

that they “be made up in such a manner that they may be easily examined” and generally are not permitted to “contain any document having the character of current and personal correspondence.” Exceptions to the latter requirement exist for matter for the blind and certain correspondence between school children. Because of these exceptions, the prohibition against reading correspondence without a search warrant or authorization of the sender or addressee applies to correspondence of the blind and correspondence between school children contained in “AO” mail. “AO” mail can usually be identified by the following words: “Imprime” or “Printed Matter”, “Cecogramme” or “Literature for the Blind”, “Petit Paquet” or “Small Packet” or similar terms or their equivalents.

*C. Reasonable Cause to Suspect.* Determining whether there is “reasonable cause to suspect” that merchandise or contraband is contained in sealed letter class mail is ultimately a matter of judgment for each Customs official, based on all relevant facts and circumstances. This judgment should be exercised within the framework of the Customs regulation that sealed letter class mail which appears to contain only correspondence is not to be opened unless a search warrant or written authorization from either the sender or the addressee has been obtained in advance of the opening.

Past practice indicates that the following circumstances (which are illustrative and not exhaustive) provide “reasonable cause to suspect” and permit the opening of sealed letter class mail without a search warrant or authorization of the sender or addressee.

1. A detector dog has alerted to the presence of narcotics or explosives in a specific mail article.
2. X-ray of fluoroscope examination indicates the presence of merchandise or contraband.
3. The weight, shape, feel, or sound of the mail article or its contents may indicate that merchandise or contraband (e.g., a hard object which may be jewelry, a stack of paper which may be counterfeit money, or coins) could be in the mail article. Contents of a mail article which feel lumpy, powdery, or spongy may, for example, indicate the presence of narcotics.
4. Information from a source previously shown to be reliable indicates that an identifiable mail article contains merchandise or contraband.
5. The mail article is insured.
6. The mail article is a box, carton, or wrapper other than a thin envelope.
7. The sender or addressee of the mail article is known to be fictitious.

On the other hand, certain facts standing alone generally will not provide “reasonable cause to suspect” the presence of merchandise or contraband and therefore do not permit the opening of sealed letter class mail.

For example, sealed letter class mail may not be opened merely because:

1. The mail article is registered.
2. The feel of a letter-size envelope suggests that it contains one or a limited number of photographs.
3. The mail article appears to be part of a mass mailing.
4. The mail article is from a particular country, whether or not a known source country of contraband.
5. A detector dog has alerted to the presence of narcotics or explosives somewhere within a tray of mail (the individual articles of mail must then be examined individually).
6. The sender or addressee of the mail article is known to have mailed or received contraband or merchandise in violation of law in the past.
7. The wrapper contains writing or typing similar to that previously found on articles of mail which contained contraband or merchandise in violation of law.

In case where any one of the above facts is present, additional evidence must exist which in conjunction with that fact provides reasonable cause to suspect the presence of merchandise or contraband.

[T.D. 78-102, 43 FR 14454, Apr. 6, 1978, as amended by T.D. 83-212, 48 FR 46771, Oct. 14, 1983]

## PART 146—FOREIGN TRADE ZONES

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#### APPENDIX TO PART 146—GUIDELINES FOR DETERMINING PRODUCIBILITY AND RELATIVE VALUES FOR OIL REFINERY ZONES

AUTHORITY: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

SOURCE: T.D. 86–16, 51 FR 5049, Feb. 11, 1986, unless otherwise noted.

### § 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.

(a) The following words, defined in section 1 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a), are given the same meaning when used in this part, unless otherwise stated: “Board”, “Grantee”, and “Zones”.

(b) The following are general definitions for the purpose of this part:

*Act.* “Act” means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a–u).

*Activation.* “Activation” means approval by the grantee and port director for operations and for the admission and handling of merchandise in zone status.

*Admit.* “Admit” means to bring merchandise into a zone with zone status.

*Alteration.* “Alteration” means a change in the boundaries of an activated zone or subzone; activation of a

separate site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

*Conditionally admissible merchandise.* “Conditionally admissible merchandise” is merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

*Constructive transfer.* “Constructive transfer” is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory.

*Customs territory.* “Customs territory” is the territory of the U.S. in which the general tariff laws of the U.S. apply. “Customs territory of the United States” includes only the States, the District of Columbia, and Puerto Rico. (General Note 2, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)).

*Deactivation.* “Deactivation” means voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuation of the activated status of only a part of a zone site is an alteration.

*Default.* “Default” means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foreign Trade Zone Operator Bond.

*Domestic merchandise.* “Domestic merchandise” is merchandise which has been (i) produced in the U.S. and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

*Foreign merchandise.* “Foreign merchandise” is imported merchandise which has not been properly released from Customs custody in Customs territory.

*Fungible merchandise.* “Fungible merchandise” means merchandise which for commercial purposes is identical and interchangeable in all situations.

*Merchandise.* “Merchandise” includes goods, wares and chattels of every de-

scription, except prohibited merchandise. Building materials, production equipment, and supplies for use in operation of a zone are not “merchandise” for the purpose of this part.

*Operator.* “Operator” is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. Where used in this part, the term “operator” also applies to a “grantee” that operates its own zone.

*Port Director.* For those foreign trade zones located within the geographical limits of a port of entry, the term “port director” means the director of that port of entry. For those foreign trade zones located outside the geographical limits of a port of entry, the term “port director” means the director of the port of entry geographically nearest to where the foreign trade zone is located.

*Prohibited merchandise.* “Prohibited merchandise” is merchandise the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise which is excluded from a zone by order of the Board. Books urging treason or insurrection against the U.S., obscene pictures, and lottery tickets are examples of prohibited merchandise.

*Reactivation.* “Reactivation” means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is an alteration. If the operator is different, it is an activation.

*Subzone.* “Subzone” is a special-purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. The term “zone” also applies to a subzone, unless specified otherwise.

*Transfer.* “Transfer” means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes.

*Unique identifier.* “Unique identifier” means the numbers, letters, or combination of numbers and letters that

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identify merchandise admitted to a zone with zone status.

*User.* “User” means a person or firm using a zone or subzone for storage, handling, or processing of merchandise.

*Zone lot.* “Zone lot” means a collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot.

*Zone site.* “Zone site” means the physical location of a zone or subzone.

*Zone status.* “Zone status” means the status of merchandise admitted to a zone, *i.e.*, nonprivileged foreign, privileged foreign, zone restricted, or domestic.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89-1, 53 FR 51263, Dec. 21, 1988; T.D. 99-27, 64 FR 13674, Mar. 22, 1999]

## § 146.2 Port director as Board representative.

The appropriate port director shall be in charge of the zone as the representative of the Board.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

## § 146.3 Customs supervision.

(a) *Assignment of Customs officers.* Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with §101.2(c) of this chapter. The port director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator’s records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 98-22, 63 FR 11826, Mar. 11, 1998]

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## § 146.4 Operator responsibility and supervision.

(a) *Supervision.* The operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise.

(b) *Customs access.* The operator shall permit any Customs officer access to a zone.

(c) *Safekeeping of merchandise and records.* The operator is responsible for safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(d) *Records maintenance.* The operator shall (1) maintain the inventory control and recordkeeping system in accordance with the provisions of subpart B, (2) retain all records required in this part and defined in §162.1(a) of this chapter, pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and (3) protect proprietary information in its custody from unauthorized disclosure. Records shall be readily available for Customs review at the zone.

(e) *Merchandise security.* The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(f) *Storage and handling.* The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly

removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

(g) *Guard service.* The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the port director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

(h) *Miscellaneous responsibilities.* The operator is responsible for complying with requirements for admission, manipulation, manufacture, exhibition, or destruction, shortage, or overage; inventory control and recordkeeping systems, transfer to Customs territory, and other requirements as specified in this part. If the operator elects to transfer merchandise from within the district boundaries (see definition of “district” at §112.1) to his zone, he shall receipt for the merchandise at the time he picks it up for transportation to his facility. He becomes liable for the merchandise at that time.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94-81, 59 FR 51496, Oct. 12, 1994; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

#### § 146.5 [Reserved]

#### § 146.6 Procedure for activation.

(a) *Application.* A zone operator, or where there is no operator, a grantee, shall make written application to the port director to obtain approval of activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted. The port director may also require the operator or grantee to submit fingerprints on form FD 258 or electronically at the time of filing the application. If the operator is an individual, that individual's fingerprints may be required. If the operator or grantee is a business entity, finger-

prints of all officers and managing officials may be required.

(b) *Supporting documents.* The application must be accompanied by the following:

(1) [Reserved]

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity, in the appropriate unit, of any tank, certified to be correct by the operator of the tank;

(4) A procedures manual describing the inventory control and record-keeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of subpart B; and

(5) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by port director.* As a condition of approval of the application, the port director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the port director.* The port director shall promptly notify the applicant in writing of his decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in §146.82. The decision of the port director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of §113.73 of this chapter.

(e) *Activation.* Upon the port director's approval of the application and acceptance of the executed bond, the

zone or zone site will be considered activated; and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 93-18, 58 FR 15773, Mar. 24, 1993; T.D. 95-99, 60 FR 62733, Dec. 7, 1995; T.D. 99-27, 64 FR 13676, Mar. 22, 1999; T.D. 01-14, 66 FR 8767, Feb. 2, 2001]

**§ 146.7 Zone changes.**

(a) *Alteration of an activated area.* An operator shall make written application to the port director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the supporting document requirements specified in §146.6, as applicable. The port director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in §146.6.

(b) *Deactivation or reactivation.* A grantee, or an operator with the concurrence of a grantee, shall make written application to the port director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. The port director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator. The port director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under §146.6(d).

(c) *Suspension of activated site.* When approval of an activated status has been suspended through the procedure in subpart G, the port director may require all goods in that area in zone status (other than domestic status) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, if the port director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(d) *New bond.* The port director may require an operator to furnish, on 10 days notice, a new Foreign Trade Zone

Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if (1) the activated zone area is substantially altered; (2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (3) the existing bond lacks good and sufficient surety; or (4) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the surety to any material alteration in the boundaries of the zone.

(e) *New operator.* A grantee of an activated zone site shall make written application to the port director for approval of a new operator, submitting with the application a certification by the new operator that the inventory control and recordkeeping system meets the requirements of subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The port director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers.

(f) The bond in §146.6 shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The port director shall promptly notify the grantee, in writing, of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The port director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of officers and persons having a direct or indirect financial interest in the operator, and of persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone user. If a list was previously furnished, the port director may make a written

demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 95-99, 60 FR 62733, Dec. 7, 1995]

**§ 146.8 Seals, authority of operator to break and affix.**

The port director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or intermodal container containing merchandise approved for admission to the zone upon its arrival at the zone; or to affix a Customs in-bond seal to any vehicle or intermodal container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in-bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the port director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the port director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the port director shall deem the seal or delivering conveyance to be intact.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

**§ 146.9 Permission of operator.**

An application for permission to admit merchandise into a zone, or to manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket application. The written concurrence of the operator in the removal of merchandise from a zone is

not required because the merchandise is released by the port director to the operator for delivery from the zone, as provided in § 146.71 (a).

**§ 146.10 Authority to examine merchandise.**

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

**§ 146.11 Transportation of merchandise to a zone.**

(a) *From outside Customs territory.* Merchandise may be admitted 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 will 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 admitted to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedures in § 144.37(g) of this chapter and transferred to a zone for admission in zone-restricted status.

**§ 146.12 Use of zone by carrier.**

(a) *Primary use; lading and unlading.* The water area docking facilities, and any lading and unlading 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 Customs if found to endanger the revenue, or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulations.* Nothing in the Act or the regulations in this part shall be

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construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

### § 146.13 Customs forms and procedures.

Where a Customs form or other document is required in this part, the number of copies of the form or document required to be presented and their manner of distribution and processing shall be determined by the port director, except as otherwise specified in this part.

### § 146.14 Retail trade within a zone.

Retail trade is prohibited within a zone except as provided in 19 U.S.C. 810(d). See also the regulations of the Board as contained in 15 CFR part 400.

## Subpart B—Inventory Control and Recordkeeping System

### § 146.21 General requirements.

(a) *Systems capability.* The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method.

(b) *Procedures manual.* (1) The operator shall provide the port director with an English language copy of its

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written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its procedures manual and shall submit to the port director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the port director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the port director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator.* Upon zone activation approval the operator remains liable for complying with all inventory control and recordkeeping system requirements set forth in this part.

### § 146.22 Admission of merchandise to a zone.

(a) *Identification.* All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under § 146.43, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the port director as provided in § 146.37.

(c) *Incomplete documentation.* Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it will be formally admitted to the zone under § 146.32 or 146.40. The receiving report or



document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation*. Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier for traceability. The inventory record will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

(e) *Harbor maintenance fee*. When imported cargo is unloaded from a commercial vessel at a U.S. port and admitted into a foreign trade zone, the applicant for admission of that cargo into the zone may be subject to the harbor maintenance fee as set forth in § 24.24 of this chapter.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 87-44, 52 FR 10211, Mar. 30, 1987; 52 FR 10970, Apr. 6, 1987]

#### § 146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise*—(1) *General*. A zone lot number or unique identifier will be used to identify and trace merchandise.

(2) *Fungible merchandise*. Fungible merchandise may be identified by an inventory method authorized by Customs, which is consistently applied, such as First-In-First-Out (FIFO) and using a unique identifier.

(b) *Inventory records*. The inventory records will specify by zone lot number or unique identifier:

- (1) Location of merchandise;
- (2) Zone status;
- (3) Cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;
- (4) Beginning balance, cumulative receipts and removals, adjustments, and current balance on hand by date and quantity;
- (5) Destruction of merchandise; and
- (6) Scrap, waste, and by-products.

(c) *Physical inventory*. The operator shall take at least an annual physical

inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the port director of any discrepancies in accordance with § 146.53.

#### § 146.24 Transfer of merchandise from a zone.

(a) *Accountability*. (1) All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping system.

(2) The inventory control and recordkeeping system for merchandise transfers must have the capability to trace all transfers back to a zone admission under a Customs authorized inventory method.

(b) *Information*. The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise from the zone.

#### § 146.25 Annual reconciliation.

(a) *Report*. The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the port director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for a spot check or audit by Customs, and need not furnish it to Customs unless requested. There is no form specified for the preparation of the report.

(b) *Information required*. The report must contain a description of merchandise for each zone lot or unique identifier, zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification*. The operator shall submit to the port director within 10 working days after the annual reconciliation report, a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must

contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with §146.53. These reports must accompany the certification letter.

**§ 146.26 System review.**

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the port director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

**Subpart C—Admission of Merchandise to a Zone**

**§ 146.31 Admissibility of merchandise into a zone.**

Merchandise of every description may be admitted into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* Port directors shall not admit prohibited merchandise. If there is a question as to whether the merchandise may be prohibited, port 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 will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise.

(b) *Conditionally admissible merchandise.* The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned.

**§ 146.32 Application and permit for admission of merchandise.**

(a)(1) *Application on CBP Form 214 and permit.* Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered CBP Form 214 (“Application for Foreign Trade Zone Admission and/or Status Designation”) and the issuance of a permit by the port director. Exceptions

to the CBP Form 214 requirement are for merchandise temporarily deposited (§146.33), transiting merchandise (§146.34), or domestic merchandise admitted without permit (§146.43). The applicant for admission shall present the application to the port director and shall include a statistical copy on CBP Form 214-A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct transmittal of statistical information to that agency.

(2) *CBP Form 214 and Importer Security Filing submitted via a single electronic transmission.* If an Importer Security Filing is filed pursuant to part 149 of this chapter via the same electronic transmission as CBP Form 214, the filer is only required to provide the following fields once to be used for Importer Security Filing and CBP Form 214 purposes:

(i) Country of origin; and  
(ii) Commodity HTSUS number if this number is provided at the 10-digit level.

(b) *Supporting documents—(1) Commercial documentation.* The applicant shall submit with the application two copies of an examination invoice meeting the requirements of subpart F, part 141, of this chapter, for any merchandise, other than that excepted in paragraph (a) of this section, to be admitted to a zone. The notation of tariff classification and value required by §141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under §141.11 or §141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized for delivery by Customs to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see §141.11 of this chapter). When a release order is required, it will be made on any of the forms specified in §141.111 of this chapter, or by the following statement attached to CBP Form 214:

**U.S. Customs and Border Protection, DHS; Treasury**

**§ 146.34**

Authority is hereby given to release the merchandise described in this application to \_\_\_\_\_

Name of Carrier \_\_\_\_\_

Signature and title of carrier representative \_\_\_\_\_

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in §141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on CBP Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The port director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* The port director will issue a permit for admission of merchandise to a zone when:

(1) The application is properly executed and includes the zone status desired for the merchandise, as provided in subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unlading, the zone, or other location designated by the port director, except for merchandise for direct delivery to a zone under §§146.39 and 146.40. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) All requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone under blanket application upon presentation of a CBP Form 214 covering more than one shipment of merchandise. A blanket application for admission is for:

(1) Shipments which arrive under one transportation entry as described in §141.55 of this chapter, or

(2) Shipments which are destined to the same zone applicant on a single business day, in which case the applicant shall:

(i) Present the examination invoices required by paragraph (b) of this section to the port director before the merchandise is admitted into the zone,

(ii) Have been approved for the direct transmittal of statistical trade information to the Bureau of Census under an agreement with that agency; and

(iii) Have examination invoices containing a unique identifier to trace the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and recordkeeping system of the operator as described in subpart B.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 08-46, 73 FR 71782, Nov. 25, 2008]

**§ 146.33 Temporary deposit for manipulation.**

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought 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. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of section 562 and other Customs laws while in the zone.

**§ 146.34 Merchandise transiting a zone.**

The following procedure is 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 will be filed with the port director on Customs Form 3171 prior to transfer of the merchandise into the zone.

## § 146.35

(b) *Permit.* The port director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with § 146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Delay in zone transit.* Merchandise delayed while transiting a zone must be made the subject of an application for admission in accordance with § 146.32, or it must be removed from the zone.

## § 146.35 Temporary deposit in a zone; incomplete documentation.

(a) *General.* Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in § 146.36.

(b) *Application.* An application for temporary deposit will be made to the port director on a properly signed and uniquely numbered Customs Form 214, annotated clearly "Temporary Deposit in a Zone".

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section has no zone status and is considered to be in the Customs territory. It will:

(1) Be physically segregated from all other zone merchandise;

(2) Be held under the bond and at the risk of the operator; and

(3) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Approval.* The port director shall approve the application for temporary deposit of merchandise in a zone if the provisions of paragraphs (b) and (c) of this section are met.

(e) *Submission of CBP Form 214.* A complete and accurate CBP Form 214 must be submitted, as provided in § 146.32, within 15 calendar days with no

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exceptions granted by the port director, or the merchandise will be placed in general order.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 10–29, 75 FR 52452, Aug. 26, 2010]

## § 146.36 Examination of merchandise.

Except for direct delivery procedures provided for in § 146.39, all merchandise covered by a Customs Form 214 may be retained for Customs examination at the place of unlading, the zone, or another location, as designated by the port director. The port director may authorize release of the merchandise without examination, as provided in § 151.2 of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices.

## § 146.37 Operator admission responsibilities.

(a) *Maintenance of admission documentation.* The operator shall maintain either:

(1) *Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number; or

(2) *Authorized inventory method.* Where a Customs authorized inventory method other than a lot system (specific identification of merchandise) is used, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Form's 214 in sequential order.

(b) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise from the zone upon request of that person or the port director.

(c) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as

described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the port director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of subpart A, part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(d) *Supervision of merchandise.* The port director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see §146.3). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Customs Form 214 to Customs at the location specified by the port director.

#### § 146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the port director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

#### § 146.39 Direct delivery procedures.

(a) *General.* This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214.

(b) *Application.* An operator, meeting the criteria of paragraph (c) of this section, shall file a written application

with the port director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo in the zone.

(c) *Criteria.* The port director shall approve the application if the following criteria are met:

(1) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site; and

(3) The operator is the owner or purchaser of the goods.

(d) *Application decision.* The port director shall promptly notify the operator, in writing, of Customs decision on the application. If the application is denied, the port director shall specify the reason for denial in his reply. The port director's decision will constitute the final Customs administrative determination concerning the application.

(e) *Revocation of approval.* The port director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

#### § 146.40 Operator responsibilities for direct delivery.

(a) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the port director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation to accept responsibility for the merchandise under the Foreign Trade Zone Operator's Bond and to relieve the carrier of responsibility.

(5) Forward the in-bond or cartage documentation so as to reach the port director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

(6) Maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site; and

(7) Notify the port director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(b) *Transportation by operator.* If merchandise is transported to a subzone or zone site by the foreign trade zone operator from a location in the district (see definition of "district" at §112.1) in which the subzone or zone site is situated, the merchandise is deemed admitted at the time the foreign trade zone operator picks it up. At the time of pick-up, the operator is responsible for:

(1) Receipting for the merchandise and recording on the appropriate document any discrepancies regarding quantity, condition or the status of the seals;

(2) Transporting the merchandise to the zone or subzone; and

(3) Ensuring that the zone records reflect that the merchandise is received in the zone.

(c) *Admission of merchandise: alternative procedures—(1) Cumulative Customs Form 214.* If the operator has an agreement with the Bureau of Census for direct transmittal of statistical information, he shall submit to the port director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise except for domestic status merchandise admitted under §146.43 recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any

cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (b)(1) of this section, the operator shall file with the port director each business day an individual Customs Form 214 and 214-A covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. The forms shall be submitted within 10 days after the end of the month in which the merchandise was received in the zone, and no extension beyond that time will be approved by the port director.

(3) *General order.* Merchandise not admitted into a subzone or zone site as provided in this section within 15 calendar days after its arrival there shall be disposed of in accordance with the applicable procedures in §4.37 or §122.50 or §123.10 of this chapter.

(4) *Inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the port director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so that the port director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94-81, 59 FR 51497, Oct. 12, 1994; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 98-74, 64 FR 6801, Feb. 11, 1999]

## Subpart D—Status of Merchandise in a Zone

### § 146.41 Privileged foreign status.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the port director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application 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) *Supporting documentation.* Each applicant for this status shall submit to the port director, with the application, an invoice notated as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the port director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to classification and valuation as provided in § 146.65.

(e) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.42(b)), 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 taxes and duties, in accordance with §§ 146.67 and 146.69.

### § 146.42 Nonprivileged foreign status.

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

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

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

(c) *Certain domestic merchandise.* Domestic merchandise in a zone, which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise, will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the port director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest.

### § 146.43 Domestic status.

(a) *General.* Domestic status may be granted to merchandise:

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

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

(3) Previously entered free of duty and tax.

(b) *Application.* No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except: (1) When it is mixed or combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he may also order the procedures, forms, and terms under which the permit will be received and processed.

(c) *Return of merchandise of Customs territory.* Upon compliance with the provisions of this section, any of the merchandise specified in paragraph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

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### § 146.44 Zone-restricted status.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application.* Application for zone-restricted status will be made on Customs Form 214.

(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 an actual exportation shall be complied with as though the admission of the merchandise into zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 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 port director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(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 § 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-re-

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stricted status is desired for the merchandise.

### Subpart E—Handling of Merchandise in a Zone

#### § 146.51 Customs control of merchandise.

No merchandise, other than domestic status merchandise provided for in § 146.43, will be manipulated, manufactured, exhibited, destroyed, or transferred from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The port director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations.

#### § 146.52 Manipulation, manufacture, exhibition or destruction; Customs Form 216.

(a) *Application.* Prior to any action, the operator shall file with the port director an application (or blanket application) on Customs Form 216 for permission to manipulate, manufacture, exhibit, or destroy merchandise in a zone. After Customs approves the application (or blanket application), the operator will retain in his record-keeping system the approved application.

(b) *Approval.* (1) The port director shall approve the application unless (i) the proposed operation would be in violation of law or regulation; (ii) the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise, or for safeguarding the revenue; (iii) the port director is not satisfied that the destruction will be effective; or (iv) the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) The port director is authorized to approve a blanket application for a period of up to one year for a continuous or repetitive operation. The port director may disapprove or revoke approval of any application, or may require the operator to file an individual application.

(c) *Appeal of adverse ruling.* If an approved application is subsequently rescinded by the port director for any



reason, the applicant or grantee may appeal the adverse ruling pursuant to the hearing provisions of §146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal.

(d) *Report results*—(1) *Separate application*. The operator shall report on Customs Form 216 the results of an approved manipulation, manufacture, exhibition, or certification of destruction (other than by a blanket application), unless the port director chooses physically to supervise the operation.

(2) *Blanket application*. The operator shall maintain a record of an approved manipulation, manufacture, exhibition, or certification of destruction, in its inventory control and record-keeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

(e) *Destruction*. The port director may permit destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue from the destruction within a zone, which is determined to be without commercial value, may be removed to Customs territory for disposal.

#### § 146.53 Shortages and overages.

(a) *Report required*. The operator shall report, in writing, to the port director upon identification, as such, of any:

(1) Theft or suspected theft of merchandise;

(2) Merchandise not properly admitted to the zone; or

(3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique identifier, if the missing merchandise would have been subject to duties and taxes of \$100 or more upon entry into the Customs territory. The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the port director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under § 146.25.

(b) *Certain domestic merchandise*. Except in a case of theft or suspected theft, the operator need not file a report with the port director, or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required.

(c) *Shortage*—(1) *Operator responsibility*. The operator is responsible under its Foreign Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the port director is satisfied that the merchandise was:

(i) Never received in the zone;

(ii) Removed from the zone under proper permit;

(iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S.

(2) *Liability for duty and taxes*. Upon demand of the port director, the operator shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for.

(d) *Overage*. The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the port director has not granted an extension of the time provided, the merchandise shall be sent to general order.

(e) *Damage*. The liability of the operator under its Foreign Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity as damaged merchandise.

### Subpart F—Transfer of Merchandise From a Zone

#### § 146.61 Constructive transfer to Customs territory.

The port director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

#### § 146.62 Entry.

(a) *General.* Entry for foreign merchandise that is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made by filing an in-bond application pursuant to part 18 of this chapter, CBP Form 3461, CBP Form 7501, or other applicable CBP forms. If entry is made on CBP Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the CBP Form 3461 within 10 business days after the time of entry.

(b) *Documentation.* (1) Customs Form 7501, or its electronic equivalent, or the entry summary will be accompanied by the entry documentation, including invoices as provided in parts 141 and 142 of this chapter. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the transferred merchandise and provide the information necessary to support the admissibility, the declared values, quantity, and classification of the merchandise. If the declared values are predicated on estimates or estimated costs, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) An in-bond application for merchandise to be transferred to another port or zone or for exportation must provide that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the

status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

(c) *Waiver of supporting documents.* The port director may waive presentation of an invoice and supporting documentation required in paragraph (b) of this section with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the port director or maintains and makes those records available for examination by Customs.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015; CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017]

#### § 146.63 Entry for consumption.

(a) *Foreign merchandise.* Merchandise in foreign status or composed in part of merchandise in foreign status may be entered for consumption from a zone.

(b) *Zone-restricted merchandise.* Merchandise in a zone-restricted status may be entered for consumption only when the Board has ruled that merchandise can be entered for consumption.

(c) *Estimated production.*—(1) *Weekly entry.* When merchandise is manufactured or otherwise changed in a zone (exclusive of packing) to its physical condition as entered within 24 hours before physical transfer from the zone for consumption, the port director may allow the person making entry to file an entry on Customs Form 3461, or its electronic equivalent, for the estimated removals of merchandise during the calendar week. The Customs Form 3461, or its electronic equivalent, must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. Merchandise covered by an entry made under the provisions of this section will be considered to be entered and may be removed only when the port director has accepted the entry on Customs Form 3461, or its electronic equivalent. If the actual removals will exceed the estimate for the week, the person making

entry shall file an additional Customs Form 3461, or its electronic equivalent, to cover the additional units before their removal from the zone. Notwithstanding that a weekly entry may be allowed, all merchandise will be dutiable as provided in §146.65. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory.

(2) *Individual transfers.* After acceptance of the weekly entry, individual transfers of merchandise covered by the entry may be made from the zone.

(d) *Textiles and textile products.* Subject to the existing statutory authority of the Board, textiles and textile products admitted into a zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation (if entered for consumption rather than admitted to a zone), may not be subsequently transferred into Customs territory for consumption if, during the time the merchandise is in the zone, there has been a change by manipulation, manufacture, or other means:

(1) In the country of origin of the merchandise as defined by §102.21 or §102.22 of this chapter, as applicable;

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation; or

(3) From one textile category to another textile category.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 05-32, 70 FR 58016, Oct. 5, 2005; CBP Dec. 15-14, 80 FR 61291, Oct. 13, 2015]

#### § 146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in §146.63(d) may be entered for warehouse only if the entry is endorsed by the port director to show that the merchandise may not be withdrawn for consumption.

(d) *Time limit.* Merchandise may neither be placed nor remain in a Customs bonded warehouse after 5 years from the date of importation of the merchandise.

#### § 146.65 Classification, valuation, and liquidation.

(a) *Classification*—(1) *Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section will be subject to tariff classification according to its character, condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted. Notwithstanding the grant of privileged status, Customs may correct any misclassification of any such entered merchandise when it posts the bulletin notice of liquidation under §159.9 of this chapter.

(2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

(b) *Valuation*—(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500).

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The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone, plus the statutory additions contained in section 402(b)(1) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(b)(1)), less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost or of the statutory additions, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in § 146.42(b) will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

(3) *Allowance.* An allowance in the dutiable value of zone merchandise may be made by the Center director in accordance with the provisions of subparts B and C of part 158 of this chapter, for damage, deterioration, or casualty while the merchandise is in the zone.

(c) *Liquidation; extension to update cost data.* When the declared value or values of the merchandise are based on an estimate or estimates, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be grant-

ed at the discretion of the Center director.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91–79, 56 FR 46372, Sept. 12, 1991; T.D. 95–35, 60 FR 20632, Apr. 27, 1995; CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

### § 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) must be made by a licensed cartman or a bonded carrier as provided for in § 112.2(b) of this chapter or by the operator of the zone for which the merchandise is destined under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter or other appropriate form with a CBP Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CBP Form 6043 or under a local control system approved by the port director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port must be made by bonded carrier under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original CBP Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any CBP Form 214 filed subsequent to admission to change the

status of the merchandise or its components; and

(iii) A copy of any CBP Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original CBP Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any CBP Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any CBP Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section are not presented, the operator of the transferring zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the transferring zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the transferring zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry. The statement will also show any change in zone status in the transferring zone and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the transferring zone that the statement in paragraph (c)(4)(i) of this section is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in §146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the CBP Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94-81, 59 FR 51497, Oct. 12, 1994; CBP Dec. 17-13, 82 FR 45407, Sept. 28, 2017]

#### **§ 146.67 Transfer of merchandise for exportation.**

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of paragraph (b) of this section.

(b) *Immediate exportation.* Each transfer of merchandise to the customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation filed in an in-bond application pursuant to part 18 of this chapter. The person making entry must furnish an export bond on CBP Form 301 containing the bond conditions provided for in §113.63 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the customs territory for transportation to and exportation from a different port will be made under an entry for transportation and exportation in an in-bond application pursuant to part 18 of this chapter. The bonded carrier will be

responsible for exportation of the merchandise in accordance with §18.26 of this chapter.

(d) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in §146.63(d) may be exported and returned to Customs territory for warehousing provided the entry for warehouse is endorsed by the port director to show that the merchandise may not be withdrawn for consumption.

(e) *Merchandise produced or manufactured in a zone and returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988; CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017]

**§ 146.68 Transfer for transportation or exportation; estimated production.**

(a) *Weekly permit.* The port director may allow the person making entry for merchandise provided for in §146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be made by filing an in-bond application pursuant to part 18 of this chapter. The in-bond application must provide invoice or schedule information like that required in §146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry must file a supplemental in-bond application to cover the addi-

tional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the port director.

(b) *Individual entries.* After approval of the application for a weekly permit by the port director, the person making entry will be authorized to file individual in-bond applications for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the carrier must update the in-bond record via a CBP-approved EDI system to ensure its assumption of liability under the carrier's or cartman's bond. CBP will consider the time of entry to be when the removing carrier updates the in-bond record.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit must file with the port director, by the close of business on the second business day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each in-bond application by its unique IT number, and must provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual in-bond applications submitted to CBP, as well as an explanation of any discrepancy.

[CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017]

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

(a) *General.* Any merchandise which may be withdrawn duty and tax free in Customs territory under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified vessel or aircraft, will be made on Customs Form 5512 (see §10.60 of this chapter). The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in §113.62 of this chapter.

(b) *Merchandise for delivery within zone.* Upon acceptance of the entry and bond, the port director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* Upon acceptance of the entry and bond, the port director shall release the merchandise to the operator for delivery to the bonded cartmen, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

**§ 146.70 Transfer of zone-restricted merchandise into Customs territory.**

(a) *General.* Zone-restricted merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending 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, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval (See 15 CFR part 400), that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisalment, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *For consumption.* 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 port director to show the authority under which it was made, and that the merchandise is subject to the provisions of Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(c) *For warehousing.* Zone-restricted merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The

Customs Form 7501, or its electronic equivalent, shall be endorsed by the port director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the port director to show that the merchandise is foreign trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation.

(d) *For other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89-1, 53 FR 51263, Dec. 21, 1988; CBP Dec. 15-14, 80 FR 61291, Oct. 13, 2015]

**§ 146.71 Release and removal of merchandise from zone.**

(a) *General.* Except as provided for in §146.43, no merchandise will be transferred from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. This port director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the port director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the

merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any joint report of discrepancy must be submitted to the port director within 10 working days of signing by the parties.

(c) *Time limit.* Except in the case of articles for use in a zone, merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The port director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory.

(d) *Retention or return of merchandise to zone for consumption.* (1) The port director shall cancel any entry for consumption where: (i) The merchandise is not removed from the zone within the period specified in paragraph (c) of this section, or (ii) the merchandise was removed from the zone but did not enter the commerce of the U.S. in Customs territory and was subsequently readmitted to a zone in domestic status. If the port director has reason to believe any new entry would be cancelled under the provisions of this paragraph, he may reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise covered by an entry which has been cancelled

under this paragraph shall be restored to its last foreign status.

(2) A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the port director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisal of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in part 173 of this chapter. If the port director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as an overage and subject to the provisions of §146.53(d).

(3) When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in paragraph (d)(1) of this section, it shall be admitted in domestic status.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

## Subpart G—Penalties; Suspension; Revocation

### § 146.81 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, operator or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than \$1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the port director under this section will be reviewed by the Assistant Commissioner, Office of International Trade, or his designee, Headquarters, to determine whether further action against



the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

**§ 146.82 Suspension.**

(a) *For cause.* The port director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. An action to suspend will be taken in accordance with the procedure in paragraph (b) of this section if:

(1) The approval of the application to activate the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed acts which would constitute a felony, or misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision;

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) [Reserved]

(7) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information contained on a Customs form or in the inventory control and recordkeeping system; or

(8) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure*—(1) *Notice.* The port director may, at any time, serve notice, in writing, upon an operator to show cause why its right to continue operation of a zone should not be suspended or why an individual user or activities of an individual user should not be suspended, as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the port director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, will be presented. The right of cross-examination will be available to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the Assistant Commissioner, Office of Field Operations, or designee, together with a recommendation for final action.

(3) *Decision of Assistant Commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the Assistant Commissioner, Office of Field Operations, or designee, in writing any additional

views or arguments. The Assistant Commissioner, Office of Field Operations, or designee, shall then render a written decision stating his reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

(4) *Grantee*. If the grantee of the zone is not the operator, a copy of the notice to show cause will be served upon the grantee. The grantee, as a party-in-interest, may join the operator in any proceedings under this section.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 88-63, 53 FR 40220, Oct. 14, 1988; T.D. 95-99, 60 FR 62733, Dec. 7, 1995]

**§ 146.83 Revocation of zone grant.**

(a) *Recommendation of port director*. The port director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under CBP jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the port director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request internal advice under the provisions of part 177 of this chapter from the Executive Director, Regulations and Rulings, Office of International Trade, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board*. The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of the Act and title 15, chapter IV, part 400, Code of Federal Regulations.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 99-27, 64 FR 13676, Mar. 22, 1999]

**Subpart H—Petroleum Refineries in Foreign-Trade Subzones**

SOURCE: T.D. 95-35, 60 FR 20632, Apr. 27, 1995, unless otherwise noted.

**§ 146.91 Applicability.**

This subpart applies only to a petroleum refinery (as defined herein) engaged in refining petroleum in a foreign-trade zone or subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart. It does not cover zone-to-zone transfers in which the fact of removal from one zone is ignored.

**§ 146.92 Definitions.**

(a) *Attribution*. “Attribution” means the association of a final product with its source material.

(b) *Feedstocks*. “Feedstocks” means crude petroleum or intermediate product that is used in a petroleum refinery to make a final product.

(c) *Feedstock factor*. “Feedstock factor” means the relative value of final products utilizing T.D. 66-16 (see § 146.92(h)), and which takes into account any volumetric loss or gain.

(d) *Final product*. “Final product” means any petroleum product that is produced in a refinery subzone and thereafter removed therefrom or consumed within the zone.

(e) *Manufacturing period*. “Manufacturing period” means a period selected by the refiner which must be no more than a calendar month basis, for which attribution to a source feedstock must be made for every final product made, consumed in, or removed from the refinery subzone.

(f) *Petroleum refinery*. “Petroleum refinery” means a facility that refines a feedstock listed on the top line of the tables set forth in T.D. 66-16 into a product listed in the left column of the tables set forth in T.D. 66-16.

(g) *Price of product*. “Price of product” means the average per unit market value of each final product for a given manufacturing period or the published standard product value if updated each month.

(h) *Producibility*. “Producibility” is a method of attributing products to feedstocks for petroleum manufacturing in

accordance with the Industry Standards of Potential Production set forth in T.D. 66-16.

(i) *Relative value*. “Relative value” means a value assigned to each final product attributed to the separation from a privileged foreign feedstock based on the ratio of the final product’s value compared to the privileged foreign feedstock’s duty.

(j) *Time of separation*. “Time of separation” means the manufacturing period in which a privileged foreign status feedstock is deemed to have been separated into two or more final products.

(k) *Weighted average*. “Weighted average” means the relative value of merchandise, which is determined by dividing the total value of shipments in a given period by the total quantity shipped in the same given period. See example in section VI of the appendix to this part.

**§ 146.93 Inventory control and record-keeping system.**

(a) *Attribution*. All final products removed from or consumed within a petroleum refinery subzone must be attributed to feedstock admitted into said petroleum refinery subzone in the current or prior manufacturing period. Attribution must be based on records maintained by the operator. Attribution may be made by applying one of the authorized methods set forth in this section. Records must be maintained on a weight or volume basis.

(1) *Producibility*. The producibility method of attribution requires that records be kept to attribute final products to feedstocks which are eligible for attribution as set forth in this section during the current or prior manufacturing period.

(2) *Actual production records*. An operator may use its actual production records as provided for under § 146.95(b) of this subpart.

(3) *Other inventory method*. An operator may use the FIFO (first-in, first-out) method of accounting (see § 191.22(c) of this chapter). The use of this method is illustrated in the appendix to this part.

(b) *Feedstock eligible for attribution*. Only a feedstock that has been admitted into the refinery subzone is eligible

for attribution. For a given manufacturing period, the quantity of feedstock eligible for attribution may be computed as beginning inventory, plus receipts less shipments of feedstock out of the subzone, and less ending inventory.

(c) *Consumption or removal of final product*. Each final product that is consumed in or removed from a refinery subzone must be attributed to a feedstock eligible for attribution during the current or a prior manufacturing period. Each final product attributed as being produced from the separation of a privileged foreign status feedstock must be assigned the proper relative value as set forth in paragraph (d) of this section.

(d) *Relative value*. A relative value calculation is required when two or more final products are produced as the result of the separation of privileged foreign status feedstock. Ad valorem and compound rates of duty must be converted to specific rates of duty in order to make a relative value calculation.

(e) *Privileged status after admission*. Nonprivileged status feedstock is eligible for privileged status only if the request shows to the satisfaction of the Customs Service that there was no manipulation or manufacture of the feedstock to change its tariff classification before the request is granted. The absence of such manipulation or manufacture can be shown by demonstrating that the feedstock was placed in an empty tank, in a tank that contained only feedstock with the same nominal specifications or providing a sample which shows there was no change in tariff status. The existence of negligible amounts of other feedstocks may be disregarded only in accordance with § 146.95(b). A request for after-admission privileged foreign status shall be denied unless the feedstock’s tank records from admission to the time that the request is made accompany the request. A refiner who makes such a request shall not put any other feedstock having different nominal specifications into the tank until the request for privileged status is granted.

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The Customs Service will deny or revoke a post-admission request if a refiner fails to retain the integrity of the feedstock in the tank.

(f) *Consistent use required.* The operator must use the selected method, measurement (weight or volume), and the price of product consistently (see § 146.92(g) of this subpart and paragraph (a) of this section).

### § 146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock admitted into the refinery subzone.* The operator must maintain appropriate inventory records during the manufacturing period to substantiate the feedstock(s) eligible for attribution under § 146.93(b) and in accordance with the operator's selected attribution method.

(b) *Final product consumed in or removed from subzone.* The operator must record the date and amount of each final product consumed in, or removed from the subzone.

(c) *Consumption or removal.* The consumption or removal of a final product during a week may be considered to have occurred on the last day of that week for purposes of attribution and relative value calculation instead of the actual day on which the removal or consumption occurred, unless the refiner elects to attribute using the FIFO method (see section II of the appendix to this part).

(d) *Gain or loss.* A gain or loss that occurs during a manufacturing period must be taken into account in determining the attribution of a final product to a feedstock and the relative value calculation of privileged foreign feedstocks. Any gain in a final product attributed to a non-privileged foreign status feedstock is dutiable if entered for consumption unless otherwise exempt from duty.

(e) *Determining gain or loss; acceptable methods—*(1) *Converting volume to weight.* Volume measurements may be converted to weight measurements using American Petroleum Institute conversion factors to account for gain or loss.

(2) *Calculating feedstock factor to account for volume gain or loss.* A feedstock factor may be calculated by dividing the value per barrel of produc-

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tion per product category by the quotient of the total value of production divided by all feedstock consumed. This factor would be applied to a finished product that has been attributed to a feedstock to account for volume gain.

(3) *Calculating volume difference.* Volume difference may be determined by comparing the amount of feedstocks introduced for a given period with the amount of final products produced during the period, and then assigning the volume change to each final product proportionately.

### § 146.95 Methods of attribution.

(a) *Producibility—*(1) *General.* A subzone operator must attribute the source of each final product. The operator is limited in this regard to feedstocks which were eligible for attribution during the current or prior manufacturing period. Attribution of final products is allowable to the extent that the quantity of such products could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66-16. Once attribution is made for a particular product, that attribution is binding. Subsequent attributions of feedstock to product must take prior attributions into account. Each refiner shall keep records showing each attribution.

(2) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility attribution method are contained in tables published in T.D. 66-16. With these tables, a subzone operator may attribute final products consumed in, or removed from, the subzone to feedstocks during the current or a prior manufacturing period.

(3) *Attribution to product or feedstock not listed in T.D. 66-16.* (i) For purposes of attribution, where a final product or a feedstock is not listed in T.D. 66-16, the operator must submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate port director. The port director shall refer the request to the Director, Office of Regulatory Audit ("ORA"), who will verify the refiner's records

and will coordinate with the Director, Office of Laboratories and Scientific Services (“OLSS”). The Director, ORA, shall either approve or deny the request. If the request is approved, the Director, ORA, shall publish a modification of T.D. 66-16. If an operator elects to show attribution on a producibility basis, but fails to keep records on that basis, the operator shall use its actual operating records to determine attribution and any necessary relative value calculation upon the Customs Service demand and subject to verification.

(ii) An operator may attribute a final product to a feedstock in excess of the amount allowed under T.D. 66-16, when authorized by Customs, without losing the ability to attribute under T.D. 66-16 for all other feedstock-final product combinations. The operator must use its actual production records for the requested feedstock-final product combination. The operator must agree in writing that it will not, and it will not enable any other person, to file a drawback claim under 19 U.S.C. 1313 inconsistent with those actual production records for that feedstock-final product combination. The operator shall file its request in accordance with paragraph (a)(3) of this section. The Director, ORA, and the Director, OLSS, must determine whether T.D. 66-16 needs to be modified and shall publish in the Customs Bulletin each approval granted under this paragraph and request public comments with each such approval.

(4) *Attribution to privileged foreign feedstock; relative value.* If a final product is attributed to the separation of a privileged foreign feedstock a relative value must be assigned (see section IV of the appendix to this part).

(b) *Refinery operating records.* An operator may use the actual refinery operating records to attribute the feedstocks used to the removed or consumed products. Customs shall accept the operator’s operating conventions to the extent that the operator demonstrates that it actually uses these conventions in its refinery operations. Whatever conventions are elected by the operator, they must be used consistently in order to be acceptable to Customs. Additionally, Customs may use these records to test the validity of

admissions into the subzone, consumption within and removals from the subzone.

*Example.* If the operator mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials. If, in the alternative, the operator assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

#### § 146.96 Approval of other record-keeping systems.

(a) *Approval procedure.* An operator must seek prior approval of another recordkeeping procedure by submitting the following to the Director, Office of Regulatory Audit:

(1) An explanation of the method describing how attribution will be made when a finished product is removed from or consumed in the subzone, and how and when the feedstocks will be decremented;

(2) A mathematical example covering at least two months which shows the amounts attributed, all necessary relative value calculations, the dates of consumption and removal, and the amounts and dates that the transactions are reported to Customs.

(b) *Failure to comply.* Requests received that fail to comply with paragraph (a) of this section will be returned to the requester with the defects noted by the Director, Office of Regulatory Audit.

(c) *Determination by Director.* When the Director, Office of Regulatory Audit, determines that the recordkeeping procedures provide an acceptable basis for verifying the admissions and removals from or consumption in a refinery subzone, the Director will issue a written approval to the applicant.

APPENDIX TO PART 146—GUIDELINES FOR  
DETERMINING PRODUCIBILITY AND  
RELATIVE VALUES FOR OIL REFIN-  
ERY ZONES

Where an example is set out in this appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency. Alternative formats are also acceptable so long as they are consistent with the provisions of this part.

I. ATTRIBUTION USING PRODUCIBILITY SHOWING  
MANUFACTURING PERIODS FROM ADMISSION  
TO REMOVAL WITHIN A CALENDAR MONTH.

Volume losses and gains accounted for by weight.

*Day 1*

Receipt into the refinery subzone during a 30-day month:

50,000 pounds privileged foreign (PF) class II crude oil.  
50,000 pounds PF class III crude oil.  
50,000 pounds domestic status class III crude oil.

*Day 10*

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 10. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.V. 66-16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds ( $50,000 \times .30$ ). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds ( $50,000 \times .40$ ). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, and 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported; 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class III crude oil would be available for further production, of which up

to 5,000 pounds could be attributed to aviation gasoline.

*Day 21*

Receipt in the refinery subzone:

50,000 pounds PF status class I crude oil.  
50,000 pounds PF status class IV crude oil.

*Day 30*

Removal from the refinery subzone:

30,000 pounds of motor gasoline for consumption.  
10,000 pounds of jet fuel sold to the US Air Force for use in military aircraft.  
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights.  
10,000 pounds of kerosene for exportation.

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 30, the period of manufacture is Day 1 to Day 30. If the refiner chooses to attribute the crude oils that were admitted on Day 21 as the designated sources of the products removed on Day 30 using the production standards published in T.D. 66-16, the manufacturing period is Day 21 to Day 30. This choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 30 and the manufacturing period from Day 21 to Day 30, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that were admitted into the refinery subzone Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66-16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds ( $50,000 \times .20$ ). Likewise, the class IV crude oil could

produce aviation gasoline in an amount up to 8,500 pounds ( $50,000 \times .17$ ).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds ( $35,000 - 5,000 \times .91$ ) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the US Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil ( $32,300 \times .65$ ). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of the 10,000 pounds of jet fuel ( $22,300 \times .65$ ). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene ( $30,000 \times .50$ ).

## II. ATTRIBUTION ON A FIFO BASIS

(Accounting for volume losses or gains by the weight method)

### Day 1-5

Transfer, into the Refinery Subzone, from one or more storage tanks into process 150 barrels of Privileged Foreign (PF) Class II crude oil, equivalent to 50,000 pounds.

### Day 6

Removal from the refinery subzone 119 barrels of residual oils to customs territory, equivalent to 40,000 pounds.

Since the operator uses the FIFO method of attribution, as the product is removed

from the subzone, or consumed or lost within the subzone, attribution must be to the oldest feedstock available for attribution. Accordingly, the 40,000 pounds of residual oils will be attributed to 40,000 pounds of the PF Class II crude oil from Day 1-5.

### Day 10

Transfer, into the refinery subzone, from one or more storage tanks 4 barrels of domestic motor gasoline blend stock, equivalent to 1,000 pounds to motor gasoline blending tank.

### Day 6-15

Transfer, into the refinery subzone, from one or more storage tanks into process 320 barrels of Domestic Class III crude oil, equivalent to 100,000 pounds.

### Day 16

Removal from the refinery subzone 14 barrels of asphalt to customs territory, equivalent to 5,000 pounds.

The 5,000 pounds of asphalt will be attributed to 5,000 pounds of PF Class II crude oil from Day 1-5.

### Day 17

Removal from the refinery subzone, 324 barrels of motor gasoline to customs territory, equivalent to 81,000 pounds.

The 81,000 pounds of motor gasoline will be attributed to 1,000 pounds of domestic motor gasoline blend stock from Day 10, to the remaining 5,000 pounds of PF Class II crude oil from Day 1-5 and 75,000 pounds of domestic Class III crude oil from Day 6-15.

### Day 16-20

Transfer, into the refinery subzone, from one or more storage tanks into process 169 barrels of Privileged Foreign (PF) Class III crude oil, equivalent to 50,000 pounds.

### Day 22

Removal from the refinery subzone, 214 barrels of jet fuel for exportation, equivalent to 60,000 pounds.

The 60,000 pounds of jet fuel will be attributed to the remaining 25,000 pounds of domestic Class III crude oil from Day 6-15 and 35,000 pounds of PF Class III crude oil from Day 16-20.

### Day 21-25

Transfer, into the refinery subzone from one or more storage tanks into process, 143 barrels of domestic Class I crude oil, equivalent to 50,000 pounds.

### Day 30 (End of the Manufacturing Period)

It is determined that during the manufacturing period just ended, that 34 barrels of

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fuel, equivalent to 10,000 pounds was consumed, and 5 barrels of oil, equivalent to 1,500 pounds was lost in the refining production process within the refinery subzone.

The 10,000 pounds of fuel consumed will be attributed 10,000 pounds of PF Class III crude oil from Day 16–20. The 1,500 pounds of oil lost in the refining production process will be attributed to 1,500 pounds of PF Class III crude oil from Day 16–20. The remaining 3,500 pounds of PF Class III crude oil from Day 16–

20 will be the first to be attributed during the next manufacturing period.

**III. RELATIVE VALUE CALCULATION**

Because privileged foreign feedstocks transferred into process during Day 1–5 and Day 16–20 have two or more products attributed to them, each feedstock will require a relative value calculation.

Relative value calculation for UIN Day 1–5, 50,000 pounds, equivalent to 150 barrels.

	A Lbs	B BBLS	C \$/BBL	D Product value	E R.V. Factor	F R.V. BBL	G Dutiable BBL
Residual oil .....	40,000	119	15.00	1,785	.9047	108	108
Asphalt .....	5,000	14	13.00	182	.7840	11	11
Motor gasoline .....	5,000	20	26.00	520	1.5682	31	31
Totals .....	50,000	153		2,487		150	150

A = Pounds Attributed.  
B = Equivalent Barrels.  
C = Price of Product.  
D = B × C.  
E = C/(Total of Column D/Attributed Crude BBLs).  
Residual Oil RV Factor = 15.00/(2,487/150) = .9047.  
F = B × E.  
G = Dutiable Barrels.

Since all products attributed to the 50,000 pounds (150 BBLs) of PF Class II crude entered customs territory duty equals \$7.88 (150 × .0525).

Feedstock factor calculation for UIN Day 16–20, 46,500 pounds equivalent to 157 barrels.

	Lbs	BBLS	\$/BBL	Product value	Feedstock factor	R.V. BBL	Dutiable BBL
Jet Fuel .....	35,000	125	27.00	3,375	1.1030	138	0
Fuel .....	10,000	34	12.00	408	0.4902	17	0
Consumed Process Loss .....	1,500	5	12.00	60	0.4902	2	0
Totals .....	46,500	164		3,843		157	0

Since jet fuel was exported, no duty is applicable. Fuel consumed for refinery process was consumed within the subzone premises and did not enter customs territory, thus no duty is applicable (assume refinery not barred by duty-free consumption restriction). Likewise, the process loss occurred entirely within the subzone. Therefore, no duty is applicable.

**IV. ATTRIBUTION TO PRIVILEGED FOREIGN FEEDSTOCK; RELATIVE VALUE; MONTHLY MANUFACTURING PERIOD, WEEKLY ENTRIES, ATTRIBUTION TO A PRIOR PERIOD; VOLUME LOSS OR GAIN SHOWN BY VOLUME DIFFERENCES.**

An operator who elects to attribute on a monthly basis files the following estimated removal of final products for the first week in September:

Jet Fuel (deemed exported on international flights) .....	20,000
Gasoline—Domestic Consumption .....	15,000
Duty-free certified as emergency war material .....	10,000
Petroleum coke exportations .....	10,000
Distillate for consumption .....	5,000
Petrochemicals exported .....	10,000
Total removals .....	70,000

Because it does not elect to make attributions for feedstocks that were charged to operating units during the same week, the operator attributes the estimated removals to final products made during August from the following feedstocks:

Class II PF (privileged foreign) crude .....	20,000
Class III PF crude .....	35,000
Class III D (domestic) crude .....	20,000
Class III NPF (nonprivileged foreign crude) .....	20,000
	95,000

During August the operator produced from those feedstocks:

Jet .....	35,000
Gasoline .....	40,000
Petroleum Coke .....	10,000
Distillate .....	5,000
Petrochemicals .....	15,000



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105,000

There is a gain of 105,000 – 95,000 = 10,000

Using the tables in T.D. 66–16, the following choices are available for attribution:

	Charged	Jet	Gasoline	Petroleum coke	Distillate	Petro-chemical
Class II PF Crude .....	20,000	13,000	17,200	4,400	17,200	5,000
Class III PF Crude .....	35,000	24,500	31,850	14,000	31,150	10,150
Class III D Crude .....	20,000	14,000	18,200	8,000	17,800	5,800
Class III NPF Crude .....	20,000	14,000	18,200	8,000	17,800	5,800

Feedstock factors are calculated:

	Barrels	Value barrels	Value	Feedstock factors
Gasoline .....	40,000	\$25	\$1,000,000	.9117
Jet Fuel .....	35,000	23	805,000	.8388
Distillate .....	5,000	20	100,000	.7294
Petroleum Coke .....	10,000	10	100,000	.3647
Petrochemicals .....	15,000	40	600,000	1.4587
	105,000		2,605,000	
Gain .....	– 10,000	\$2,605,000		
Total .....	195,000			

Using the feedstock factor the refiner makes the following attributions:

Jet Fuel .....	24,192	(20,291 feedstock attributed to Class III PF Crude).
	10,808	Class III NPF Crude (attribution of 9066 solely for purpose of accounting for the amount of NPF used).
	35,000	
Gasoline .....	5,000	(4,559 feedstock attributed to Class III PF Crude).
	5,000	Class III NPF Crude (attribution of 4599 solely for purpose of accounting for the amount of NPF used).
	15,000	(13,676 feedstock attributed to Class III D Crude).
Petroleum Coke .....	8,418	(3,070 feedstock attributed to Class II PF Crude).
	1,582	Class III NPF Crude (attribution of 577 solely for purposes of accounting for the amount of NPF used).
	10,000	
Distillate .....	5,000	(3,647 feedstock attributed to Class III Domestic).
Petrochemicals .....	3,975	(5,800 feedstock attributed to Class III NPF Crude).
	6,025	(8,789 feedstock attributed to Class III PF Crude).
	10,000	

**V. WEEKLY ENTRY, WEEKLY MANUFACTURING PERIOD, AND RELATIVE VALUES CALCULATED ON THE ACTUAL WEIGHTED AVERAGE VALUES AT THE END OF THE WEEK.**

On the weekly estimated production CF 3461, the refiner is required to provide a pro forma invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. For example, on CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

Product week 1	PF shipments (MBLS)	Value/barrel (platts)	Total value
Motor Gasoline .....	20,000	\$35	\$700,000
Total Alkylate .....	25,000	35	875,000
Heavy Reformate .....	60,000	35	2,100,000
Reformer Feed .....	110,000	35	3,850,000
Raffinates .....	200,000	35	7,000,000
Jet Fuel .....	200,000	35	7,000,000
Total .....	615,000		\$21,525,000

Attributed Feedstock—Class III Crude: 615,000 @ \$105 = \$64,575 (estimated duties)

During that week the refiner actually removes the following products and reports those on the CF 7501, or its electronic equivalent, filed within 10 business days after the CF 3461 is filed. Column 3 is the actual “weighted average” value for the manufacturing period, therefore, no reconciliation is necessary.

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1 Product	2 PF Shipments (mbbls)	3 Value/ barrel (wt. avg.)	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distribu. (5) × (2)	7 Liq. duties (6) × (10) (9)
Week 1:						
Motor Gasoline .....	19,977	\$35.70	\$713,179	1.104545	22,065	\$2,317
Total Alkylate .....	22,907	42.50	973,548	1.314935	30,121	3,163
Heavy Reformate ...	58,164	31.42	1,827,513	.972123	56,542	5,937
Reformer Feed .....	100,279	31.42	3,150,766	.972123	97,484	10,235
Raffinates .....	170,293	29.55	5,032,158	.914266	155,693	16,348
Jet Fuel .....	168,433	30.04	5,059,727	.929426	156,546	16,437
Total .....	540,053		16,756,891		518,451 (9)	54,437 (10)

Class III Crude Consumed  $518,451 \times \$ .105 = \$54,437$

Volumetric Gain 21,602

Avg. Value/Barrel Crude Consumed =  $\$16,756,891 \div 518,451 = \$32.321$  (8)

This example shows volumetric gain of 21,602 mbbls. However, in that PF was requested, liquidated duties are only on actual feedstock (class III crude) used in the refining process. ( $518,451 \times \$ .105 = \$54,437$ ).

VI. WEEKLY ENTRY, MONTHLY MANUFACTURING PERIOD, AND RELATIVE VALUES CALCULATED ON THE ACTUAL WEIGHTED AVERAGE VALUES AT THE END OF THE MONTH.

For example, on the CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (platts)	4 Total value
Week 1:			
Motor Gasoline .....	20,000	\$35	\$700,000
Total Alkylate .....	25,000	35	875,000
Heavy Reformate .....	60,000	35	2,100,000
Reformer Feed .....	110,000	35	3,850,000
Raffinates .....	200,000	35	7,000,000
Jet Fuel .....	200,000	35	7,000,000
Total .....	615,000		21,525,000

Attributed Feedstock—Class III Crude:  $615,000 \times \$ .105 = \$64,575$  (estimated duties)

During the week the refiner actually removes the following products and reports those on the CF 7501, or its electronic equivalent, filed within 10 business days after the CF 3461 is filed. The reported relative values may be an estimate based on Platts, prior period actual prices, or the refiner's transfer prices. For this example, the estimates are based on the refiner's actual transfer prices. Listed below are the data to be shown on the weekly CF 7501s, or their electronic equivalents, with actual quantities shipped and estimated values for weeks 1–5.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimates)	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distrib. (5) × (2)	7 Liq. duties (6) × (10) (9)
Week 1:						
Motor Gasoline .....	19,977	\$35.70	\$713,179	1.104545	22,065	\$2,317
Total Alkylate .....	22,907	42.50	973,548	1.314935	30,121	3,163
Heavy Reformate ...	58,164	31.42	1,827,513	.972123	56,542	5,937
Reformer Feed .....	100,279	31.42	3,150,766	.972123	97,484	10,235
Raffinates .....	170,293	29.55	5,032,158	.914266	155,693	16,348
Jet Fuel .....	168,433	30.04	5,059,727	.929426	156,546	16,437
Total .....	540,053		16,756,891		518,451 (9)	\$54,437 (10)

Class III Crude Consumed  $518,451 \times \$ .105 = \$54,437$

Volumetric Gain 21,602

Avg. Value/Barrel Crude Consumed =  $\$16,756,891 \div 518,451 = \$32.321$  (8)

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 2:						
Motor Gasoline .....	20,651	\$36.90	\$762,022	1.145429	23,654	\$2,484
Total Alkylate .....	23,435	44.25	1,036,999	1.373584	32,190	3,380
Heavy Reformate ...	59,819	30.35	1,815,507	.942108	56,358	5,918

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1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Reformer Feed .....	101,167	30.10	3,045,127	.934347	94,526	9,925
Raffinates .....	172,317	29.30	5,048,888	.909514	156,726	16,456
Jet fuel .....	165,291	30.70	5,074,434	.952972	157,519	16,539
Total .....	542,680		\$16,782,977		520,973	\$54,702

Class III Crude Consumed 520,973 × \$.105 = \$54,702  
Volumetric Gain 21,707  
Avg. Value/Barrel Crude Consumed = \$32.215

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 3:						
Motor Gasoline .....	18,689	\$34.90	\$652,246	1.091819	20,405	\$2,142
Total Alkylate .....	21,511	40.25	865,818	1.259190	27,087	2,844
Heavy Reformate ...	57,371	30.90	1,772,764	.966682	55,460	5,823
Reformer Feed .....	99,707	30.90	3,080,946	.966682	96,386	10,121
Raffinates .....	168,112	29.65	4,984,521	.927577	155,938	16,374
Jet Fuel .....	172,092	29.85	5,136,946	.933834	160,707	16,874
Total .....	537,482		\$16,493,241		515,983	\$54,178

Class III Crude Consumed 515,983 × \$.105 = \$54,178  
Volumetric Gain 21,499  
Avg. Value/Barrel Crude Consumed = \$31.965

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 4:						
Motor Gasoline .....	21,905	\$32.85	\$719,579	1.027237	22,502	\$2,363
Total Alkylate .....	22,552	38.75	873,890	1.211733	27,327	2,869
Heavy Reformate ...	58,116	29.60	1,720,234	0.925607	53,791	5,648
Reformer Feed .....	101,058	29.40	2,971,105	0.919353	92,908	9,755
Raffinates .....	169,823	30.15	5,120,163	0.942806	160,110	16,812
Jet Fuel .....	171,493	31.05	5,324,858	0.970949	166,511	17,484
Total .....	544,947		\$16,729,829		523,149	\$54,931

Class III Crude Consumed 523,149 × \$.105 = \$54,931  
Gain 21,798  
Avg. Value/Barrel Crude Consumed = \$31.979

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 5:						
Motor Gasoline .....	8,990	\$37.25	\$334,878	1.136260	10,215	\$1,073
Total Alkylate .....	9,984	45.10	450,278	1.375713	13,735	1,442
Heavy Reformate ...	25,351	31.50	798,557	0.960864	24,360	2,558
Reformer Feed .....	43,492	31.35	1,363,474	0.956288	41,592	4,367
Raffinates .....	75,172	29.95	2,251,401	0.913583	68,677	7,211
Jet fuel .....	75,795	30.56	2,316,295	0.932190	70,654	7,418
Total .....	238,784		\$7,514,883		229,233	\$24,069

Class III Crude Consumed 229,233 × \$.105 = \$24,069  
Gain 9,551  
Avg. Value/Barrel Crude Consumed = \$32.783

As provided in the regulations, the refiner files an amended CF 7501 for each week based on the refiner's actual weighted average values for the month, as shown below.

Product	Value/ barrel (MBBLs)
Month End:	
Motor Gasoline .....	\$35.27
Total Alkylate .....	41.84
Heavy Reformate .....	30.66

Product	Value/ barrel (MBBLs)
Reformer Feed .....	30.54
Raffinates .....	29.69
Jet Fuel .....	30.42

## RECONCILIATION OF WEEK 1 USING MONTH'S END ACTUAL WEIGHTED AVERAGE VALUES

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (wt. avg.) actual	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5) × (2)	7 Amended wt. avg. duties (6) × (10) (9)
Motor Gasoline .....	19,977	\$35.27	\$704,589	1.095716	21,889	\$2,298
Total Alkylate .....	22,907	41.84	958,429	1.299823	29,775	3,126
Heavy Reformate .....	58,164	30.66	1,783,308	.952499	55,401	5,817
Reformer Feed .....	100,279	30.54	3,062,521	.948771	95,141	9,990
Raffinates .....	170,293	29.69	5,055,999	.922365	157,072	16,493
Jet Fuel .....	168,433	30.42	5,123,732	.945043	159,176	16,713
Total .....	540,053		\$16,688,578		518,454 (9)	54,437 (10)

Class III Crude Consumed = 518,454 × \$.105 = \$54,437

Volumetric Gain 21,599

Avg. Value/Bbl Crude Consumed = \$16,688,578 ÷ 518,454 = \$32.189 (8)

Note: No change in amended total duties, because duty is computed on total quantity of class III crude used. The difference is amongst the various products, *i.e.*, estimated weekly CF 7501 duties paid for Motor Gasoline was \$2,317, while the reconciled amount as shown above is \$2,298. Additional duties owed or refunds due would depend on the reconciliation of the weekly entry as an entirety.

## VII. WEEKLY ENTRY, MONTHLY MANUFACTURING PERIOD, RELATIVE VALUES CALCULATED ON PRIOR MANUFACTURING PERIOD'S ACTUAL WEIGHTED AVERAGE VALUES. THE PRIOR PERIOD (PP) VALUES ARE SET FORTH BELOW:

Product	Value/Barrel (wt. avg.)
Motor Gasoline .....	\$ 35.28
Total Alkylate .....	41.90
Heavy Reformate .....	31.78
Reformer Feed .....	30.02
Raffinates .....	31.10
Jet Fuel .....	28.80

Thereafter, the information provided or both the CF 3461, or its electronic equivalent, and CF 7501 filed for each weekly entry with respect to relative values would remain the same. The only estimated amount would be the quantity to be removed on the CF 3461, or its electronic equivalent, as shown below. On the CF 3461, or its electronic equivalent, the refiner estimates the following shipments and uses a prior manufacturing period's actual weighted average values.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value
Week 1			
Motor Gasoline .....	20,000	\$35.28	\$705,600
Total Alkylate .....	25,000	41.90	1,047,500
Heavy Reformate .....	60,000	31.78	1,906,800
Reformer Feed .....	110,000	30.02	3,302,200
Raffinates .....	200,000	31.10	6,220,000
Jet Fuel .....	200,000	28.80	5,760,000
Total .....	615,000		18,942,100

Attributed Feedstock—Class III Crude: 615,000 @ \$.105 = \$64,575 (estimated duties)

On the CF 7501, the refiner reports the following shipments and uses a prior manufacturing period's actual average values.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5) × (2)	7 Liq. duties (6) × (10) (9)
Week 1:						
Motor Gasoline .....	19,977	\$35.28	\$704,789	1.097219	21,919	\$2,902
Total Alkylate .....	22,907	41.90	959,803	1.303104	29,850	3,134

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1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5) × (2)	7 Liq. duties (6) × (10) (9)
Heavy Reformate ...	58,164	31.78	1,848,452	.988368	57,486	6,036
Reformer Feed .....	100,279	30.02	3,010,376	.933632	93,623	9,830
Raffinates .....	170,293	31.10	5,296,112	.967220	164,710	17,295
Jet Fuel .....	168,433	28.80	4,850,870	.895689	150,863	15,840
Total .....	540,053		\$16,670,402		518,451 (9)	\$54,437 (10)

Class III Crude Used  $518,451 \times \$ .105 = \$54,437$

Volumetric Gain 21,602

Avg. Value/Barrel Crude Used =  $\$16,670,402 \div 518,451 = \$32.154$  (8)

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 2:						
Motor Gasoline .....	20,651	\$35.28	\$728,567	1.096128	22,636	\$2,377
Total Alkylate .....	23,435	41.90	981,926	1.301808	30,508	3,203
Heavy Reformate ...	59,819	31.78	1,901,048	.987386	59,064	6,202
Reformer Feed .....	101,167	30.02	3,037,033	.932704	94,359	9,908
Raffinates .....	172,317	31.10	5,359,059	.966259	166,503	17,483
Jet Fuel .....	165,291	28.80	4,760,381	.894799	147,903	15,529
Total .....	542,680		16,768,014		520,973	54,702

Class III Crude Used  $520,973 \times \$ .105 = \$54,702$

Volumetric Gain 21,707

Avg. Value/Barrel Crude Used =  $\$32.186$

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 3:						
Motor Gasoline .....	18,689	\$35.28	\$659,348	1.099168	20,542	\$2,157
Total Alkylate .....	21,511	41.90	901,311	1.305418	28,081	2,948
Heavy Reformate ...	57,371	31.78	1,823,250	.990124	56,803	5,964
Reformer Feed .....	99,707	30.02	2,993,204	.935290	93,254	9,792
Raffinates .....	168,112	31.10	5,228,283	.968938	162,889	17,103
Jet Fuel .....	172,092	28.80	4,956,250	.897280	154,414	16,214
Total .....	537,482		16,561,646		515,983	54,178

Class III Crude Used  $515,983 \times \$ .105 = \$54,178$

Volumetric Gain 21,499

Avg. Value/Barrel Crude Used =  $\$32.097$

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 4:						
Motor Gasoline .....	21,905	\$35.28	\$772,808	1.097390	24,038	\$2,524
Total Alkylate .....	22,552	41.90	944,929	1.303306	29,391	3,086
Heavy Reformate ...	58,116	31.78	1,846,926	.988522	57,447	6,032
Reformer Feed .....	101,058	30.02	3,033,761	.933777	94,365	9,908
Raffinates .....	169,823	31.10	5,281,495	.967371	164,281	17,250
Jet Fuel .....	171,493	28.80	4,938,998	.895829	153,627	16,131
Total .....	544,947		16,818,917		523,149	54,931

Class III Crude Used  $523,149 \times \$ .105 = \$54,931$

Volumetric Gain 21,798

Avg. Value/Barrel Crude Used =  $\$32.149$

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 5:						
Motor Gasoline .....	8,990	\$35.28	\$317,167	1.097698	9,868	\$1,036
Total Alkylate .....	9,984	41.90	418,330	1.303671	13,016	1,367
Heavy Reformate ...	25,351	31.78	805,655	.988799	25,067	2,632
Reformer Feed .....	43,492	30.02	1,305,630	.934039	40,623	4,265
Raffinates .....	75,172	31.10	2,337,849	.967642	72,740	7,638
Jet Fuel .....	75,795	28.80	2,182,896	.896080	67,919	7,131
Total .....	238,784		7,367,527		229,233	24,069

Class III Crude Used  $229,233 \times \$1.05 = \$24,069$

Volumetric Gain 9,551

Avg. Value/Barrel Crude Used = \$32.14

At the end of the month, the refiner must calculate its actual weighted average values for use in the subsequent period.

#### RECONCILIATION OF RELATIVE VALUE FOR THE SUBSEQUENT PERIOD

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2 × 3)	5 Relative value factor (3)/(8)	6 Feedstock distrib. (5 × 2)	7 Liq. duties (6 × (10) (9)
Month End:						
Motor Gasoline .....	90,212	\$35.27	\$3,181,777	1.095682	98,844	\$10,379
Total Alkylate .....	100,389	41.84	4,200,276	1.299783	130,484	13,701
Heavy Reformate ...	258,821	30.66	7,935,452	.952470	246,519	25,885
Reformer Feed .....	445,703	30.54	13,611,770	.948742	422,857	44,400
Raffinates .....	755,717	29.69	22,437,238	.922336	697,025	73,188
Jet Fuel .....	753,104	30.42	22,909,424	.945014	711,694	74,726
Total .....	2,403,946		74,275,937		2,307,423 (9)	242,279 (10)

Class III Crude Used  $2,307,423 \times \$1.05 = \$242,279$

Volumetric Gain 96,523

Avg. Value/Barrel Crude Used =  $\$74,275,937 \div 2,307,423 = \$32.19$  (8)

Note: Actual monthly reconciliation data could result in attributions on a product basis that are less than or greater than weekly distributions. This is due to the "weighing" of the data *i.e.*, motor gasoline on a weekly basis was \$10,996 as compared to \$10,379 as above. No additional duties are due to the averaging.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

## PART 147—TRADE FAIRS

Sec.

147.0 Scope.

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147.41 Removal or disposition pursuant to regulation.

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