

§ 400.34

(1) If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant shall be notified in writing (via electronic means, where appropriate) of the preliminary recommendations and the factors considered in their development. The applicant shall be given 30 days from the date of notification, subject to extensions upon request by the applicant, which shall not be unreasonably withheld, in which to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(2) If the response contains new evidence on which there has been no opportunity for public comment, the Executive Secretary shall publish a notice in the FEDERAL REGISTER after completion of the review of the response. The new material shall be made available for public inspection and the FEDERAL REGISTER notice shall invite further public comment for a period of not less than 30 days, with an additional 15-day period for rebuttal comments.

(3) If the bases for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ 400.33(e)(1) and (2) shall be followed.

(4) When necessary, a request may be made to CBP to provide further comments, which shall be submitted within 45 days after the request.

§ 400.34 Examiner's review—application for production authority.

(a) The examiner shall conduct a review taking into account the factors enumerated in this section, § 400.27, and other appropriate sections of this part, which shall include:

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

(2) Reviewing case records, including public comments;

(3) Requesting information and evidence from parties of record and others, as warranted;

(4) Developing information and evidence necessary for analysis of the

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threshold factors and the economic factors enumerated in § 400.27; and

(5) Conducting an analysis to include:

(i) An evaluation of policy considerations pursuant to §§ 400.27(a)(1) and (2);

(ii) An evaluation of the economic factors enumerated in §§ 400.27(a)(3) and 400.27(b), which shall include an evaluation of the economic impact on domestic industry, considering both producers of like products and producers of components/materials used in the production activity;

(iii) Conducting appropriate industry research and surveys, as necessary; and

(iv) Developing recommendations to the Board and submitting a report to the Executive Secretary, generally within 150 days of the close of the period for public comment (although additional time may be required in circumstances such as when the applicant or other party has obtained a time extension for a particular procedural step):

(A) If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant shall be notified in writing (via electronic transmission where appropriate) of the preliminary recommendations and the factors considered in their development. The applicant shall be given 45 days from the date of notification in which to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

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

(C) If the bases for an examiner's recommendation(s) change as a result of

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new evidence, the applicable procedures of §§ 400.34(a)(5)(iv)(A) and (B) shall be followed.

(b) *Methodology and evidence.* The evaluation of an application for production authority shall include the following steps:

(1) The first phase (§ 400.27(a)) involves consideration of threshold factors. If an examiner or reviewer makes a negative finding on any of the factors in § 400.27(a) in the course of a review, the applicant shall be informed pursuant to § 400.34(a)(5)(iv)(A). When threshold factors are the basis for a negative recommendation in a review of ongoing activity, the zone grantee and directly affected party shall be notified and given an opportunity to submit evidence pursuant to § 400.34(a)(5)(iv)(A). If the Board determines in the negative regarding any of the factors in § 400.27(a), it shall deny or restrict authority for the proposed or ongoing activity.

(2) The second phase (§ 400.27(b)) involves consideration of the enumerated economic factors, taking into account their relative weight and significance under the circumstances. Previous evaluations in similar cases shall be considered.

§ 400.35 Examiner's review—application for subzone designation.

The examiner shall develop a memorandum with a recommendation on whether to approve the application, taking into account the criteria enumerated in § 400.26. To develop that memorandum, the examiner shall review the case records including public comments, and may request information and evidence from parties of record, as necessary. The examiner's memorandum shall generally be submitted to the Board within 30 days of the close of the period for public comment. However, additional time may be taken as necessary for analysis of any public comment in opposition to the application or if other complicating factors arise.

(a) If the examiner's recommendation is unfavorable to the applicant, it shall be considered preliminary and the applicant shall be notified in writing (via electronic means, where appropriate) of the preliminary recommendation

and the factors considered in its development. The applicant shall be given 30 days from the date of notification, subject to extensions upon request by the applicant, which shall not be unreasonably withheld, in which to respond to the recommendation and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

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

(c) If the bases for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ 400.35(a) and (b) shall be followed.

(d) The CBP adviser shall be requested, when necessary, to provide further comments, which shall be submitted within 45 days after the request.

§ 400.36 Completion of case review.

(a) The Executive Secretary shall circulate the examiner's report (memorandum in the case of subzone applications) with recommendations to CBP headquarters staff and to the Treasury Board member for review and action.

(b) In its advisory role to the Board, CBP headquarters staff shall provide any comments within 15 days.

(c) The vote of the Treasury Board member shall be returned to the Executive Secretary within 30 days, unless a formal meeting is requested (see, § 400.3(b)).

(d) The Commerce Department shall complete the decision process within 15 days of receiving the vote of the Treasury Board member, and the Executive Secretary shall publish the Board decision.

(e) If the Board is unable to reach a unanimous decision, the grantee shall