 6 months. Upon the receipt of such a request from importers and exporters concerned the Commissioner will decide whether appraisal should be withheld for a period longer than 3 months. If the Commissioner decides that a period of withholding of appraisal longer than 3 months is justified, he will publish a withholding of appraisal notice upon the same basis and containing information of the same type as is required by paragraph (a) of this section, except that the expiration date of the notice may be 6 months from the date of publication of the notice in the FEDERAL REGISTER.

(c) *Advice to District Directors of Customs.* The Commissioner shall advise all district directors of Customs of his action. Upon receipt of such advice the district director of Customs shall proceed to withhold appraisal in accordance with the pertinent provisions of § 153.48.

(d) *Notice issued before July 1, 1968.* The time limitations of this section do not apply to withholding of appraisal notices issued before July 1, 1968.

§ 153.35 Affirmative determination; general.

If it appears to the Secretary on the basis of the information before him that a determination of sales at less than fair value is required, unless the withholding of appraisal notice was issued pursuant to § 153.34(b), he will publish in

the FEDERAL REGISTER his Determination of Sales at Less Than Fair Value. This determination will include:

- (a) An adequate description of the merchandise;
- (b) The name of each country of exportation;
- (c) The name of the supplier or suppliers, if practicable;
- (d) The date of the receipt of the information in an acceptable form;
- (e) Whether the appropriate basis of comparison is purchase price or exporter's sales price; and
- (f) A statement of reasons upon which the determination is based.

§ 153.36 Affirmative determination; appraisal withheld pursuant to § 153.34(b).

If it appears to the Secretary on the basis of the information before him that a determination of sales at less than fair value is required, and if a withholding of appraisal notice has been issued pursuant to § 153.34(b), he will publish in the FEDERAL REGISTER his Determination of Sales at Less Than Fair Value within 3 months from the date of publication of such withholding of appraisal notice. This determination will contain information of the same type as required in § 153.35 (a) through (f).

§ 153.37 Affirmative determination; opportunity to present views.

As soon as possible after the publication of the withholding of appraisal notice if any person believes that for any reason the withholding action is in error, he may request that the Secretary of the Treasury afford him an opportunity to present his views in this regard. Upon receipt of such a request the Secretary will notify each person who supplied any information, relied upon in connection with the withholding action, and such other person or persons, if any, as he may deem to be appropriate. If the Secretary is satisfied that the circumstances so warrant, an opportunity will be afforded by the Secretary or his delegate for all interested persons to appear, through their counsel or in person, accompanied by counsel if they so desire, to make known their respective points of view and to supply such further information or argument as may be of assistance in a consideration of the matter. Unless for unusual reasons it is clearly impracticable, such meeting will be held within 3 weeks of the date of the publication of the notice of withholding, unless such notice was issued pursuant to § 153.34(b), when it shall be held within 5 weeks of such publication. Reasonable notice of the meeting will be given.

§ 153.38 Referral to U.S. Tariff Commission.

Whenever the Secretary makes a determination of sales at less than fair value he shall so advise the U.S. Tariff Commission.

§ 153.39 Revocation of determination of sales at less than fair value; determination of sales at not less than fair value.

If the Secretary is persuaded from information submitted or arguments received that his determination of sales at less than fair value was in error, and if the Tariff Commission has not yet issued a determination relating to injury, he will publish a notice of "Revocation of Determination of Sales at Less Than Fair Value; Determination of Sales at Not Less Than Fair Value," or, if appropriate, a notice of "Modification of Determination of Sales at Less Than Fair Value," which notice will state the reasons upon which it was based. He shall notify the Tariff Commission of his action.

§ 153.40 Dumping finding.

If the Tariff Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary of the Treasury will make the finding contemplated by section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to the involved merchandise.

§ 153.41 Modification or revocation of finding.

(a) *Application to modify or revoke.* An application for the modification or revocation of any finding made as provided for in § 153.40 may be submitted in writing to the Commissioner of Customs, together with detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists with respect to all or any part of the merchandise covered thereby.

(b) *Modification or revocation by Secretary.* The Secretary of the Treasury may on his own initiative modify or revoke a finding of dumping.

(c) *Notice of modification or revocation of finding.* Notice of intent to modify or revoke a finding will be published by the Secretary in the FEDERAL REGISTER. Comments from interested parties will be given consideration if they are received within the period of time stated in the notice.

§ 153.42 Publication of determinations and findings.

Each determination made in accordance with §§ 153.33, 153.34, 153.35, and 153.36, whether such determination is in the affirmative or in the negative, and each finding made in accordance with § 153.40, will be published in the FEDERAL REGISTER, together with a statement of the reasons therefor.

§ 153.43 List of current findings.

The following findings of dumping are currently in effect:

FINDINGS OF DUMPING

Merchandise	Country	T.D.	Modified by
Portland cement, other than white, nonstaining portland cement.	Sweden	53369	
Portland gray cement	Belgium	53428	
Portland cement, other than white, nonstaining portland cement.	Portugal	53501	
Chromic acid	Dominican Republic	53883	
Steel reinforcing bars	Australia	56130	
Carbon steel bars and structural shapes	Canada	56150	
Steel jacks	do	56264	
Cast iron soil pipe	Poland	66-191	
Titanium sponge	U.S.S.R.	67-252	
Pig iron	U.S.S.R.	68-212	
Do	Czechoslovakia	68-261	
Do	East Germany	68-262	
Do	Romania	68-263	
Potassium chloride, otherwise known as muriate of potash	France	68-264	
Do	West Germany	69-263	
Potassium chloride, otherwise known as muriate of potash, except shipments by U.S. Borax & Chemical Co., Kalium, Saskatchewan, Canada.	Canada	69-264	
Aminocetic acid (glycine)	France	70-71	
Steel bars, reinforcing bars, and shapes manufactured by the Broken Hill Proprietary Co., Ltd., Melbourne, Australia.	Australia	70-81	

Subpart D—Action by District Director of Customs

§ 153.48 Action by the district director of Customs.

(a) *Appraisal withheld; notice to importer.* Upon receipt of advice from the Commissioner of Customs pursuant to § 153.34, the district director of Customs shall withhold appraisal as to such merchandise entered, or withdrawn from warehouse, for consumption, after the date of publication of the "Withholding of Appraisal Notice," unless the Commissioner's Withholding of Appraisal Notice specifies a different effective date. Each district director of Customs shall notify the importer, consignee, or agent immediately of each lot of merchandise with respect to which appraisal is so withheld. Such notice shall indicate (1) the rate of duty of the merchandise under the applicable item of the Tariff Schedules of the United States if known, and (2) the estimated margin of the special dumping duty that could be assessed. Upon advice of a finding made in accordance with § 153.40, the district director of Customs shall give immediate notice thereof to the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of appraisal of such shipment.

(b) *Request to proceed with appraisal.* If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the district director of Customs is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than foreign market value (or, in the absence of such value, than the constructed value), he shall so advise the Commissioner and request authorization to proceed with his appraisal of that shipment in the usual manner.

§ 153.49 Certificate of importer.

If a finding of dumping has been made, the district director of Customs shall require the importer or his agent to file a certificate of the importer on the appropriate one of the following forms. A sep-

arate certificate shall be required for each shipment.

Form 1:

NONEXPORTER'S CERTIFICATE

ANTIDUMPING ACT, 1921

Re: Entry No. _____, dated _____, 19____
 Import carrier _____
 Arrived _____, 19____
 I certify that I am not the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry. I further certify that the merchandise was purchased for importation by _____ on _____, 19____, and that the purchase price is _____
 (Signed) _____

Form 2:

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS KNOWN

ANTIDUMPING ACT, 1921

Re: Entry No. _____, dated _____, 19____
 Import carrier _____
 Arrived _____, 19____
 I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the price stated in the attached statement; and that, if any of such merchandise is actually sold at any price different from the price stated therefor in the attached statement, I will immediately notify the district director of Customs of all the circumstances.

The merchandise was acquired by me in the following manner: _____

and has been sold or agreed to be sold to _____
 (Name and address)

at _____
 (Price)

(Signed) _____

Form 3:

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS NOT KNOWN

ANTIDUMPING ACT, 1921

Re: Entry No. _____, dated _____, 19____
 Import carrier _____
 Arrived _____, 19____
 I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the price stated in the attached statement; and that, if any of such merchandise is actually sold at any price different from the price stated therefor in the attached statement, I will immediately notify the district director of Customs of all the circumstances.

Import carrier _____
 Arrived _____, 19____

I certify that I am the importer as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that I have no knowledge as to any price at which such merchandise will be sold in the United States. I hereby agree that I will keep a record of the sales and will furnish the district director of Customs within 30 days after the sale of any of such merchandise a statement of each selling price. I further agree that, if any of the merchandise has not been sold before the expiration of 6 months from the date of entry, I will so report to the district director of Customs upon such expiration date.

The merchandise was acquired by me in the following manner: _____

(Signed) _____

Form 4:

EXPORTER'S CERTIFICATE WHEN MERCHANDISE IS NOT, AND WILL NOT BE, SOLD

ANTIDUMPING ACT, 1921

Re: Entry No. _____, dated _____, 19____
 Import carrier _____
 Arrived _____, 19____
 I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry and that such merchandise has not been, and will not be, sold in the United States for the following reason: _____
 (Signed) _____

(Sec. 486, 46 Stat. 725, as amended; 19 U.S.C. 1486)

§ 153.50 Appraisal of merchandise covered by Form 4.

If an unqualified certificate on Form 4 is filed and the district director of Customs is satisfied that no evidence can be obtained to contradict it, the shipment will be appraised without regard to the Antidumping Act.

§ 153.51 Appraisal when required certificate not filed.

If the importer fails to file an appropriate certificate within 30 days following notification by the district director of Customs that a certificate is required under § 153.49, appraisal shall proceed upon the basis of the best information available.

§ 153.52 Reimbursement of dumping duties.

(a) *General.* In calculating purchase price or exporter's sales price as the case may be, there shall be deducted the amount of any special dumping duties which are, or will be paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of dumping duties entered into before the initiation of the investigation, will not be regarded as affecting purchase price or exporter's sales price if it was granted to an importer with respect to merchandise which was

(1) Purchased, or agreed to be purchased, before publication of a Withholding of Appraisal Notice with respect to such merchandise, and

(2) Exported before a determination of sales at less than fair value is made.

(b) *Statement concerning reimbursement.* Before proceeding with appraisal of any merchandise with respect to which dumping duties are found to be due the district director of Customs shall require the importer to file a written statement in the following form:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller or exporter of all or any part of the special dumping duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of withholding in Federal Register) or purchased before (same date) but exported on or after (date of determination of sales at less than fair value).

A certificate will be required for all merchandise that is unappraised on the date that the finding of dumping is issued. Thereafter, a separate certificate will be required for each additional shipment.

§ 153.53 Release of merchandise; bond.

When the district director of Customs in accordance with § 153.34(c) has received a notice of withheld appraisal or when he has been advised of a finding provided for in § 153.40, and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his custody or is thereafter imported, unless an appropriate bond is filed or is on file, as specified hereafter in § 153.54, or unless the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act, 1921, as amended.

§ 153.54 Type of bond required.

(a) *General.* If the merchandise is of a class or kind covered by a notice of withheld appraisal provided for in § 153.48(a) or by a finding provided for in § 153.40, a single consumption entry bond covering the shipment, in addition to any other required bond, shall be furnished by the person making the entry or withdrawal, unless

(1) A bond is required under paragraph (b) of this section, or

(2) In cases in which there is no such requirement the district director of Customs is satisfied that the bond under which the entry was filed is sufficient.

The face amount of any additional bond required under this paragraph shall be sufficient to assure payment of any special duty that may accrue by reason of the Antidumping Act, but in no case shall be for less than \$100.

(b) *Bond on Customs Form 7591.* If the merchandise is of a class or kind covered by a finding provided for in § 153.40 and the importer or his agent has filed a certificate on Form 3 (§ 153.49), the bond required by section 208 of the Antidumping Act, 1921 (19 U.S.C. 167), shall be on Customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The

record of sales required under the conditions of the bond of Customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The face amount of such bond shall be equal to the estimated value of the merchandise covered by the finding.

§ 153.55 Conversion of currencies.

In determining the existence and amount of any difference between the purchase price or exporter's sales price and the foreign market value (or, in the absence of such value, the constructed value) for the purposes of §§ 153.2 through 153.5 of these regulations, or of section 201(b) or 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in U.S. currency shall be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended (31 U.S.C. 372) and § 16.4 of this chapter, (a) as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison, or (b) as of the date of exportation, if the exporter's sales price is an element of the comparison.

§ 153.56 Dumping duty.

(a) *Rule for assessment.* Special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, as to which the Secretary of the Treasury has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary or his delegate, provided the particular importation has not been appraised prior to the publication of such finding, and the district director of Customs has determined that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be.

(b) *Entered value not controlling.* The fact that the importer has added on entry the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the district director of Customs has approved the resulting entered value shall not prevent the assessment of the special dumping duty.

§ 153.57 Notice to importer.

Before dumping duty is assessed, the district director of Customs shall notify the importer, his consignee, or agent of the appraisal of the merchandise, as in the case of an advance in value. If the importer files an appeal for reappraisal, liquidation shall be suspended until the appeal for reappraisal is finally decided.

§ 153.58 Dumping duty; samples.

If the necessary conditions are present, the special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

§ 153.59 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207, Antidumping Act, 1921 (19 U.S.C. 166), the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or, if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into U.S. money as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of such section 207, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into U.S. money as of the date of exportation.

Subpart E—Antidumping Appeals and Protests

§ 153.64 Antidumping appeals and protests procedure.

Appeals for reappraisal, applications for reviews of reappraisals, and protests relating to the Antidumping Act, 1921, as amended, shall be made in the same manner as appeals, applications for review, and protests relating to ordinary Customs duties.

[P.R. Doc. 70-7330; Filed, June 12, 1970; 8:45 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 4, further amended]

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart M—Coverage of Employees of State and Local Governments

REFUND OF CONTRIBUTIONS

Regulations No. 4 of the Social Security Administration, as amended (20 CFR 404.1 et seq.), are further amended as follows:

Paragraph (b) of § 404.1262 is revised to read as follows:

§ 404.1262 Adjustment of overpayment of contributions.

(b) *Overpayment due to overreporting of wages.*—(1) *In general.* If the overpayment is due to an overreporting of the amount of wages paid to one or more employees during one or more calendar quarters, and such overpayment is not adjusted in accordance with paragraph (a) of this section, a report on form

OAR-S4 showing the amount or amounts of wages previously reported for the quarter or quarters and the correct amount or amounts of wages, if any, paid to such employee in such calendar quarter or quarters, shall be filed upon ascertainment of the error by the State, together with a copy of the form OAR-S1 prepared in accordance with the instructions contained thereon. Such report shall include, or be accompanied by, a statement of the reason why the original reporting of wages was incorrect.

(2) *Refund or credit of overpayment:* section 218(e)(2) not applicable. If the State has collected or caused to be collected contributions from employees in amounts which exceed the amount of taxes which would have been imposed by section 3101 of the Internal Revenue Code of 1954, and has paid to the Secretary of the Treasury such contributions plus an equal amount equivalent to the excess over the taxes which would have been imposed by section 3111 of the code, if the services covered under the agreement constituted employment as defined in section 3121 of such code, the State shall adjust the overpayment by a report on form OAR-S4 in accordance with subparagraph (1) of this paragraph. The State's claim for refund or credit of this overpayment shall include, or be accompanied by, a statement or certification in or on a prescribed form that the employees who are listed on form OAR-S4 and from whom excess contributions have been collected have not received and will not apply for a refund of excess contributions under the provisions of section 6413(c) of the Internal Revenue Code of 1954. (See § 404.1266(b).) If the State's claim for refund or credit for the overpayment is not accompanied by such statement or certification, refund or credit shall be limited to one-half of the amount overpaid.

(Secs. 205, 218, 1102, 53 Stat. 1368, as amended, 64 Stat. 514, as amended, 49 Stat. 647, as amended; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 418, and 1302)

Effective date. The foregoing regulations shall become effective upon publication in the FEDERAL REGISTER.

Dated: May 6, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: June 10, 1970.

JOHN G. VENEMAN,
Acting Secretary of Health,
Education, and Welfare.

[P.R. Doc. 70-7424; Filed, June 12, 1970;
8:48 a.m.]

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

PART 422—ORGANIZATION AND PROCEDURES

Supervision by Child-Placement Agency

Regulations No. 4 and Regulations No. 22 of the Social Security Administration

(20 CFR 404.1 et seq. and 20 CFR 422.1 et seq.) are amended as follows:

Subpart D—Old-Age, Disability, Dependents', and Survivors' Insurance Benefits; Period of Disability

1. Subparagraph (c) (3) of § 404.323 is revised to read as follows:

§ 404.323 Child's insurance benefits; time at which child must be dependent upon parent.

(c) *Adoption under the supervision of a public or private child-placement agency.* * * *

(3) *Supervision by a child-placement agency.* For purposes of paragraph (a) (5) (iii) of this section, the term "supervision of a public or private child-placement agency" means that such agency, as defined in subparagraphs (1) and (2) of this paragraph, prior to the final decree of adoption, was significantly involved in the adoption by making an investigation to determine the suitability of the adopting parent and the eligibility of the child for adoption, or by issuing a report of such suitability and eligibility, or by making recommendations based on such suitability and eligibility, to the court having jurisdiction of the adoption proceedings. This requirement is not met if such investigation, report, or recommendation by such an agency was not made, whether because it was waived, or because it is not required under applicable State law, or for any other reason.

Subpart E—Availability of Information and Records to the Public

2. Section 422.408 is revised to read as follows:

§ 422.408 Statements of policy and interpretations not published in the "Federal Register."

Precedent final opinions and orders and statements of policy and interpretations that have been adopted by the Administration and that are not published in the FEDERAL REGISTER will be made available by publication in the Social Security Rulings (see § 422.410(d)). Social Security Rulings are published under the authority of the Commissioner of Social Security and are binding on all components of the Administration.

(Secs. 205, 206, 1102, 1871, and 1872, 53 Stat. 1368, as amended, 53 Stat. 1372, as amended, 49 Stat. 647, as amended, 79 Stat. 331, 332; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 406, 1302, and 1395 (hb) and (ii); 5 U.S.C. 552, as amended by Public Law 90-23)

3. **Effective date.** These amendments shall be effective upon publication in the FEDERAL REGISTER.

Dated: May 6, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: June 10, 1970.

JOHN G. VENEMAN,
Acting Secretary of Health,
Education, and Welfare.

[P.R. Doc. 70-7423; Filed, June 12, 1970;
8:48 a.m.]

[Reg. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965—)

Subpart A—Hospital Insurance Benefits

NURSING SERVICES AND OTHER RELATED SERVICES

Subpart A of Regulations No. 5 is amended as set forth below.

1. Section 405.116 is amended by revising paragraph (c) to read as follows:

§ 405.116 Inpatient hospital services; defined.

(c) *Nursing services and other related medical services; medical social services; use of hospital facilities; exclusion of private-duty nursing and related services.* Nursing services and other related services, use of hospital facilities, and medical social services are considered as inpatient hospital services only if ordinarily furnished by the hospital for the care and treatment of inpatients. The services of a private-duty nurse or other private-duty attendant are excluded from the definition of inpatient hospital services for which reasonable cost reimbursement can be made. Such persons are generally engaged or paid by an individual patient or by someone acting on his behalf, including a hospital that initially incurs the cost and looks to the patient for reimbursement for such non-covered services. Ordinarily, they are not employees of the hospital. A nurse or other attendant is not considered as a private-duty nurse or other private-duty attendant if, during the time the services are rendered, such individual is an employee of the hospital. The services of such employees are within the definition of inpatient hospital services for which reimbursement can be made. Where, however, the hospital acts on behalf of a patient or patients in engaging a private-duty nurse or other private-duty attendant and initially pays such person for his services pursuant to arrangement with the patient or patients that the hospital will be reimbursed for the payment, and the person so engaged renders services to one or more such patients, the services of the private-duty nurse or other attendant under such an arrangement are not inpatient hospital services regardless of the control which the hospital may exercise with respect to the services rendered by such private-duty nurse or attendant.

(Secs. 1102, 1861(b), and 1871, 49 Stat. 647, as amended, 79 Stat. 314, 331; 42 U.S.C. 1302, 1395 et seq.)

2. **Effective date.** The foregoing amendments shall become effective upon publication in the FEDERAL REGISTER.

Dated: May 6, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: June 10, 1970.

JOHN G. VENEMAN,
Acting Secretary of Health,
Education, and Welfare.

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