

From: LES_EIS
To: Doris Mendiola
Date: 3/11/04 1:00PM
Subject: Comment: Foreign Trade Zone (attachment handdelivered)

2/4/04
69FR5374
37

>>> "Ventura, Diane (Bingaman)" <Diane_Ventura@bingaman.senate.gov> 01/30/04 04:42PM >>>

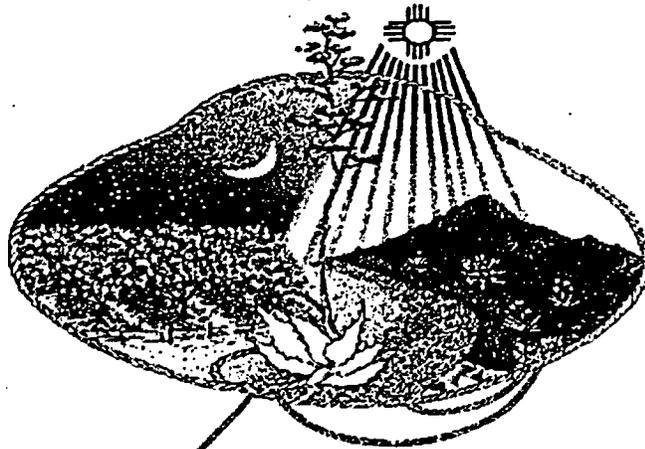
I am on the Foreign Trade Zone Committee for Roswell, NM. I was asked to find out whether or not LES would be utilizing the zone and possibly applying for a sub-zone. Another question raised was if LES would be utilizing the FTZ, would this info need to be included in the EIS? Thanks.

RECEIVED
2004 MAR 11 PM 1:05
Rules and Directives
Branch
USNRC

E-RIDS = ADM-03
Add = T. Johnson (TJS)
m. Wong (mew)

Template = ADM-013

City of Roswell



City of Roswell

FOREIGN-TRADE ZONE

No. 256

ZONE SCHEDULE

**Bill B. Owen
Mayor**

ZONE SCHEDULE FOR FOREIGN-TRADE ZONE NO. 256

GRANTEE: City of Roswell, New Mexico

OPERATOR/S
No current Operator

Foreign-Trade Zone No. 256 consists of one site.

Original Zone Schedule Date: 01/08/2004

Current Version Zone Schedule Date: 01/08/2004

Prepared By:
Foreign-Trade Zone Corporation
On behalf of City of Roswell, New Mexico

ADMINISTRATIVE PAGE

Grantee
City of Roswell, New Mexico
P.O. Box 1838
Roswell New Mexico 88202-1838

Phone: (505) 624-6700
Fax: (505) 624-6709

Operator/s
No current Operator

TABLE OF CONTENTS

DEFINITIONS4
DESCRIPTION OF FOREIGN-TRADE ZONE NO. 2569
ZONE POLICY10
OPERATIONS IN ZONES.....13
GENERAL REGULATIONS18
REGULATIONS PERTAINING TO MERCHANDISE.....22
RATES AND CHARGES.....24
PART 400-REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD28

DEFINITIONS

ACT:

The Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 98-1003; 19 U.S.C. 81a-81u), as amended by Pub. L. 566, 81st Congress, approved June 17, 1950 (64 Stat. 246), and Pub. L. 791, 85th Congress, approved August 28, 1958 (72 Stat. 945).

ACTIVATION:

Approval by the Grantee and the Port Director of Customs and Border Protection for operations and for the admission and handling of merchandise in Zone status.

ADMISSION:

Physical arrival of goods in the Foreign-Trade Zone with the approval of the Zone Grantee and Customs and Border Protection. The word "admission" is to be used instead of "entry" of goods into a Zone to avoid confusion with Customs and Border Protection entry processes under parts 141-144 of the Customs and Border Protection regulations.

ADMIT:

To bring merchandise into a Zone with Zone status.

AUDIT-INSPECTION INVENTORY CONTROL SYSTEM:

The procedures used to maintain the records necessary for inventory control of merchandise that is under the supervision and control of the Customs and Border Protection.

BOARD:

The Foreign-Trade Zones Board established by the Act. The Board consists of the Secretary of Commerce and the Secretary of the Treasury. Each Board member designates an official of his/her Department, usually an Assistant Secretary, to serve as his/her alternate.

CITY OF ROSWELL, NEW MEXICO:

The City of Roswell, New Mexico serves as the Grantee for U. S. Foreign-Trade Zone No. 256, and provides trade and economic development services to the Roswell metropolitan area, including zone services for the benefit of the public. The City of Roswell established U.S. Foreign-Trade Zone No. 256 under a grant of authority issued by the U. S. Foreign-Trade Zones Board pursuant to Board Order No. 1261, issued on December 02, 2002.

BULK:

The term used in describing fungibles, which can be poured, scooped, or shoveled, which generally cannot be counted or identified piece by piece.

CUSTOMS AND BORDER PROTECTION TERRITORY:

The territory of the United States in which the general tariff law of the United States applies, but which is not included in any Foreign-Trade Zone.

DOMESTIC MERCHANDISE:

Merchandise of every description (except articles specifically and absolutely prohibited by statute), which has been:

- (1) Grown, produced, or manufactured in the United States and not exported therefrom, or;
- (2) Previously imported into Customs and Border Protection territory and properly released from Customs and Border Protection custody.

EXAMINER:

An employee of one of the Board agencies designated under the regulations to conduct or participate in an investigation concerning the establishment or expansion of a Zone or Subzone or other matter requiring a fact-finding determination and recommendation for Board action.

FOREIGN MERCHANDISE:

Merchandise of every description (except articles specifically and absolutely prohibited by statute), which has not been properly released into Customs and Border Protection territory.

FOREIGN-TRADE ZONE:

A Foreign-Trade Zone is a restricted access site, in or adjacent to a Customs and Border Protection port of entry, operated under public utility principles under the sponsorship of a corporation granted authority by the Foreign-Trade Zones Board. U.S. Foreign-Trade Zones are restricted areas, under supervision of the Customs and Border Protection, in which, when activated under Zone procedures, merchandise is treated for Customs and Border Protection and taxation purposes as if it is outside the Customs and Border Protection territory of the United States. Foreign-Trade Zones are the U. S. version of what are generally known internationally as Customs free trade zones; however, U.S. Foreign-Trade Zones are different in several important respects from other types of free trade zones. Located in or near Customs and Border Protection Ports of Entry, Zones are operated under public utility principles by qualified corporations. Authority for establishing these facilities is granted by the Foreign-Trade Zones Board under the Act and regulations. The term "Foreign-Trade Zone" typically refers to a Zone environment known as a "General Purpose Zone." The General Purpose Zone is established to accommodate various Zone activities carried on by multiple users. Storage, distribution, testing, repair, and repackaging are typical of activities carried on within a General Purpose Zone. Manufacturing or processing activity within a General Purpose Zone requires prior approval by the Foreign-Trade Zones Board. "Foreign-Trade Zone" might, as a general term, include special purpose Subzones. If the Zone is designed to serve a special type of activity, the term "Subzone" may be used. Like the General Purpose Zone, Subzones are established under the sponsorship of the Grantee. When a Zone consists of more than one site under the same Grantee, the sites shall be considered part of the same Zone project. Foreign and domestic merchandise may be moved into Zones for operations not otherwise prohibited by law involving storage, exhibition, assembly, manufacture or other processing. The usual formal Customs and Border Protection entry procedures and payment of duties is not required on the foreign merchandise unless and until it enters Customs and Border Protection territory for domestic consumption, in which case the importer generally has a choice of paying the duty rate which applies to either the original foreign material or to the finished product. Quota restrictions do not normally apply to foreign goods in Zones, except that

special procedures may apply when manufacturing is involved. Domestic goods moved into a Zone for export may, at the request of the exporter, be considered exported upon admission to the Zone for purposes of excise tax rebates and drawback.

GRANTEE:

The City of Roswell, New Mexico, to which the privilege of establishing, operating, and maintaining Foreign-Trade Zone No. 256 and its Subzones has been granted.

HOLIDAYS:

The Zone will be closed on those days designated as Federal Holidays by the United States Government and recognized by Customs and Border Protection.

MANIPULATION:

Means breaking up, repacking, assembling, distributing, sorting or grading, cleaning mixing with foreign or domestic merchandise, or other processing which does not constitute a manufacture or processing as defined by the Foreign-Trade Zones Board.

NON-PRIVILEGED FOREIGN MERCHANDISE:

- (1) Foreign merchandise properly in the Zone that does not have status of:
 - (a) privileged-foreign merchandise, or;
 - (b) zone-restricted merchandise.
- (2) Waste recovered from any manipulation or manufacture of privileged foreign merchandise, or;
- (3) Domestic merchandise taken into a Zone whose identity has been lost.

OPERATOR:

The Grantee may designate any number of Operators, including General Purpose Zone and Subzone Operators pursuant to a written agreement with the Grantee. A Zone or Subzone Operator is that party that has an Agreement with the Grantee, and accepts Customs and Border Protection liability for Zone or Subzone operations through a bond filed with the Customs and Border Protection.

PORT DIRECTOR, CUSTOMS AND BORDER PROTECTION:

The Customs and Border Protection official so designated for Roswell, New Mexico. The Port Director is the Board's representative for Foreign-Trade Zone No. 256 and any of its Subzones.

PORT OF ENTRY:

Places designated by the U.S. Government, at which a Customs and Border Protection officer is assigned with authority to accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and Border Protection laws.

PRIVILEGED-FOREIGN MERCHANDISE:

Foreign merchandise or non-tax-paid Domestic merchandise upon which the duty and applicable taxes have been determined at the time this Status is approved. The determined duty rate and taxes are not subject to future fluctuation. Once established, Privileged Foreign Status cannot be

changed. If merchandise has already been Admitted to a Zone with Nonprivileged Foreign Status, Privileged Foreign Status may be obtained by filing a CF214 and related documents. Application for this Status, however, must be filed prior to manipulation or manufacture in the Zone.

RE-EXPORTS OR RE-SHIPMENTS:

Merchandise from one foreign country initially destined to the United States which, after being unladen, stored, and/or manipulated or manufactured in this country, is transited under a new bill of lading or other new documentation to another foreign country. The term is particularly applied to re-exports or re-shipments from a Foreign-Trade Zone.

It includes privileged, non-privileged, or zone-restricted foreign merchandise which:

- (1) Is in the same condition as when transported into the United States, or;
- (2) Has been manipulated without any change in its form or nature, or;
- (3) Has been manipulated, manufactured, or processed in such a manner as to change its form, whether or not mixed with domestic merchandise, provided the domestic merchandise in not a component part or substantial ingredient thereof.

Generally, it includes all merchandise of foreign origin, which has not been so manipulated or manufactured, as to be deemed a product of the United States, and which has not been released from Customs and Border Protection custody into Customs and Border Protection territory.

SECRETARY:

The Secretary of Commerce.

STORAGE:

The keeping of merchandise in or upon the premises within the Foreign-Trade Zone. Covered storage means keeping within a covered and enclosed structure affording weather protection. The term "storage," with or without designation, ordinarily implies covered storage.

SUBZONES:

Special-purpose ancillary Zone sites authorized by the Board through Grantees of public Zones for operations by individual firms that cannot be accommodated within an existing Zone, when it can be demonstrated that the activity, usually manufacturing, will result in a significant public benefit. Subzones are considered noncontiguous extensions of Zones for single users, usually at their own facilities and, in this sense, are private rather than public Zone facilities. Separate Zone sites within an industrial or commercial complex subject to common management and covenants may be considered as contiguous, and thus a part of the General Purpose Zone, rather than as Subzones.

TRANSSHIPMENT MERCHANDISE:

Foreign merchandise that enters and leaves the United States through the same port, being transferred from one vessel to another directly or by way of a Foreign-Trade Zone or Customs

and Border Protection bonded warehouse. The term is particularly applied to such merchandise transferred through a Foreign-Trade Zone.

UNIT OF QUANTITY:

The customary groupings of a commodity as a unit to indicate the medium or method of measure.

UNITED STATES:

The several states, District of Columbia and Puerto Rico. The term "United States" includes all territories and possessions of the United States, except the Virgin Islands, American Samoa, Wake Island Midway Islands, Kingman Reef, and the Island of Guam.

USER:

A person or firm using a Zone or Subzone, an individual, company, or corporation utilizing the services and facilities of the Zone.

ZONE:

The term "Zone" refers to any General Purpose Zone or Subzone site.

ZONE PROJECT: All of the Zone and Subzone sites established by the Board under a single Grantee, normally in a single Port of Entry area.

ZONE-RESTRICTED MERCHANDISE:

Foreign or domestic merchandise taken into the Zone under the rules and regulations of the controlling Federal agency for the sole purpose of exportation or destruction (except destruction of distilled spirits, wine, and fermented malt liquors) or storage pending exportation or destruction.

DESCRIPTION OF FOREIGN-TRADE ZONE NO. 256

Foreign-Trade Zone No. 256 was established by Board Order No. 1261, issued on December 02, 2002. The Grantee is the City of Roswell, New Mexico.

Foreign-Trade Zone No. 256 consists of 1 site totaling 524 acres located at the Roswell Industrial Air Center.

The General Purpose Foreign-Trade Zone currently has no Operator.

The City of Roswell New Mexico, as Grantee of Foreign-Trade Zone No. 256, has established no Subzones.

In the event Subzones are established, each will be operated pursuant to user agreements between the Subzone operators and the City of Roswell New Mexico.

ZONE POLICY

SCHEDULE AUTHORITY

This Schedule is published pursuant to a Grant re-issued by the Foreign-Trade Zone Board, U.S. Department of Commerce, Washington, DC on February 22, 2000, to the City of Roswell New Mexico under provisions of Public Law No, 397, 73rd Congress, approved June 18, 1934, as amended. The Zone policy, rules, regulations, rates and charges of this schedule shall apply at Foreign-Trade Zone No. 256 and its Subzone unless otherwise provided for.

ZONE OPERATED AS A PUBLIC UTILITY

The rates and charges for space, facilities, and services within a Zone shall be fair and reasonable, and the City of Roswell shall afford uniform treatment under like conditions to all users. The Board shall determine whether the rates and charges are fair and reasonable.

BOARD REGULATIONS

Foreign-Trade Zone No. 256 is regulated by the Foreign-Trade Zones Board, Washington, DC under U.S. Code of Federal Regulations; Title 15, Chapter IV, Part 400. Copies of these regulations are attached herewith for reference.

CUSTOMS AND BORDER PROTECTION REGULATIONS

Foreign-Trade Zone No. 256 is subject to special Customs and Border Protection regulations as defined in U.S. Code of Federal Regulations, Title 19, Chapter I, Part 146 - Foreign-Trade Zones; and the guidelines contained in the " Customs and Border Protection Foreign-Trade Zones Operations Manual." Copies of these publications are maintained at the Foreign-Trade Zone No. 256 office for reference.

INTERPRETATION OF SCHEDULE

The City of Roswell shall interpret and determine the applicability of any rates, rules, regulations, or services provided for in this schedule. However, any matters involving interpretation or action by Customs and Border Protection or another agency of the U.S. Government will be determined by the Port Director of Customs and Border Protection or his/her duly appointed representative.

PRIVILEGES OF FOREIGN-TRADE ZONES

Section 3 of the Act, as amended, authorizes the following privileges:

"Foreign and domestic merchandise of every description, except such as prohibited by law, may, without being subject to Customs and Border Protection laws of the United States, except as otherwise as provided in this Act, be brought into a Zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign and domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into Customs and Border Protection territory of the United States, therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a Zone into Customs and Border Protection territory of the United

States it shall be subject to the laws and regulations of the United States affecting imported merchandise:

Provided, that whenever the privilege shall be requested there has been no manipulation or manufacture affecting a change in tariff classification, the collector of Customs and Border Protection shall take under supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into Customs and Border Protection territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered articles. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into Customs and Border Protection territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. When two or more products results from a manipulation or manufacture of merchandised in a Zone the liquidated duties and determined taxes shall be distributed to the several products in accordance to their relative value at the time of separation with due allowance for waste as provided for above:

Provided further, that subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal revenue taxes have been paid, or which have been admitted free of duty and tax may be taken into a Zone from the Customs and Border Protection territory of the United States, placed under the supervision of the collector, and whether or not they have been combined with or made part, while in such Zone, of other articles, may be brought back thereto free of quotas, duty or tax:

Provided further, that if in the opinion of the Secretary of the Treasury, their identity has been lost, such articles not entitled to free entry by reason of non-compliance with the requirements made hereunder by the Secretary of the Treasury shall be treated, when they re-enter Customs and Border Protection territory of the United States, as foreign merchandise under the provisions of the tariff and internal revenue laws in force at that time:

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

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

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

Such a transfer may also be considered an exportation for the purposes of the Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to Customs and Border Protection territory for domestic consumption except where the Foreign-Trade Zones Board deem such return to be in the public interest, in which event the article shall be subject to the provisions of the paragraph 1615 (F) of the Tariff Act of 1930, as amended:

Provided further, that no operation involving any foreign or domestic merchandise brought into a Zone which operation would be subject to any provision or provisions of Section 1807, Chapter 15, Chapter 16, Chapter 17, Chapter 21, Chapter 23, Chapter 24, Chapter 25, Chapter 26 or Chapter 32 of the Internal Revenue Code if performed in Customs and Border Protection territory, or involving the manufacture of any article provided for in Paragraph 367 or Paragraph 368 of the Tariff Act of 1930, shall be permitted in a Zone except those operations (other than rectification of distilled spirits and wines, or the manufacture of production of alcoholic products unfit for beverage uses) which were permissible under this Act prior to July 1, 1949.

Provided further, that articles produced or manufactured in a Zone and exported therefrom shall on subsequent importation into the Customs and Border Protection territory of the United States be subject to the import laws applicable to like articles produced or manufactured in a Zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second provision of this section, may on such importation, be entered as American goods returned."

USE OF ZONE FACILITIES

Zone facilities will be used for the sole purpose of receipt, storage, handling, exhibition, manipulation, manufacturing, and related processing and shipment of foreign merchandise, and domestic merchandise as considered necessary to the conduct of a user's normal business in conjunction with the foreign merchandise. Users shall not use or permit the Zone to be used for any other purpose without the proper written consent of the City of Roswell. Users shall not do or permit anything to be done on or about the Zone, which will in any way obstruct or interfere with the rights of other users or occupants of the Zone or injure or annoy them.

INSPECTION OF ZONE AREAS

The City of Roswell may inspect any activated area at any an all reasonable times to ascertain whether or not the conditions related to its proper use are being observed.

OPERATIONS IN ZONES

MERCHANDISE PERMITTED IN A ZONE

Foreign and domestic merchandise of every description, except in such as is specifically prohibited by law, may, without being subject to the Customs and Border Protection Laws of the United States, except as otherwise provided in the Act and the regulations made thereunder, be brought into a Zone.

- (a) Merchandise, which is specifically and absolutely prohibited by law, shall not be admitted into a Zone. Any merchandise so prohibited by law that is found within a Zone shall be disposed of in the manner provided for in laws and regulations applicable to such merchandise. A distinction is made between (i) Merchandise which is specifically and absolutely prohibited by law on the grounds of policy and morals, such as immoral or subversive literature, obscene articles, or lottery matter and (ii) Merchandise which is subject to conditional prohibition only, for example, articles which are subject to permits or licenses for the protection of economic or national security or which may be reconditioned to bring them into compliance with the laws administered by various Federal Agencies. Port Directors of Customs and Border Protection are required to exclude the first class of articles and may not permit them to be transferred to a Zone if they are aware of their prohibited status except that the Port Director may permit the temporary deposit of any such merchandise in the Zone pending final determination of its status. The transfer of articles of the second class to a Zone is subject to any requirements of the Federal agency concerned. There is no prohibition against placing over quota merchandise in a Zone pending its rights to transfer to Customs and Border Protection territory pursuant to the applicable quotas' provisions.
- (b) The application for the admission of merchandise into a Zone shall be approved or disapproved by the Port Director as the representative of the Board, where the merchandise is not excluded by any other Federal agency having jurisdiction over the merchandise.
- (c) Zone procedures may not be used to circumvent the laws and regulations. Upon order of the Secretary of the Commerce, or his designee, the Commissioner of Customs and Border Protection, or his designee, shall direct that an importer place goods in a specific status for this purpose, subject to appeal to the Board.

DISPOSITION OF MERCHANDISE IN A ZONE

In general, merchandise lawfully brought into a Zone may in accordance with these and other regulations made under the provisions of the Act, be exported, destroyed or sent into Customs and Border Protection territory of the United States in the original package or otherwise; but when foreign merchandise, and domestic merchandise whose identity has been lost, is sent from a Zone into the Customs and Border Protection territory of the United States, it shall be subject to the laws and regulations of the United States affecting imported merchandise.

MANIPULATION, MANUFACTURE, AND EXHIBITION OF MERCHANDISE

In general, merchandise lawfully brought into a Zone may, in accordance with these and other regulations made under the provisions of the Act, be stored, sold, exhibited, broken up, repacked,

assembled, distributed, sorted, graded, cleaned, mixed with foreign and domestic merchandise, or otherwise manipulated, or be worth the prior approval of the Board as otherwise provided by the Act.

- (a) Permission for any manipulation or exhibition in a Zone shall be obtained from the Port Director of Customs and Border Protection, as the representative of the Board, subject to such application and procedure prescribed by the Secretary of the Treasury for the protection of the revenue.
- (b) In the event of the denial of any application by the Port Director of Customs and Border Protection for any reason, the applicant, the City of Roswell, or the Operator of the Zone may appeal the adverse ruling to the Board. If any revenue protection considerations are involved in such an application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

STATUS OF MERCHANDISE IN A ZONE

- (a) For the purpose of the Act and the regulations of this section, all merchandise within a Zone, except merchandise in-transit through a Zone as provided in Sections 146.14 and 146.13 of Customs and Border Protection Regulations, and except merchandise temporarily transferred to a Zone for manipulation as provided in paragraph (b) of this section, shall be given a Zone status as (i) Privileged Foreign Merchandise, (ii) Non-Privileged Foreign Merchandise, (iii) Domestic Merchandise, or (iv) Zone Restricted Merchandise.
- (b) Imported merchandise, which has been entered and which has remained in continuous Customs and Border Protection custody, may be temporarily transferred to a Zone for manipulation under Customs and Border Protection supervision pursuant to Section 562, Tariff Act of 1930, as amended, and for return to Customs and Border Protection territory. Any such merchandise shall not be considered within the purview of the Foreign-Trade Zones Act, but shall be treated in all respects as though remaining in Customs and Border Protection territory. Therefore, no Zone form or procedure shall be considered applicable, but the merchandise shall remain subject in the Zone to such requirements as are necessary for the enforcement of Section 562 and other pertinent Customs and Border Protection laws.

USE OF ZONE BY CARRIERS

The cargo facilities, and service of a Zone area, are intended primarily for the use of vessels, vehicles, or aircraft lading or unlading Zone merchandise, and their use for other purposes may be terminated by the Commissioner of Customs and Border Protection if found to endanger the revenue, or by the Board if found to interfere with the primary uses of the Zone.

SUBSEQUENT IMPORTATION OF ZONE MERCHANDISE

Articles produced or manufactured in a Zone and exported therefrom shall, on subsequent importation into the Customs and Border Protection territory of the United States, be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a Zone exclusively with the use of domestic merchandise, the

01/01/2004

FOREIGN-TRADE ZONE NO. 256 ZONE SCHEDULE NO. 1.00

identity of which has been maintained in accordance with the Second Proviso of Section 3 of the Act, as amended may, on such importation, be entered as American goods returned.

PUBLIC INTEREST PROVISION

Pursuant to 15(c) of the Act, the Board has authority to restrict or prohibit any Zone operation "That in its judgment is detrimental to the public interest, health or safety."

- (a) Adversely affected parties may submit complaints to the Board under this section, requesting the prohibition or restriction of a Zone activity; or, the Board may conduct investigations on its own initiative. A complaint must contain information as to how the Zone activity in question is or would be detrimental to the public interest, health, or safety. When the Board or the Executive Secretary finds good cause, the matter shall be investigated pursuant to these regulations. In deciding whether good cause exists, special consideration shall be given to conducting investigations when the Zone activity in question involves "import-sensitive" industry. In determining whether an industry is import-sensitive, the Board and the Executive Secretary shall be guided by references to such industries in trade laws and regulations and decisions of federal courts and agencies.
- (b) In investigations under this section, either self-initiated or in response to complaints, the factors considered by the Board shall include:
 - 1. Whether the adverse effect is significant in relation to actual and potential public benefits.
 - 2. Whether additional exports from the U.S. will be created;
 - 3. Whether Zone procedures will encourage activity related to import displacement or substitution;
 - 4. Whether employment and investment will be generated or sustained in the U.S.;
 - 5. Whether Zone activity will undermine a remedial action or program in effect because an unfair trade practice, or materially or substantially harm an existing domestic industry.
- (c) Zone activity may be approved for limited periods, subject to extension after a review as to whether the anticipated public benefits have materialized.
- (d) Zone activity, which is exclusively for export, shall be presumed to be in the public interest.
- (e) Interested parties shall have an opportunity to submit comments or participate in any public hearings or proceedings held on such investigations.

RETAIL TRADE WITHIN A ZONE

No retail trade shall be conducted within activated Zone space except under permits issued by the Grantee and approved by the Board. Only domestic, duty-paid, and duty-free goods may be sold in such cases. In considering whether to approve requests under this section, the Board shall consider the economic impact on the retail trade outside the Zone in the Port of Entry area. No approval is required for sales involving domestic or duty-paid food products sold within the Zone or Subzone to be consumed on the premises by persons working therein. Grantees shall revoke permits when there is a violation of this restriction. The Port Director of Customs and Border Protection shall determine which sales are to be classified as retail sales under this section, subject to review by the Board when a question arises. Appeals from his decision may be made to the Executive Secretary. Retail sales within non-activated but approved Zone areas, may be

prohibited if found by the Board, the Executive Secretary, or the Port Director, to be incompatible with Zone operations.

RESIDENCE WITHIN A ZONE

No person shall be allowed to reside within a Zone except Federal, State, or Municipal Officers or agents whose resident presence is deemed necessary by the Board or the Customs and Border Protection Service.

CONTROLLED ACCESS TO ZONES

Plans for the controlled access of persons and vehicles to activated Zone areas shall be subject to the approval of the Port Director as part of his/her review for operation approval. All persons and vehicles entering such areas shall be subject to the requirements of the Customs and Border Protection, Zone User, and the Zone Schedule.

HOURS OF BUSINESS AND SERVICE

Hours of business and service, for Customs and Border Protection purposes, shall be the same as those prescribed in Customs and Border Protection regulations. Hours for other business and service shall be those set forth in this Schedule.

SUBJECT TO CUSTOMS AND BORDER PROTECTION SUPERVISION

Zone operations are subject to the control of the Customs and Border Protection, exercised mainly through the Port Director who shall be in charge of the Zones within the Port for purposes of enforcement of the requirements of the Act and regulations, the Board, and the Customs and Border Protection.

Requirements for such matters as Zone forms, inventory control systems, cargo security standards, and physical security shall be determined by the Title 19, CFR Part 146.

GENERAL REGULATIONS

APPLICATION OF REGULATIONS

All persons and merchandise of every description entering or leaving activated Zone areas for any purpose whatsoever, shall be bound by the lawful regulations of the Foreign-Trade Zones Board, U.S. Customs Service, and Grantee of the Zone.

CONFIDENTIAL RELATIONSHIPS

The Grantee will take precaution to avoid the divulging of information regarding merchandise and services thereon performed in the Zone. Any Zone employee violating this confidential relationship will be suitably disciplined or discharged.

REPORTS TO GOVERNMENTAL AGENCIES

The Grantee is required to submit periodic reports to the Foreign-Trade Zones Board and the Customs and Border Protection or may be required to perform other acts as the Grantee of the Zone in compliance with governmental regulations. Users are required to and shall cooperate with the Grantee in the creation and maintenance of procedures, systems, regulations, or programs, and provide information and statistics which the Grantee considers necessary to ensure compliance with governmental requirements.

GOVERNMENTAL LICENSES

Users are responsible to obtain, maintain, and keep current any and all licenses, permits, certificates, or other authorizations required by any Federal, State, or Local governments that are or may be necessary in the conduct of business in or from the Zone.

USER AGREEMENTS

The Grantee requires that a Zone User Agreement be executed between and among the user and the Grantee prior to any person or firm conducting Zone business in Foreign-Trade Zone No. 256 or any of its Subzones.

PUBLIC INTEREST, HEALTH, AND SAFETY

No merchandise, operation, or process of treatment will be permitted in the Zone that is detrimental to the public interest, health, and safety.

PUBLIC WAREHOUSE OPERATIONS

Public warehousing services may be performed in the Zone by private firms under a User Agreement with the Grantee.

INDEMNITY BOND

Users shall be required upon notice by the Grantee to post an indemnity bond executed on a form and by a U.S. Surety acceptable to the Grantee, or other security payable to the City of Roswell as a guarantee of payment of Customs and Border Protection duty or taxes or other obligations of or to the Grantee under the following circumstances:

- (a) User does not have a sufficient beneficial interest in inventoried merchandise to pay the estimated duty/taxes;
- (b) User accepts delivery of a shipment of unusually high duty/tax liability;
- (c) Value of user inventory is insufficient to compensate the Customs and Border Protection for possible duty/tax obligations payable on merchandise inventory shortages and/or financial obligations to the Grantee;
- (d) A significant increase in duty/tax liability due to changes in Customs and Border Protection regulations, foreign currency valuations, etc;
- (e) Other situations, which require appropriate security to protect past, present, or future obligations or liabilities of the Grantee.

INSURANCE

Insurance is carried by the Grantee or on its own property only and does not include insurance on any contents stored within the Zone. Users shall not do or permit anything to be done in or about the Zone nor bring or keep anything in the Zone which will in any way increase the existing rate of or effect any fire or other insurance upon the building or any of its contents, or cause cancellation of any insurance policy covering any Zone building or any part thereof or any of its contents. Insurance on commodities or other property stored on the leased premises, if desired, must be carried by and at the expense of the User or owner of the commodities or other properties. Merchandise stored, manipulated, or transferred within the Zone is not insured by the Grantee. The Zone Schedule rates do not include insurance on merchandise.

INDEMNIFICATION

Each user shall indemnify and hold harmless the Grantee from and against any and all loss, cost (including attorney's fees), damages, expense, and liability (including statutory liability and liability under Workman's Compensation Laws) in connection with claims for damages as a result of injury or death of any person or persons or property damages to any property sustained by user and/or all other persons which arise from or in any manner grow out of any act or neglect on or about the Zone by user, user's partners, agents, employees, customers, invitees, contractor, or subcontractors. Additionally, the user shall be responsible for and pay any fines, (including Customs and Border Protection fines, penalties, and liquidated damages), penalties, claims, legal fees, suits, or other costs, arising out of any action or omission, accident, or any other occurrence at its Zone site and shall hold harmless the Grantee from any and all liabilities and costs arising out of any fines, (including Customs and Border Protection fines, penalties, and liquidated damages,) penalties, claims legal fees, suits, or other costs arising out of any action or omission, accident, or any other occurrence at the user's Zone site.

RELEASE OF GRANTEE FROM LIABILITY

In consideration of permission granted user to enter the Zone and participate in it activities, user, for itself, its heirs, legal representatives, agents, partners, employees, customers, invitees, and assignees, releases, premises, and discharges the Grantee and its directors, officers, servants, agents and employees of and from all damage, claim, demand, action, and cause of action of any sort of loss, damage, or destruction to buildings or contents, or to property or merchandise of any kind located or stored in the Zone by the user or by any other person with the consent or knowledge of the user and without regard to whether such loss or damage be the result of negligence or misconduct of any person in the employ of the Grantee.

LIABILITY INSURANCE

All persons or firms conducting business operations within the Zone or Subzone, in accordance with a User Agreement with the City of Roswell, New Mexico, shall carry, and keep in force, those insurance levels required by the Operator Agreement.

PERSONS ENTERING AND LEAVING ZONE

Employees and other persons entering and leaving activated Zone areas shall pass through the designated entrances to the activated Zone area. Employees and other persons shall be subject to such examination upon entering and leaving the Zone area as the Grantee may deem necessary for the protection of the revenue and security of the Zone.

REGULATIONS APPLICABLE AT SUBZONES

"Subzones" are special-purpose ancillary Zone sites authorized by the Board through Grantees of public Zones for operations by individual firms that cannot be accommodated within an existing Zone when it can be demonstrated that the activity, usually manufacturing, will result in significant public benefits. They are considered noncontiguous extensions of Zones for single users, usually at their own facilities, and in this sense, are private rather than public Zone facilities. Separate Zone sites within an industrial or commercial complex subject to common management and covenants may be considered contiguous, and thus a part of the general purpose Zone, rather than as Subzones.

In reviewing proposals for Subzones the Foreign-Trade Zones Board and the Grantee will, in addition to the economic factors for public Zones consider:

- (1) Whether the operation can be accommodated in the public Zone serving the area;
- (2) Whether efforts have been made to accommodate the operation, such as enlarging the public Zone area, the cost of locating in a public Zone not being a determining factor;
- (3) Whether convincing evidence has been presented as to a resulting significant public benefit, including export development and displacement or substitution of imports, usually measured in terms of new or sustained employment.

All persons and entities doing business within a Subzone established by a Grantee must comply with the provisions of the Foreign-Trade Zones Act; with the rules, regulations, and procedures of the Foreign-Trade Zones Board; with such laws and regulations of the United States, the operators, occupants, their employees, and invitees, and users of Subzones; and with such of the

provisions of this Schedule and subsequent issues and modifications thereof as may be applicable to the operations conducted in the Subzone.

All persons and entities who request the Grantee to apply for authority to establish a Subzone must first enter into an agreement with the Grantee concerning proposed Subzone operations. This agreement will contain provisions including, but not limited to, those relating costs incident to the preparation of the applications and any subsequent amendments or modification thereof; costs incident to public hearings and legal proceedings; charges for providing required Customs and Border Protection; Startup and Activation and User Fees; and charges for special services not provided in this Schedule. Applicants for the establishment of a Subzone will bear application costs and charges resulting to preparing and filing of application whether or not the Foreign-Trade Zones Board favorably acts upon the application.

REGULATIONS PERTAINING TO MERCHANDISE

TRANSPORTATION

Transfer of foreign merchandise between Customs and Border Protection territory and the Zone, or through Customs and Border Protection territory, must be made by Customs and Border Protection bonded trucks or other carriers and in accordance with Customs and Border Protection regulations.

TENDER FOR ACCEPTANCE

All merchandise for Zone movement shall be delivered at designated points properly marked and packed and accompanied or preceded by necessary documents for preserving the identity of such merchandise.

CUSTOMS AND BORDER PROTECTION INSPECTION OF MERCHANDISE

The consignee, the Zone user, or agent, shall at all times be immediately available to make merchandise available and ready for inspection as may be required by the Customs and Border Protection, and shall have the sole responsibility of opening crates and packages, handling the merchandise, and securing the crates and packages following inspection. In the event that the consignee or his agent is not immediately available for inspections, Zone personnel are authorized to open such packages for the Customs and Border Protection and shall not be liable for any loss or damage to the goods for any reason.

INVENTORY PROCEDURES

Zone users are responsible for establishing and maintaining an Audit Inspection Inventory Control System acceptable to Customs and Border Protection and the Grantee for all merchandise in their care, custody, and control. Inventory actions may be conducted by the user or through an agent authorized to maintain inventory records and to represent the user in inventory matters. The Grantee will advise users where necessary in establishing an Audit Inspection Inventory Control System, monitor records, conduct periodic selective inventories of merchandise, and advise the Port Director of any inventory discrepancies. It is the User's entire responsibility to establish proper inventory, audit, and compliance procedures and record keeping.

PERMIT TO MANIPULATE, MANUFACTURE, PROCESS AND EXHIBIT

Before merchandise may be manufactured, processed, manipulated, or exhibited within the Zone, application must be presented to the Port Director of Customs and Border Protection for approval. The Port Director of Customs and Border Protection must submit requests for manufacturing or processing authority to the Foreign-Trade Zones Board and final approval prior to approval. On approval by appropriate agencies, the contemplated operation will be permitted.

TRANSITING MERCHANDISE

Merchandise transiting the Zone under the provision of CR 146.14 must leave the Zone within five (5) working days after arrival. Working days do not include Saturday, Sunday, or Holidays. Items remaining in the Zone beyond five (5) working days will lose the "transiting" status and will be admitted into the Zone as merchandise under supervision of the Customs and Border Protection unless the Port Director of Customs and Border Protection authorizes an extension.

MARKING

All merchandise handled in the Zone, before entry to Customs and Border Protection territory, must be truly marked in accordance with Customs and Border Protection regulations as to the country of origin and in accordance with all other government regulations, and no merchandise will be permitted to leave the Zone for any purpose that carries any false or misleading label or mark. When repacked or labeled in the Zone, the goods should, when possible, be marked to indicate that fact.

PUBLIC WAREHOUSE OPERATING REQUIREMENTS

Private firms may enter into a user agreement with the Grantee to offer public warehousing facilities and services within the Zone. The warehouse firm will be required to comply with the Foreign-Trade Zone No. 256 public warehouse minimum standards as established by the Grantee.

UNIFORM PROCEDURES REGARDING CONSTRUCTION OF BUILDINGS AND FACILITIES

All uses and development of the lands of the Zone shall comply with all applicable Zoning Ordinances of the appropriate local government, which has zoning jurisdiction, and applicable covenants that run with the land.

RATES AND CHARGES

RESPONSIBILITY FOR DUTY AND TAXES

Users of the Zone are responsible and liable for payment of any duties, taxes, fines, penalties, or liquidated damages, due any agency of the Federal, State or Local government arising from use of the Zone, including liabilities on merchandise which is not accounted for to the satisfaction of the Customs and Border Protection. In the event the Grantee or Operator is required to pay any duty or tax to the Customs and Border Protection under conditions of the Customs and Border Protection Bond maintained by Grantee or Operator, the person responsible for payment of the duty or tax will immediately reimburse the Grantee or Operator for such payments. Such person shall be liable to the Grantee or Operator for all costs, expenses, and attorney fees, which may be incurred or sustained by the Grantee or Operator by reason of collection of such duty or taxes. Any sums due to the Grantee or Operator under the provisions of this paragraph shall constitute a lien against the interest of the User in the Zone and all its property situated in the Zone to the same extent and on the same condition as delinquent rent would constitute a lien on such premises and property.

CUSTOMS AND BORDER PROTECTION FEES

The user shall reimburse the Operator for any Customs and Border Protection fees connected with its conducting business within the Zone. Such Customs and Border Protection Fees may include activation and deactivation fees, alteration fees, transaction fees, and annual fees. Whenever the operator pays fees to Customs and Border Protection, which concern the entire general purpose Zone or the entire Zone project, reimbursement by users to the Operator our user will be done by apportionment.

CUSTOMS AND BORDER PROTECTION BOND FEES

The Operator provides a Foreign-Trade Zones Operator's Bond to the Customs and Border Protection, which is applicable to all merchandise in the Zone that is under Customs and Border Protection supervision. The amount of the bond required for a specific facility is established by Customs and Border Protection and the appropriate cost of the bond will be billed to the user.

ACTIVATION FEE

Each user of Foreign-Trade Zone No. 256 and its Subzones shall pay the Grantee an activation fee according to the table herein listed below prior to the Grantee's review of the user's FTZ Inventory Control Systems and its FTZ Systems and Procedures Manual, and other documentation necessary for activation of the user's Zone site. Such activation fee shall consist of a base fee, plus fees for additional services rendered, and shall be set forth in the User Agreement with the City of Roswell.

Type of Zone Operation	Location	Activation Fee
Subzone	Within Chaves County	\$5,000 one time fee
Subzone	Outside Chaves	\$7,500 one time fee

01/01/2004

FOREIGN-TRADE ZONE NO. 256 ZONE SCHEDULE NO. 1.00

	County	
General Purpose Manufacturing/Processing Facility		\$5,000 one time fee
General Purpose Distribution Facility		\$5,000 one time fee

USER FEES

Each user of Foreign-Trade Zone No. 256 and its Subzones shall pay the City of Roswell user fees as set forth in the table herein listed below:

Type of Zone Operation	User Fee
Subzone or General Purpose Manufacturing/Processing Facility	\$17,500 per year
General Purpose Distribution Facility Option A	\$35.00 per transaction
General Purpose Distribution Facility Option B	Transactions 1 through 40 for \$833 per month, and Transactions 41 through 80 for an additional fee of \$15 each, and All transactions above 80 per month for a fee of \$10 per transaction
General Purpose Distribution Facility Option C	Unlimited transactions for \$17,500 per year
Note: The term "transaction" means the movement or manipulation of any merchandise requiring a CF 214, automated admission, CF 216, CF 7512, local transfer document, local control or authorization number, or customs entry.	

CHARGES BY OTHER GOVERNMENT AGENCIES

Charges made by government agencies that are not included in this Schedule should be arranged for and paid by the user.

WHEN CHARGES ARE PAYABLE

Zone charges are due and payable as they accrue.

ENFORCEMENT OF CHARGES

For the purpose of enforcing the payment of charges provided for in this Schedule, the Grantee may take possession of the merchandise, and may remove and store same at the charge, risk, and expense of the owner or consignee thereof and may sell the goods by public auction, and may avail itself of such other remedies as may be provided by law.

SPECIAL SERVICES

Users of Zone facilities requiring special or additional services not being regularly furnished to all Users may request same in writing to the Grantee, who shall determine the possibility of furnishing such services and consider cost thereof. If service is established, it will be made

01/01/2004

FOREIGN-TRADE ZONE NO. 256 ZONE SCHEDULE NO. 1.00

available under similar circumstances to all users on the same basis. Special services include services provided outside normal business hours (8:00 AM to 5:00 PM), on government holidays, and any services provided by U.S. Customs or the Grantee outside Chaves County.

The fees for special services will be billed at the rate of \$175 per hour plus reimbursement of reasonable expenses.

MISCELLANEOUS SUPPLIES

The Grantee will provide, at Zone costs, Customs and Border Protection forms and miscellaneous items.

PART 400-REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

Subpart A-Scope and Definitions

Sec.

400.1 Scope.

400.2 Definitions.

Subpart B-Foreign-Trade Zones Board

400.11 Authority of the Board.

400.12 Responsibilities and authority of the Executive Secretary.

400.13 Board headquarters.

Subpart C-Establishment and Modification of Zone Projects

400.21 Number and location of zones and subzones.

400.22 Eligible applicants.

400.23 Criteria for grants of authority for zones and subzones.

400.24 Application for zone.

400.25 Application for subzone.

400.26 Application for expansion or other modification to zone project.

400.27 Procedure for processing application.

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

400.29 Application fees.

Subpart D-Manufacturing and Processing Activity-Reviews

400.31 Manufacturing and processing activity; criteria.

400.32 Procedure for review of request for approval of manufacturing or processing.

400.33 Restrictions on manufacturing and processing activity.

Subpart E-Zone Operations and Administrative Requirements

400.41 Zone operations; general.

400.42 Requirements for commencement of operations in a zone project.

400.43 Restriction and prohibition of certain zone operations.

400.44 Zone-restricted merchandise.

400.45 Retail trade.

400.46 Accounts, records and reports.

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

Subpart F-Notice, Hearings, Record and Information

400.51 Notice and hearings.

400.52 Official record; public access.

400.53 Information.

Authority: Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 397, 73rd Congress, 48 Stat. 998-1003 (19 U.S.C. 81a-81u)).

Subpart A-Scope and Definitions

§400.1 Scope.

- (a) This part sets forth the regulations, including the rules of practice and procedure, of the Foreign-Trade Zones Board with regard to foreign-trade zones in the United States pursuant to the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u). It includes the substantive and procedural rules for the authorization of zones and the regulation of zone activity. The purpose of zones as stated in the Act is to "expedite and encourage foreign commerce, and other purposes." The regulations provide the legal framework for accomplishing this purpose in the context of evolving U.S. economic and trade policy, and economic factors relating to international competition.
- (b) Part 146 of the regulations of the United States Customs Service (19 CFR part 146) governs zone operations, including the admission of merchandise into zones, zone activity involving such merchandise, and the transfer of merchandise from zones.
- (c) To the extent "activated" under Customs procedures in 19 CFR part 146, and only for the purposes specified in the Act (19 U.S.C. 81c), zones are treated for purposes of the tariff laws and Customs entry procedures as being outside the Customs territory of the United States. Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal Customs entry procedures and payment of duties, unless and until the foreign merchandise enters Customs territory for domestic consumption. At that time, the importer ordinarily has a choice of paying duties either at the rate applicable to the foreign material in its condition as admitted into a zone, or if used in manufacturing or processing, to the emerging product. Quota restrictions do not normally apply to foreign goods in zones. The Board can deny or limit the use of zone procedures in specific cases on public interest grounds. Merchandise moved into zones for export (zone-restricted status) may be considered exported for purposes such as federal excise tax rebates and Customs drawback. Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt for certain state and local ad valorem taxes (19 U.S.C. 81o(e)). Articles admitted into zones for purposes not specified in the Act shall be subject to the tariff laws and regular entry procedures, including the payment of applicable duties, taxes, and fees.

5400.2 Definitions.

- (a) Act means the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u).
- (b) Board means the Foreign-Trade Zones Board, which consists of the Secretary of the Department of Commerce (chairman), the Secretary of the Treasury, and the Secretary of the Army, or their designated alternates.
- (c) Customs Service means the United States Customs Service of the Department of the Treasury.
- (d) District Director is the director of Customs for the Customs district in which a zone or proposed zone is located.
- (e) District Engineer is the engineer of the Department of the Army in whose district a zone or proposed zone is located.
- (f) Executive Secretary is the Executive Secretary of the Foreign-Trade Zones Board.
- (g) Foreign-trade zone is a restricted-access site, in or adjacent to a Customs port of entry, operated pursuant to public utility principles under the sponsorship of a corporation granted

- authority by the Board and under supervision of the Customs Service.
- (h) Grant of authority is a document issued by the Board which authorizes a zone grantee to establish, operate and maintain a zone project or a subzone, subject to limitations and conditions specified in this part and in 19 CFR part 146. The authority to establish a zone includes the authority to operate and the responsibility to maintain it.
 - (i) Manufacturing, as used in this part, means activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use.
 - (j) Port of entry means a port of entry in the United States, as defined by part 101 of the regulations of the Customs Service (19 CFR part 101), or a user fee airport authorized under 19 U.S.C. 58b and listed in part 122 of the regulations of the Customs Service (19 CFR part 122).
 - (k) Private corporation means any corporation, other than a public corporation, which is organized for the purpose of establishing a zone project and which is chartered for this purpose under a law of the state in which the zone is located.
 - (l) Processing, when referring to zone activity, means any activity involving a change in condition of merchandise, other than manufacturing, which results in a change in the Customs classification of an article or in its eligibility for entry for consumption.
 - (m) Public corporation means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states.
 - (n) Regional Commissioner is the Regional Commissioner of Customs for the Customs region in which the zone is located.
 - (o) State includes any state of the United States, the District of Columbia, and Puerto Rico.
 - (p) Subzone means a special-purpose zone established as an adjunct to a zone project for a limited purpose.
 - (q) Zone means a foreign-trade zone established under the provisions of the Act and these regulations. Where used in this part, the term also includes subzones, unless the context indicates otherwise.
 - (r) Zone grantee is the corporate recipient of a grant of authority for a zone project. Where used in this part, the term "grantee" means "zone grantee" unless otherwise indicated.
 - (s) Zone operator is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee or an intermediary entity, with the concurrence of the District Director.
 - (t) Zone project means the zone plan, including all of the zone and subzone sites that the Board authorizes a single grantee to establish.
 - (u) Zone site means the physical location of a zone or subzone.
 - (v) Zone user is a party using a zone under agreement with the zone grantee or operator.

Subpart B-Foreign-Trade Zones Board

§400.11 Authority of the board.

- (a) In general. In accordance with the Act and procedures of this part, the Board has authority to:
 - (1) Prescribe rules and regulations concerning zones;
 - (2) Issue grants of authority for zones and subzones, and

- approve modifications to the original zone project;
 - (3) Approve manufacturing and processing activity in zones and subzones as described in subpart D of this part;
 - (4) Make determinations on matters requiring Board decisions under this part;
 - (5) Decide appeals in regard to certain decisions of the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary;
 - (6) Inspect the premises, operations and accounts of zone grantees and operators;
 - (7) Require zone grantees to report on zone operations;
 - (8) Report annually to the Congress on zone operations;
 - (9) Restrict or prohibit zone operations;
 - (10) Impose fines for violations of the Act and this part;
 - (11) Revoke grants of authority for cause; and
 - (12) Determine, as appropriate, whether zone activity is or would be in the public interest or detrimental to the public interest.
- (b) Authority of the Chairman of the Board. The Chairman of the Board (Secretary of the Department of Commerce) has the authority to:
- (1) Appoint the Executive Secretary of the Board;
 - (2) Call meetings of the Board, with reasonable notice given to each member; and
 - (3) Submit to the Congress the Board's annual report as prepared by the Executive Secretary.
- (c) Alternates. Each member of the Board will designate an alternate with authority to act in an official capacity for that member.
- (d) Determinations of the Board.
- (1) The determinations of the Board will be based on the majority vote of the members (or alternate members) of the Board, provided that a quorum, composed of the Secretaries of the Departments of Commerce and Treasury (or their alternates), is voting.
 - (2) All votes will be recorded.
 - (3) The Board will issue its determination in proceedings under the regulations in the form of a Board order.

§400.12 Responsibilities and authority of the Executive Secretary.

The Executive Secretary has the following responsibilities and authority:

- (a) Represent the Board in administrative, regulatory, operational, and public affairs matters;
- (b) Serve as director of the Commerce Department's Foreign-Trade Zones staff;
- (c) Execute and implement orders of the Board;
- (d) Arrange meetings and direct circulation of action documents for the Board;
- (e) Arrange with other sections of the Department of Commerce, Board agencies and other governmental agencies for studies and comments on zone issues and proposals;
- (f) Maintain custody of the seal, records, files and correspondence of the Board, with disposition subject to the regulations of the Department of Commerce;
- (g) Issue notices on zone matters for publication in the Federal Register;
- (h) Determine subzone sponsorship questions as provided in §400.22 (d);

- (i) Determine whether additional information is needed for evaluation of applications and other requests for decisions under this part, as provided for in various sections of this part, including §§400.24, 400.25, and 400.26;
- (j) Issue guidelines on information required for subzone applications under §400.25(a)(6);
- (k) Determine whether proposed modifications involve major changes under §400.26(a)(2);
- (l) Determine whether applications meet prefiling requirements under §400.27(b);
- (m) Direct processing of applications, including designation of examiners and scheduling of hearings under §§400.27 and 400.32;
- (n) Authorize minor modifications to zone projects under §400.27(f);
- (o) Review changes in sourcing under §400.28(a)(3);
- (p) Direct monitoring of zone activity under §400.31(d);
- (q) Direct reviews and make recommendations on requests for manufacturing/processing approvals under §400.32(b);
- (r) Determine questions of scope under §400.32(c);
- (s) Accept rate schedules and determine their sufficiency under §400.42(b)(3);
- (t) Review and decide zone rate complaints cases under §400.42(b)(5);
- (u) Make recommendations in cases involving questions as to whether zone activity should be prohibited or restricted for public interest reasons, including reviews under §400.43;
- (v) Authorize under certain circumstances the return of "zone-restricted merchandise" for entry into Customs territory under §400.44;
- (w) Authorize certain duty-paid retail trade under §400.45;
- (x) Determine the format for the annual reports of zone grantees to the Board and direct preparation of an annual report to Congress from the Board under §400.46(d); and
- (y) Designate an acting Executive Secretary.

§400.13 Board headquarters.

The headquarters of the Board is located within the U.S. Department of Commerce (Herbert C. Hoover Building), Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, as part of the office of the Foreign-Trade Zones staff.

Subpart C-Establishment and Modification of Zone Projects

§400.21 Number and location of zones and subzones.

- (a) Number of zone projects-port of entry entitlement.
 - (1) Provided that the other requirements of this subpart are met:
 - (i) Each port of entry is entitled to at least one zone project;
 - (ii) If a port of entry is located in more than one state, each of the states in which the port of entry is located is entitled to a zone project; and
 - (iii) If a port of entry is defined to include more than one city separated by a navigable waterway, each of the cities is entitled to a zone project.
 - (2) Zone projects in addition to those approved under the entitlement provision of paragraph (a)(1) of this section may be authorized by the Board if it determines that existing project(s) will not adequately serve the public interest (convenience of commerce).
- (b) Location of zones and subzones-port of entry adjacency requirements.

- (1) The Act provides that the Board may approve "zones in or adjacent to ports of entry" (19 U.S.C. 81b).
- (2) The "adjacency" requirement is satisfied if:
 - (i) A general-purpose zone is located within 60 statute miles or 90 minutes' driving time from the outer limits of a port of entry;
 - (ii) A subzone meets the following requirements relating to Customs supervision:
 - (A) Proper Customs oversight can be accomplished with physical and electronic means; and
 - (B) All electronically produced records are maintained in a format compatible with the requirements of the U.S. Customs Service for the duration of the record period; and
 - (iii) The grantee/operator agrees to present merchandise for examination at a Customs site selected by Customs when requested, and further agrees to present all necessary documents directly to the Customs oversight office.

§400.22 Eligible applicants.

- (a) In general. Subject to the other provisions of this section, public or private corporations may apply for a grant of authority to establish a zone project. The board will give preference to public corporations.
- (b) Public and non-profit corporations. The eligibility of public and non-profit corporations to apply for a grant of authority shall be supported by an enabling legislation of the legislature of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply.
- (c) Private for-profit corporations. The eligibility of private for-profit corporations to apply for a grant of authority shall be supported by a special act of the state legislature naming the applicant corporation and by evidence indicating that the corporation is chartered for the purpose of establishing a zone.
- (d) Applicants for subzones-
 - (1) Eligibility. The following entities are eligible to apply for a grant of authority to establish a subzone:
 - (i) The zone grantee of the closest zone project in the same state;
 - (ii) The zone grantee of another zone in the same state, which is a public corporation, if the Board, or the Executive Secretary, finds that such sponsorship better serves the public interest; or
 - (iii) A state agency specifically authorized to submit such an application by an act of the state legislature.
 - (2) Complaints. If an application is submitted under paragraph (d)(1)(i) or (iii) of this section, the Executive Secretary will:
 - (i) Notify, in writing, the grantee specified in paragraph (d)(1)(i) of this section, who may, within 30 days, object to such sponsorship, in writing, with supporting information as to why the public interest would be better served by its acting as sponsor;
 - (ii) Review such objections prior to filing the application to determine whether the proposed sponsorship is in the public interest, taking into account:
 - (A) The complaining zone's structure and operation;

- (B) The views of State and local public agencies; and
- (C) The views of the proposed subzone operator;
- (iii) Notify the applicant and complainants in writing of the Executive Secretary's determination;
- (iv) If the Executive Secretary determines that the proposed sponsorship is in the public interest, file the application (see §400.47 regarding appeals to decisions of the Executive Secretary).

§400.23 Criteria for grants of authority for zones and subzones.

- (a) Zones. The Board will consider the following factors in determining whether to issue a grant of authority for a zone project:
 - (1) The need for zone services in the port of entry area, taking into account existing as well as projected international trade related activities and employment impact;
 - (2) The adequacy of the operational and financial plans and the suitability of the proposed sites and facilities, with justification for duplicative sites;
 - (3) The extent of state and local government support, as indicated by the compatibility of the zone project with the community's master plan or stated goals for economic development and the views of State and local public officials involved in economic development. Such officials shall avoid commitments that anticipate outcome of Board decisions;
 - (4) The views of persons and firms likely to be affected by proposed zone activity; and
 - (5) If the proposal involves manufacturing or processing activity, the criteria in §400.31.
- (b) Subzones. In reviewing proposals for subzones the Board will also consider:
 - (1) Whether the operation could be located in or otherwise accommodated by the multi-purpose facilities of the zone project serving the area;
 - (2) The specific zone benefits sought and the significant public benefit(s) involved supported by evidence to meet the requirement in §400.31(c); and
 - (3) Whether the proposed activity is in the public interest, taking into account the criteria in §400.31.

§400.24 Application for zone.

- (a) In general. An application for a grant of authority to establish a zone project shall consist of a transmittal letter, an executive summary and five exhibits.
- (b) Letter of transmittal. The transmittal letter shall be currently dated and signed by an authorized officer of the corporation and bear the corporate seal.
- (c) Executive summary. The executive summary shall describe:
 - (1) The corporation's legal authority to apply;
 - (2) The type of authority requested from the Board;
 - (3) The proposed zone site and facilities and the larger project of which the zone is a part;
 - (4) The project background, including surveys and studies;
 - (5) The relationship of the project to the community's and state's overall economic development plans and objectives;
 - (6) The plans for operating and financing the project; and
 - (7) Any additional pertinent information needed for a complete summary description of the proposal.
- (d) Exhibits.

- (1) Exhibit One (Legal Authority for the Application) shall consist of:
- (i) A certified copy of the state enabling legislation described in §400.22;
 - (ii) A copy of pertinent sections of the applicant's charter or organization papers; and
 - (iii) A certified copy of the resolution of the governing body of the corporation authorizing the official signing the application.
- (2) Exhibit Two (Site Description) shall consist of:
- (i) A detailed description of the zone site, including size, location, address, and a legal description of the area proposed for approval; a table with site designations shall be included when more than one site is involved;
 - (ii) A summary description of the larger project of which the zone is a part, including type, size, location and address;
 - (iii) A statement as to whether the zone is within or adjacent to a customs port of entry;
 - (iv) A description of zone facilities and services, including dimensions and types of existing and proposed structures;
 - (v) A description of existing or proposed site qualifications including: land-use zoning, relationship to flood-plain, infrastructure, utilities, security, and access to transportation services;
 - (vi) A description of current activities carried on in or contiguous to the project;
 - (vii) If part of a port facility, a summary of port and transportation services and facilities; if not, a summary description of transportation systems indicating connections from local and regional points of arrival to the zone; and
 - (viii) A statement as to the possibilities and plans for zone expansion.
- (3) Exhibit Three (Operation and Financing) shall consist of:
- (i) A statement as to site ownership (if not owned by the applicant or proposed operator, evidence as to their legal right to use the site);
 - (ii) A discussion of the operational plan (if the zone or a portion thereof is to be operated by other than the grantee, a summary of the selection process used or to be used, the type of operation agreement and, if available, the name and qualifications of the proposed operator);
 - (iii) A brief explanation of the plans for providing facilities, physical security, and for satisfying the requirements for Customs automated systems;
 - (iv) A summary of the plans for financing capital and operating costs, including a statement as to the source and use of funds; and
 - (v) The estimated time schedule for construction and activation.
- (4) Exhibit Four (Economic Justification) shall include:
- (i) A statement of the community's overall economic goals and strategies in relation to those of the region and state;
 - (ii) A reference to the plan or plans on which the goals are based and how they relate to the zone project;
 - (iii) An economic profile of the community including identification and discussion of dominant sectors in terms of percentage of employment or income, area resources and problems, economic imbalances, unemployment rates, area foreign trade statistics, and area port facilities and transportation networks;
 - (iv) A statement as to the role and objective of the zone

- project, and a justification for each of the proposed sites;
- (v) A discussion of the anticipated economic impact, direct and indirect, of the zone project, including references to public costs and benefits, employment, U.S. international trade, and environmental impact;
 - (vi) A statement as to the need for zone services in the community, with information on surveys of business, and specific expressions of interest from proposed zone users, with letters of intent from those firms that are considered prime prospects; and
 - (vii) A description of proposed manufacturing and processing operations, if applicable, with information covering the factors described in §400.31(b), including the nature and scope of the operation and production process, materials and components used, items to be foreign sourced with relevant tariff information, zone benefits anticipated and how they will affect the firm's plans, and the economic impact of the operation on the community and on related domestic industries.
- (5) Exhibit Five (Maps) shall consist of:
- (i) The following maps and drawings:
 - (A) State and county maps showing the general location of the zone in terms of the area's transportation network;
 - (B) A U.S. Geodetic Survey map or the equivalent showing in red the location of the proposed zone; and
 - (C) A detailed blueprint of the zone or subzone area showing zone boundaries in red, with dimensions and metes and bounds, or other legal description, and showing existing and proposed structures.
 - (ii) Proposals involving existing zones shall include a drawing showing existing zone sites and the proposed changes.
- (e) Additional information. The Board or the Executive Secretary may require additional information needed to adequately evaluate a proposal.
 - (f) Amendment of application. The Board or the Executive Secretary may allow amendment of the application.
 - (g) Drafts. Applicants may submit a draft application to the Executive Secretary for review.
 - (h) Format and number of copies. Unless the Executive Secretary alters the requirements of this paragraph, submit an original and 12 copies of the application on 8 1/2" x 11" (216 x 279 mm) paper. Exhibit Five of the original application shall contain full-sized maps, and copies shall contain letter-sized reductions.
 - (i) Where to file. Address and mail the application to the Secretary of Commerce, Attention: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

(Approved by the Office of Management and Budget under control number 0625-0139)

§400.25 Application for subzone.

- (a) In general. An application to establish a subzone as part of a proposed or existing zone shall be submitted in accordance with the format in §400.24, except that the focus of the information provided in Exhibit Four shall be on the specific activity involved and its net economic effect. The information submitted in Exhibit Four shall include:

- (1) A summary as to the reasons for the subzone and an explanation of its anticipated economic effects;
- (2) Identity of the subzone user and its corporate affiliation;
- (3) Description of the proposed activity, including:
 - (i) Products;
 - (ii) Materials and Components;
 - (iii) Sourcing plans (domestic/foreign);
 - (iv) Tariff rates and other import requirements or restrictions;
 - (v) Information to assist the Board in making a determination under §§400.31(b)(1)(iii) and 400.31(b)(2);
 - (vi) Benefits to subzone user;
 - (vii) Information required in §400.24(d)(4)(vii);
 - (viii) Information as to whether alternative procedures have been considered as a means of obtaining the benefits sought;
 - (ix) Information on the industry involved and extent of international competition; and
 - (x) Economic impact of the operation on the area;
- (4) Reason operation cannot be conducted within a general-purpose zone;
- (5) Statement as to environmental impact; and
- (6) Any additional information requested by the Board or the Executive Secretary in order to conduct the review. The Executive Secretary may issue guidelines as to the kind of detailed information needed for various types of subzone cases.
- (b) Burden of proof. An applicant for a subzone must demonstrate to the Board that the proposed operation meets the criteria in §400.23(b).

(Approved by the Office of Management and Budget under control number 0625-0139)

§400.26 Application for expansion or other modification to zone project.

- (a) In general.
 - (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone project.
 - (2) The Executive Secretary, in consultation with the District Director, will determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (c) of this section. In making this determination the Executive Secretary will consider the extent to which the proposed modification would:
 - (i) Substantially modify the plan originally approved by the Board; or
 - (ii) Expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan.
- (b) Major modification to zone project. An application for a major modification to an approved zone project shall be submitted in accordance with the format in §400.24, except that:
 - (1) Reference may be made to current information in an application from the same applicant on file with the Board; and
 - (2) The content of Exhibit Four shall relate specifically to the proposed change.
- (c) Minor modification to zone project. Other applications or requests under this subpart, including those for minor revisions of zone boundaries, grant of authority transfers, or time extensions, shall be submitted in letter form with information and documentation

necessary for analysis, as determined by the Executive Secretary, who shall determine whether the proposed change is a minor one subject to this paragraph (c) instead of paragraph (b) of this section (see, §400.27(f)).

- (d) Applications for other revisions to grants of authority. Applications or requests for revisions to grants of authority, such as restriction modifications, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves removal or significant modification of a restriction included by the Board in a grant of authority, the review procedures of §400.32 shall apply. If not, the procedure set forth in §400.27(f) shall apply.

(Approved by the Office of Management and Budget under control number 0625-0139)

§400.27 Procedure for processing application.

- (a) In general. This section outlines the procedure followed in processing applications submitted under §§400.24-400.26. In addition, it sets forth the time schedules which will normally be applied in processing applications. The schedules will provide guidance to applicants with respect to the time frames for each of the procedural steps involved in the Board's review. Under these schedules, applications involving manufacturing or processing activity would be processed within 1 year, and those not involving such activity, within 10 months. While the schedules set forth a standard time frame, the Board may determine that it requires additional time based on special circumstances, such as when the public comment period must be reopened pursuant to paragraphs (d) (2) (v) (B) and (d) (3) (vi) (B) of this section.
- (b) Prefiling review. Applications subject to §400.29 shall be accompanied with a check in accordance with that section, and will be dated upon receipt at the headquarters of the Board. The Executive Secretary will determine whether the application satisfies the requirements of §§400.22-400.24, 400.25, 400.26, 400.32, and other applicable provisions of this part.
- (1) If the application is deficient, the Executive Secretary will notify the applicant within 20 days of receipt of the application, specifying the deficiencies. The applicant shall correct the deficiencies and submit the correct application within 30 days of notification. Otherwise, the application (original) will be returned.
- (2) If the application is sufficient, the Executive Secretary will within 45 days of receipt of the application:
- (i) Formally file the application, thereby initiating the proceeding or review;
 - (ii) Assign a case docket number in cases requiring a Board order; and
 - (iii) Notify the applicant.
- (c) Procedure-Executive Secretary responsibilities. After initiating a proceeding based on an application under §§400.24-400.25, or 400.26(b), the Executive Secretary will:
- (1) Designate an examiner to conduct a review and prepare a report with recommendations for the Board;
 - (2) Publish in the Federal Register a notice of the formal filing of the application and initiation of the review which includes the name of the applicant, a description of the zone project, information as to any hearing scheduled at the outset,

- and an invitation for public comment, including a time period during which the public may submit evidence, factual information, and written arguments. Normally, the comment period will close 30 days after the date the notice appears, except that, if a hearing is held (see, §400.51), the period will not close prior to 15 days after the date of the hearing. The closing date for general comment will ordinarily be followed by an additional 15-day period for rebuttal comments;
- (3) Send copies of the filing and initiation notice and the application to:
- (i) The Commissioner of Customs and the Regional Commissioner, or a designee; and
 - (ii) The Resident Member, Board of Engineers for Rivers and Harbors, Department of the Army, and the District Engineer;
- (4) Arrange for hearings, as appropriate;
- (5) Transmit the reports and recommendations of the examiner and of the officials identified in paragraph (c)(3) of this section to the Board for appropriate action; and
- (6) Notify the applicant in writing and publish notice in the Federal Register of the Board's determination.
- (d) Case reviews-procedure and time schedule-
- (1) Customs and army engineer review. The Regional Commissioner (Customs), or a designee, and the District Engineer (Army), in accordance with the regulations and directives of their respective agencies, will submit their technical reports to the Executive Secretary within 45 days of the conclusion of the public comment period described in paragraph (c)(2) of this section.
 - (2) Examiners reviews-non-manufacturing/processing. Examiners assigned to cases not involving manufacturing or processing activity shall conduct a review taking into account the factors enumerated in §400.23 and other appropriate sections of this part, which shall include:
 - (i) Conducting or participating in necessary hearings scheduled by the Executive Secretary;
 - (ii) Reviewing case records, including public comments;
 - (iii) Requesting information and evidence from parties of record;
 - (iv) Developing information and evidence necessary for evaluation and analysis of the application in accordance with the criteria of the Act and this part;
 - (v) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 120 days of the close of the period for public comment (see, paragraph (c)(2) of this section).
 - (A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified within 5 days (in writing or by phone) and given 30 days from the date of notification in which to respond to the report and submit additional evidence.
 - (B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the Federal Register after completion of the review of the response. The new material will be made available for public inspection and the Federal Register notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.
 - (C) The Customs and District Engineer (Army) advisers shall be notified when necessary for their further comments,

which shall be submitted within 45 days after their Notification.

- (D) The examiners report in a situation under paragraph (d) (2) (v) (A) of this section shall be completed and submitted to the Executive Secretary within 30 days after receipt of additional evidence or notice from the applicant that there will be none; except that, if paragraph (d) (2) (v) (B) of this section applies, the report will be submitted within 30 days of the close of the period for public comment.
- (3) Examiners reviews-cases involving manufacturing or processing activity. Examiners shall conduct a review taking into account the factors enumerated in §400.23, §400.31, and other appropriate sections of this part, which shall include:
- (i) Conducting or participating in hearings scheduled by the Executive Secretary;
 - (ii) Reviewing case records, including public comments;
 - (iii) Requesting information and evidence from parties of record;
 - (iv) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in §400.31;
 - (v) Conducting an analysis to include:
 - (A) An evaluation of policy considerations pursuant to §§400.31(b) (1) (i) and 400.31(b) (1) (ii);
 - (B) An evaluation of the economic factors enumerated in §§400.31(b) (1) (iii) and 400.31(b) (2), which shall include
 - an evaluation of the economic impact on domestic industry, considering both producers of like products and producers of components/materials used in the manufacture/processing or assembly of the products. The evaluation will take into account such factors as market conditions, price sensitivity, degree and nature of foreign competition, effect on exports and imports, and the net effect on U.S. employment;
 - (vi) Conducting appropriate industry surveys when necessary; and
 - (vii) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 150 days of the close of the period for public comment:
 - (A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified (in writing or by phone) and given 45 days from the date of notification in which to respond to the report and submit additional evidence pertinent to the factors considered in the report.
 - (B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the Federal Register after completion of the review of the response. The new material will be made available for public inspection and the Federal Register notice will invite further public comment for 30 days, with an additional 15- day period for rebuttal comments.

- (e) Procedure-Completion of review-
- (1) The Executive Secretary will circulate the examiners report with recommendations to Board members for their review and votes (by resolution).
 - (2) The Treasury and Army Board members will return their votes to the Executive Secretary within 30 days, unless a formal meeting is requested (see, §400.11(d)).
 - (3) The Commerce Department will complete the decision process within 15 days of receiving the votes of both other Board members, and the Executive Secretary will publish the Board decision.
- (f) Procedure-Application for minor modification of zone project.
- (1) The Executive Secretary, with the concurrence of the District Director, will make a determination in cases under §400.26(c) involving minor changes to zone projects that do not require a Board order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under §400.26(c).
 - (2) The District Director shall provide the decision as to concurrence within 20 days after being notified of the request or application.

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

- (a) In general. Grants of authority issued by the Board for the establishment of zones or subzones, including those already issued, are subject to the Act and this part and the following general conditions or limitations:
- (1) Approvals from the grantee and the District Director, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone project; and
 - (2) Approval of the Board or the Commerce Department's Assistant Secretary for Import Administration pursuant to subpart D of this part is required prior to the commencement of manufacturing beyond the scope of that approved as part of the application or pursuant to reviews under this part (e.g., new end products, significant expansions of plant production capacity), and of similar changes in processing activity which involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower (actual or effective) duty rate (inverted tariff) than any of their foreign components.
 - (3) Sourcing changes-(i) Notification requirement. The grantee or operator of a zone or subzone shall notify the Executive Secretary when there is a change in sourcing for authorized manufacturing or processing activity which involves the use of new foreign articles subject to quotas or inverted tariffs, unless-
 - (A) Entries for consumption are not to be made at the lower duty rate; or
 - (B) The product in which the foreign articles are to be incorporated is being produced for exportation.
- (ii) Notification procedure. Notification shall be given prior to the commencement of the activity, when possible, otherwise at the time the new foreign articles arrive in the zone or are withdrawn from inventory for use in production. Requests may

be made to the Executive Secretary for authority to submit notification of sourcing changes on a quarterly federal fiscal year basis covering changes in the previous quarter.

(iii) Reviews

(A) Upon notification of a sourcing change under paragraph (a)(3)(i) of this section, within 30 days, the Executive Secretary will conduct a preliminary review of the changes in relation to the approved activity to determine whether they could have significant adverse effects, taking into account the factors enumerated in §400.31(b), and will submit a report and recommendation to the Commerce Department's Assistant Secretary for Import Administration, who shall determine whether review is necessary. The procedures of §400.32(b) shall be used in these situations when appropriate.

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

(C) The Executive Secretary shall direct reviews necessary to ensure that activity involved

in

these situations continues to be in the public interest.

- (4) Prior to activation of a zone, the zone grantee or operator shall obtain all necessary permits from federal, state and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.
- (5) A grant of authority for a zone or a subzone shall lapse unless the zone project (in case of subzones, the subzone facility) is activated, pursuant to 19 CFR part 146, and in operation not later than five years from:
- (i) A Board order (authorizing the zone or subzone) issued after November 7, 1991; or
 - (ii) November 7, 1991.
- (6) A grant of authority approved under this subpart includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone project subject to concurrence of the District Director.
- (7) Zone grantees, operators, and users shall permit federal government officials acting in an official capacity to have access to the zone project and records during normal business hours and under other reasonable circumstances.
- (8) A grant of authority may not be sold, conveyed, transferred, set over, or assigned (FTZ Act, section 7; 19 U.S.C. 81q). Private ownership of zone land and facilities is permitted provided the zone grantee retains the control necessary to implement the approved zone project. Should title to land or facilities be transferred after a grant of authority is issued, the zone

grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities

as grantee. The sale of a zone site or facility for more than its fair market value without zone status could, depending on the circumstances, be subject to section 7 of the Act.

- (9) A grant of authority will not be construed to make the zone grantee automatically liable for violations by operators, users, or other parties.
- (b) Additional conditions, prohibitions and restrictions. Other requirements, conditions or restrictions under Federal, State or local law may apply to the zone or subzone authorized by the grant of authority.
- (c) Revocation of grants of authority.
 - (1) In general. As provided in this section, the Board can revoke in whole or in part a grant of authority for a zone or subzone whenever it determines that the zone grantee or, in the case of subzones, the subzone operator, has violated, repeatedly and willfully, the provisions of the Act.
 - (2) Procedure. When the Board has reason to believe that the conditions for revocation, as described in paragraph (a) of this section, are met, the Board will:
 - (i) Notify the zone or subzone grantee in writing stating the nature of the alleged violations, and provide the grantee an opportunity to request a hearing on the proposed revocation;
 - (ii) Conduct a hearing, if requested or otherwise if appropriate;
 - (iii) Make a determination on the record of the proceeding not earlier than 4 months after providing notice to the zone grantee under paragraph (b)(1) of this section; and
 - (iv) If the Board's determination is affirmative, publish notice of revocation of the grant of authority in the Federal Register.
 - (3) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the zone or subzone grantee may appeal an order of the Board revoking the grant of authority.

§400.29 Application fees.

- (a) In general. This section sets forth a uniform system of charges in the form of fees to recover some costs incurred by the Foreign-Trade Zones staff of the Department of Commerce in processing the applications listed in paragraph (b) of this section. The legal authority for the fees is 31 U.S.C. 9701, which provides for the collection of user fees by agencies of the Federal Government.
- (b) Uniform system of user fee charges. The following graduated fee schedule establishes fees for certain types of applications and requests for authority based on their average processing time. Applications combining requests for more than one type of approval are subject to the fee for each category.
 - (1) Additional general-purpose zones (§400.24; §400.21(a)(2)) \$3,200
 - (2) Special-purpose subzones (§400.25):
 - (i) Non-manufacturing/processing or less than three products 4,000
 - (ii) Manufacturing/processing-three or more products 6,500

(3) Expansions (§400.26(b))
1,600

- (c) Applications submitted to the Board shall include a check drawn on a national or state bank or trust company of the United States or Puerto Rico in the amount called for in paragraph
- (b) of this section. Uncertified checks must be acceptable for deposit by a Federal Reserve bank or branch.
- (d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If applications are found deficient under §400.27(b)(1), or withdrawn by applicants prior to formal filing, refunds will be made.

Subpart D-...Manufacturing and Processing Activity-Reviews

§400.31 Manufacturing and processing activity; criteria.

- (a) In general. Pursuant to section 15(c) of the Act (19 U.S.C. 810(c)), the Board has authority to restrict or prohibit zone activity "that in its judgment is detrimental to the public interest." When evaluating zone and subzone manufacturing and processing activity, either as proposed in an application, in a request for manufacturing/processing approval, or as part of a review of an ongoing operation, the Board shall determine whether the activity is in the public interest by reviewing it in relation to the evaluation criteria contained in paragraph
- (b) of this section. With regard to processing activity, this section shall apply only when the activity involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower duty rate (inverted tariff) than any of their foreign components. Such a review involves consideration of whether the activity is consistent with trade policy and programs, and whether its net economic effect is positive.
- (b) Evaluation criteria-
 - (1) Threshold factors. It is the policy of the Board to authorize zone activity only when it is consistent with public policy and, in regard to activity involving foreign merchandise subject to quotas or inverted tariffs, when zone procedures are not the sole determining cause of imports. Thus, without undertaking a review of the economic factors enumerated in §400.31(b)(2), the Board shall deny or restrict authority for proposed or ongoing activity if it determines that:
 - (i) The activity is inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive branch;
 - (ii) Board approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or
 - (iii) The activity involves items subject to quantitative import controls or inverted tariffs, and the use of zone procedures would be the direct and sole cause of imports that, but for such procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.
 - (2) Economic factors. After its review of threshold factors, if there is a basis for further consideration, the Board shall consider the following factors in determining the net economic

effect of the activity of proposed activity:

- (i) Overall employment impact;
- (ii) Exports and reexports;
- (iii) Retention or creation of manufacturing or processing activity;
- (iv) Extent of value-added activity;
- (v) Overall effect on import levels of relevant products, including import displacement;
- (vi) Extent and nature of foreign competition in relevant products;
- (vii) Impact on related domestic industry, taking into account market conditions; and
- (viii) Other relevant information relating to public interest and net economic impact considerations, including technology transfers and investment effects.

(c) Methodology and evidence-

(1)

(i) The first phase (§400.31(b))

involves consideration of threshold factors. If an examiner or reviewer makes a negative finding on any of the factors in paragraph (b)(1) of this section in the course of a review, the applicant shall be informed pursuant to 400.27(d)(3)(vii)(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 §400.27(d)(3)(vii)(A). If the Board determines in the negative any of the factors in paragraph (b)(1) of this section, it shall

shall

deny or restrict authority for the proposed or ongoing activity.

- (ii) The process for paragraph (b)(2) of this section involves consideration of the enumerated economic factors, taking into account their relative weight and significance under the circumstances. Previous evaluations in similar cases are considered. The net effect is arrived at by balancing the positive and negative factors and arriving at a net economic effect.

- (2) Contributory effect. In assessing the significance of the economic effect of the zone activity as part of the consideration of economic factors, and in consideration of whether there is a significant public benefit, the Board may consider the contributory effect zone savings have as an incremental part of cost effectiveness programs adopted by companies to improve their international competitiveness.

- (3) Burden of proof. Applicants for subzones shall have the burden of submitting evidence establishing that the activity does or would result in a significant public benefit, taking into account the factors in paragraph (b) of this section.

Applicants

for approval of manufacturing or processing in general-purpose zones shall submit evidence regarding the positive economic effects that would result from activity within the zone and may submit evidence and comments as to policy considerations. Both types of applicants are expected to submit information

in response to evidence of adverse economic effects during the public comment period. Parties should submit evidence that is probative and substantial in addressing the matter in issue.

(d) Monitoring and post-approval reviews-

- (1) Ongoing zone activity may be reviewed at anytime to determine whether it is in compliance with the Act and regulations, as well as the authority granted by the Board. Reviews may also be conducted to determine whether there are changed circumstances that raise questions as to whether the activity is detrimental to the public interest, taking into account the factors enumerated in §400.31. The Board may prescribe special monitoring requirements in its decisions when appropriate.
- (2) Reviews may be initiated by the Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary; or, they may be undertaken in response to requests from parties directly affected by the activity in question and showing good cause.
- (3) Upon review, if the Board finds that zone activity is no longer in the public interest, taking into account the provisions of §400.31, it may restrict the activity in question. The appropriateness of a delayed effective date will be considered in such cases.

§400.32 Procedure for review of request for approval of manufacturing or processing.

- (a) Request as part of application for grant of authority.
A request for approval of proposed manufacturing or processing activity may be submitted as part of an application under §§400.24-400.26(a). The Board will review the request taking into account the criteria in §400.31(b).
- (b) Request for manufacturing/processing in approved zone or subzone. Prior to the commencement of manufacturing in a zone or subzone involving activity beyond the scope of that which has been previously authorized at the facility (i.e., new end products, significant expansions of plant production capacity), and of similar changes in processing activity that involves foreign articles subject to quotas or inverted tariffs, zone grantees or operators shall request the determination referred to in §400.31(a) by submitting a request in writing to the Executive Secretary (§400.28(a)(2)). Such requests shall include the information required by §§400.24(d)(4)(vii) and 400.25.
 - (1) The Commerce Department's Assistant Secretary for Import Administration may make determinations in these cases based upon a review by the FTZ staff and the recommendation of the Executive Secretary, when:
 - (i) The proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances; or
 - (ii) The activity is for export only; or
 - (iii) The zone benefits sought do not involve the election of non-privileged foreign status (19 CFR 146.42) on items involving inverted tariffs; or
 - (iv) The District Director determines that the activity could otherwise be conducted under Customs bonded procedures.
 - (2) When the informal procedure in paragraph (b)(1) of this section is not appropriate-
 - (i) The Executive Secretary will:
 - (A) Assign a case docket number and give notice in the Federal

- Register inviting public comment;
- (B) Arrange a public hearing, if appropriate;
 - (C) Appoint an examiner, if appropriate, to conduct a review and prepare a report with recommendations for the Board; and
 - (D) Prepare and transmit a report with recommendations, or transmit the examiners report, to the Board for appropriate action; and
- (ii) The Board will make a determination on the requests, and the Executive Secretary will notify the grantee in writing of the Board's determination, and will publish notice of the determination in the Federal Register.
- (c) Scope determinations. Determinations shall be made by the Executive Secretary as to whether changes in activity are within the scope of related activity already approved for the facility involved under this part. When warranted, the procedures of paragraph (b) (2) of this section will be followed.

§400.33 Restrictions on manufacturing and processing activity.

- (a) In general. In approving manufacturing or processing activity for a zone or subzone the Board may adopt restrictions to protect the public interest, health, or safety. The Commerce Department's Assistant Secretary for Import Administration may similarly adopt restrictions in exercising authority under §400.32(b)(1).
- (b) Restrictions on items subject to antidumping and countervailing duty actions-
 - (1) Board policy. Zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions under 19 CFR parts 353 and 355.
 - (2) Admission of items subject to AD/CVD actions. Items subject to AD/CVD orders or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures, if they entered U.S. Customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR parts 353 and 355.

Subpart E-Zone Operations and Administrative Requirements

§400.41 Zone operations; general.

Zones shall be operated by or under the contractual oversight of zone grantees, subject to the requirements of the Act and this part, as well as those of other federal, state and local agencies having jurisdiction over the site and operation. Zone grantees shall ensure that the reasonable zone needs of the business community are served by their zone projects. The District Director represents the Board with regard to the zone projects in the district and is responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

§400.42 Requirements for commencement of operations in a zone project.

- (a) In general. The following actions are required before operations in a zone may commence:
- (1) Approval by the District Director of an application for activation is required as provided in 19 CFR part 146; and
 - (2) The Executive Secretary will review proposed manufacturing or processing, pursuant to §400.32, and a zone schedule as provided in this section.
- (a) Zone schedule.
- (1) The zone grantee shall submit to the Executive Secretary and to the District Director a zone schedule which sets forth:
 - (i) Internal rules and regulations for the zone; and
 - (ii) A statement of the rates and charges (fees) applicable to zone users.
 - (2) A zone schedule shall consist of typed, loose-leaf, numbered, letter-sized pages, enclosed in covers, and shall contain:
 - (i) A title page, with information to include:
 - (A) The name of the zone grantee and operator(s);
 - (B) Schedule identification;
 - (C) Site description;
 - (D) Date of original schedule; and
 - (E) Name of the preparer;
 - (ii) A table of contents;
 - (iii) Administrative information;
 - (iv) A statement of zone operating policy, rules and regulations, including uniform procedures regarding the construction of buildings and facilities; and
 - (v) A section listing rates and charges for zones and subzones with information sufficient for the Board or the Executive Secretary to determine whether the rates and charges are reasonable based on other like operations in the port of entry area, and whether there is uniform treatment under like circumstances among zone users.
 - (3) The Executive Secretary will review the schedule to determine whether it contains sufficient information for users concerning the operation of the facility and a statement of rates and charges as provided in paragraph (b) (2) of this section. If the Executive Secretary determines that the schedule satisfies these requirements, the Executive Secretary will notify the zone grantee, unless there is a basis for review under paragraph (b) (5) of this section. A copy of the schedule shall be available for public inspection at the offices of the zone grantee and operator. The zone grantee shall send a copy to the District Director, who may submit comments to the Executive Secretary.
 - (4) Amendments to the schedule shall be prepared and submitted in the manner described in paragraphs (b) (1) through (b) (3) of this section, and listed in the concluding section of the schedule, with dates.
 - (5) A zone user or prospective user showing good cause may object to the zone or subzone fee on the basis that it is not reasonable, fair and uniform, by submitting to the Executive Secretary a complaint in writing with supporting information. The Executive Secretary will review the complaint and issue a report and decision, which will be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The factors considered in reviewing reasonableness and fairness, will include:
 - (i) The going-rates and charges for like operations in the area and the extra costs of operating a zone, including return on investment; and
 - (ii) In the case of subzones, the value of actual services

rendered by the zone grantee or operator, and reasonable out-of-pocket expenses.

§400.43 Restriction and prohibition of certain zone operations.

- (a) In general. After review, the Board may restrict or prohibit any admission of merchandise into a zone project or operation in a zone project when it determines that such activity is detrimental to the public interest, health or safety.
- (b) Initiation of review. The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition under paragraph (a) of this section either self-initiated, or in response to a complaint made to the Board by a party directly affected by the activity in question and showing good cause.

§400.44 Zone-restricted merchandise.

- (a) In general. Merchandise which has been given export status by Customs officials ("zone-restricted merchandise"-19 CFR 146.44) may be returned to the Customs Territory of the United States only when the Board determines that the return would be in the public interest. Such returns are subject to the Customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c, 4th proviso).
- (b) Criteria. In making the determination described in paragraph (a) of this section, the Board will consider:
 - (1) The intent of the parties;
 - (2) Why the goods cannot be exported;
 - (3) The public benefit involved in allowing their return;and
- (4) The recommendation of the District Director.
- (c) Procedure.
 - (1) A request for authority to return "zone-restricted" merchandise into Customs territory shall be made to the Executive Secretary in letter form by the zone grantee or operator of the zone in which the merchandise is located, with supporting information and documentation.
 - (2) The Executive Secretary will investigate the request and prepare a report for the Board.
 - (3) The Executive Secretary may act for the Board under this section in cases involving merchandise valued at 500,000 dollars or less, provided requests are accompanied with a letter of concurrence from the District Director.

§400.45 Retail trade.

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

in these cases, subject to the concurrence of the Executive Secretary.

- (c) Criteria. In evaluating requests under this section, the District Director and the Executive Secretary will consider:
- (1) Whether any public benefits would result from approval; and
 - (2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

§400.46 Accounts, records and reports.

- (a) Zone accounts. Zone accounts shall be maintained in accordance with generally accepted accounting principles, and in compliance with the requirements of federal, state or local agencies having jurisdiction over the site or operation.
- (b) Records and forms. Zone records and forms shall be prepared and maintained in accordance with the requirements of the Customs Service and the Board, and the zone grantee shall retain copies of applications it submits to the Board.
- (c) Maps and drawings. Zone grantees or operators, and District Directors, shall keep current layout drawings of approved sites as described in §400.24(d)(5), showing activated portions, and a file showing required approvals. The zone grantee shall furnish necessary maps to the District Director.
- (d) Annual reports
 - (1) Zone grantees shall submit annual reports to the Board at the time and in the format prescribed by the Executive Secretary, for use by the Executive Secretary in the preparation of the Board's annual report to the Congress.
 - (2) The Board shall submit an annual report to the Congress.

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

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

- (a) In general. Decisions of the Assistant Secretary for Import Administration and the Executive Secretary made pursuant to §§400.22(d)(2)(ii), 400.32(b)(1), 400.44(c)(3), and 400.45(b)(2) may be appealed to the Board by adversely affected parties showing good cause.
- (b) Procedures. Parties appealing a decision under paragraph (a) of this section shall submit a request for review to the Board in writing, stating the basis for the request, and attaching a copy of the decision in question, as well as supporting information and documentation. After a review, the Board will notify the complaining party of its decision in writing.

Subpart F-Notice, Hearings, Record and Information

§400.51 Notice and hearings.

- (a) In general. The Executive Secretary will publish notice in the Federal Register inviting public comment on applications docketed for Board action (see, §400.27(c)), and with regard to other reviews or matters considered under this part when public comment is necessary. Applicants shall give appropriate notice of their proposals in local newspapers. The Board, the Secretary, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, as appropriate,

may schedule and/or hold hearings during any proceedings or reviews conducted under this part whenever necessary or appropriate.

- (b) Requests for hearings- (1) A directly affected party showing good cause may request a hearing during a proceeding or review.
- (2) The request must be made within 30 days of the beginning of the period for public comment (see, §400.27) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.
- (3) A determination as to the need for the hearing will be made by the Commerce Department's Assistant Secretary for Import Administration within 15 days after the receipt of such a request.
- (c) Procedure for public hearings. The Board will publish notice in the Federal Register of the date, time and location of a hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

§400.52 Official record; public access.

- (a) Content. The Executive Secretary will maintain at the location stated in §400.53(d) an official record of each proceeding within the Board's jurisdiction. The Executive Secretary will include in the official record all factual information, written argument, and other material developed by, presented to, or obtained by the Board in connection with the proceeding. The official record will contain material that is public, business proprietary, privileged, and classified. While there is no requirement that a verbatim record shall be kept of public hearings, the proceedings of such hearings shall ordinarily be recorded and transcribed when significant opposition is involved.
- (b) Opening and closing of official record. The official record opens on the date the Executive Secretary files an application or receives a request that satisfies the applicable requirements of this part and closes on the date of the final determination in the proceeding or review, as applicable.
- (c) Protection of the official record. Unless otherwise ordered in a particular case by the Executive Secretary, the official record will not be removed from the Department of Commerce. A certified copy of the record will be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of proprietary or privileged information.

§400.53 Information.

- (a) Request for information. The Board may request submission of any information, including business proprietary information, and written argument necessary or appropriate to the proceeding.
- (b) Public information. Except as provided in paragraph (c) of this section, the Board will consider all information submitted in a proceeding to be public information. If the person submitting the information does not agree to its public disclosure, the Board will return the information and not consider it in the proceeding.
- (c) Business proprietary information. Persons submitting business proprietary information and requesting protection from public disclosure shall mark the cover page "business proprietary," as well as the top of each page on which such information appears.
- (d) Disclosure of information. Disclosure of public information will be governed by 15 CFR part 4. Public information in the

01/01/2004

FOREIGN-TRADE ZONE NO. 256 ZONE SCHEDULE NO. 1.00

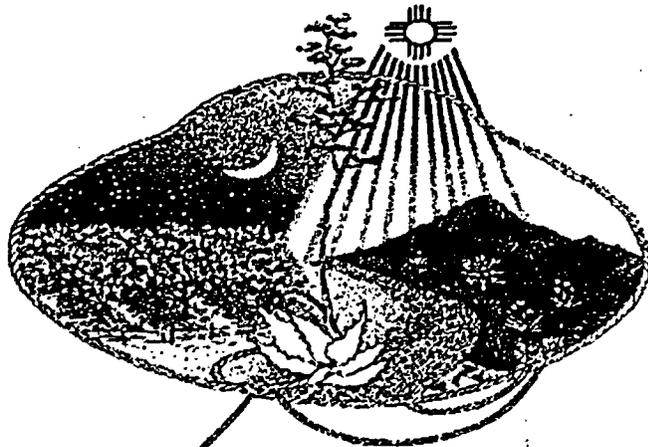
official record will be available for inspection and copying at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce Building, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

[FR Doc. 91-24130 Filed 10-3-91; 3:50 pm]
BILLING CODE 3510-DS-M

The Contents entry for this article reads as follows:

Foreign-Trade Zones Board
RULES
Foreign-trade zones in United States, 50790

City of Roswell



City of Roswell

FOREIGN-TRADE ZONE

No. 256

SUB ZONE USER AGREEMENT

**Bill B. Owen
Mayor**

STATE OF NEW MEXICO
COUNTY OF CHAVES

FOREIGN-TRADE ZONE SUBZONE USER AGREEMENT

THIS AGREEMENT is made and entered into on this the ____ day of _____, 20 __, by and among the City of Roswell, New Mexico, hereinafter referred to as "Grantee", and _____, hereinafter referred to as "User."

WITNESSETH:

WHEREAS, the Grantee has received a grant from the U.S. Foreign-Trade Zones Board, which authorizes it to establish, operate, and maintain a foreign-trade zone project which is designated as Foreign-Trade Zone No. 256. hereinafter referred to as "Zone:" and

WHEREAS, the Grantee has applied to the U.S. Foreign-Trade Zones Board for a grant of authority which, when granted, will establish Subzone 256 on behalf of the User; and

WHEREAS, User occupies the real property to be established as Subzone 256, described in Exhibit "A" attached hereto, hereinafter referred to as the "Site", and desires to conduct certain activities on the Site and to avail itself of the rights and privileges attendant to operating in a foreign-trade zone subzone;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

I. AUTHORITY GRANTED/ACCEPTED

1.1 Authority Granted: Grantee hereby grants to User the right to utilize the Site as a foreign-trade zone subzone, subject to all terms and conditions of this Agreement, and for the term specified herein and any extension thereof.

1.2 Authority Accepted: User hereby agrees to accept foreign-trade zone subzone status for the Site and hereby agrees to operate the Site in accordance with the terms and conditions of this Agreement, the effective Zone Schedule, and any applicable standards of operation, rules or regulations which now exist, or which may in the future be instituted or amended by the Grantee,

Customs and Border Protection, hereinafter referred to as "CBP", the Foreign-Trade Zones Board or any other federal, state, county, or local authority with jurisdiction over Foreign-Trade Zone operations.

II. EFFECTIVE DATE AND DURATION OF AGREEMENT

2.1 This Agreement shall be effective as of the ____ day of _____, 20__, and shall continue in effect for a term of Five (5) years unless extended or sooner terminated as herein provided. Notwithstanding the foregoing, one year from the effective date of this Agreement, any party hereto shall have the absolute right and authority to terminate this Agreement, without cause and without liability to any other party hereto, upon giving ninety (120) days advance, written notice of such termination to all parties.

III. STANDARDS OF OPERATION

3.1 Operational Management Procedures: The Site shall be operated in conformity with all applicable requirements of Federal and State law, including CBP rules and regulations. User shall establish Foreign-Trade Zone procedures for the site. It shall be the User's responsibility to maintain said operating standards.

3.2 Right of Entry: Grantee, CBP, the Foreign-Trade Zones Board, and any other federal, state, county, or local authority, or their authorized agents or representatives, shall have the right to enter the Site at all reasonable times, upon reasonable advance notice, to inspect the Site and to ensure that all activities conform to the operating standards established by and the requirements of this Agreement. Where possible, any such entry shall be limited to normal working hours and shall be made in accordance with the established security procedures of User.

IV. RECORD KEEPING

4.1 Annual Reporting: On or before June 30 of each year during the term of this Agreement, or the expiration hereof, User shall submit to Grantee copies of such reports as may be required by the Foreign-Trade Zones Board. All such reports shall be signed by an appropriate officer of User, certifying that said reports are true, correct, and accurate to the best of his/her knowledge. Said reports shall include, but not be limited to, the narrative and photographs required for the

Annual Report to the Foreign-Trade Zones Board. In the event such reports are not delivered to the Grantee in accordance with the date and terms hereinabove set forth, User shall pay to the Grantee a fee of TWO HUNDRED DOLLARS (\$200.00) PER CALENDAR DAY for each succeeding day that the User fails to deliver such documents.

4.2 Activity Reports: Within fifteen (15) days after the end of each month during the term of this Agreement, or the expiration thereof, User shall, if requested by Grantee, submit financial statements or activity reports containing such information as may be required by Grantee to comply with requests of the Foreign-Trade Zones Board, CBP, or any other authorized federal, state, county, or local agency. All such statements or reports shall be signed by an appropriate officer of the User, certifying that said statements or reports are true, correct, and accurate. All such information obtained from User shall be kept confidential, except for such information which is required to be made public by the Foreign-Trade Zones Board, CBP, or which shall be determined to be public information under applicable federal, state, or local laws.

4.3 Notification: User shall notify Grantee, within 15 days of receipt thereof, of any audit, investigation, or additional reporting requirements instituted by CBP, the Foreign-Trade Zones Board, or any federal, state, county, or local governmental agency which concerns foreign-trade zone operations within the Site. User agrees to furnish, upon Grantee's request, copies to Grantee all such requests for documentation, together with any response thereto.

4.4 Audit: Grantee or its designated representatives reserve the right, at their own expense and upon reasonable advance notice, to audit User's books, financial statements, and records for the purpose of verifying the information provided by User under this section.

4.5 Conformance: In the event it is determined that the operations of User are not in conformance with the requirements of Grantee, CBP, or the Foreign-Trade Zones Board, User agrees to take whatever steps are necessary to immediately remedy the situation. In the event the deficiency cannot be corrected within twenty (20) days after notification, User shall prepare a written plan of performance outlining the measures to be taken to ensure conformance with said requirement and the time period required therefore, which shall be subject to approval by Grantee, which approval will not be unreasonably withheld or delayed.

4.6 Retention: User shall retain all receiving, shipping, financial, and accounting records concerning foreign-trade zone operations for five (5) years after the date of the act or occurrence.

All such records shall be made available for inspection and audit by any appropriate governmental agency, the Grantee, or their designated representatives during normal business hours, upon reasonable advance notice and at such party's expense.

V. ADVERTISING

5.1 Grantee reserves the right to advertise the fact that User is a foreign-trade zone subzone user in general promotions for Foreign-Trade Zone No. 256.

VI. USER FEES

6.1 User Fees: User agrees to pay to Grantee certain user fees in accordance with the terms of Exhibit "B", which is attached hereto and incorporated herein by reference. Said user fees are to be paid prior to activation with CBP in year one of this agreement, and on the anniversary date of activation with CBP each and every year thereafter. In addition, within 25 days of receipt of invoice, User agrees to reimburse Grantee at cost for all CBP fees paid by Grantee that are incurred as a result of User's Operations within Foreign-Trade Zone No. 256. Said CBP fees shall include, but not be limited to, activation fees, deactivation fees, alteration fees, transaction fees, annual fees, and bond fees. User agrees to pay to Grantee interest at the rate of one and one-half percent (1 1/2%) per month on all sums not received by the due date. In addition, any sums not received by Grantee by the due date shall constitute a breach of this Agreement and shall give rise to any of the remedies provided herein.

VII. INDEMNIFICATION

7.1 Hold Harmless: It is an express condition of this Agreement that User shall protect, defend, indemnify, and hold harmless Grantee, and its elected officials, directors, officers, agents, representatives, and employees, from and against any and all liabilities, charges, demands, suits, claims, losses, fines, expenses or judgments arising by reason of the injury or death of any person, or loss or damage to any property arising out of, or incidental to the utilization of the Site as a Foreign-trade zone subzone, except to the extent caused by or related to the acts or omissions of the Grantee. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

Further, User agrees to indemnify and hold the Grantee and its elected officials, directors, officers, agents, representatives, and employees harmless from any fines, fees, penalties, damages, claims, expenses, or causes of action of any nature whatsoever to the extent arising out of any act, omission or incident of User or its officers, representatives, agents, employees, contractors, subcontractors, licensees or invitees, including but not limited to, such fines, duties, liquidated damages or penalties as might be assessed by CBP. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

User shall post and maintain for the duration of this Agreement a CBP Bond, at User's sole expense, in such amount as shall be determined by CBP.

VIII. INSURANCE

8.1 User agrees to obtain and continuously maintain in effect during the term of this Agreement and any extension thereof, insurance against such risks as are customarily insured against by businesses of like size and type, paying as the same come due all premiums with respect thereto, with a uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage at the time in use in the State of New Mexico, or through its self-administered claims program. Any such policies shall be obtained and maintained in generally recognized, responsible insurance companies qualified under the laws of the State New Mexico to assume the risks undertaken. User shall obtain and continuously maintain in effect during the term of this Agreement comprehensive public liability insurance with respect to its use and occupation of the Site with limits sufficient to reasonably cover all activities of User, but in no event less than One Million (\$1,000,000.00) Dollars per occurrence as to bodily injury, including death, and damage to property, with an aggregate limit of Three Million (\$3,000,000.00) Dollars. Any such policies, or self-administered claims program, required herein shall name as additional insureds, to the full extent of the coverage, the Grantee, and its elected officials, directors, officers, agents, and employees. Upon request, User shall provide a certificate of insurance to the Grantee, and the insurance carrier shall be required to give the Grantee thirty (30) days advance, written notification of any cancellation or modification of the policy.

IX. TERMINATION

9.1 Default: In the event of User's breach of any of the provisions of this Agreement, Grantee shall give to User written notice of default. In the event said default is not remedied within ten (10) days from the date of notice of default, Grantee shall have the right to terminate this Agreement. Grantee reserves the right to assert whatever remedies are available, in equity or at law, to collect any sums due hereunder, to enforce any provisions of this Agreement, to collect damages for breach of contract, or to effect or obtain any other available remedy.

An assignment for the benefit of creditors, the appointment of a receiver, any proceedings in bankruptcy, whether voluntary or involuntary, or any act of Users insolvency shall be deemed to be a breach of this Agreement.

9.2 Attorneys' Fees: User agrees to pay reasonable attorneys' fees and all costs of legal proceedings if it becomes necessary to employ an attorney or legal process to collect any amounts due hereunder or to enforce any provisions of this Agreement upon default by User.

9.3 Withdrawal of Grant: If the Foreign-Trade Zone grant to Grantee should be revoked or canceled, this Agreement shall terminate upon notification by Grantee, and User shall have no claim against the Grantee by reason of such revocation or termination, and User shall have no further interest in the subject matter of this Agreement, except to remit to Grantee such sums as may be due pursuant to this Agreement, by virtue of services provided before the date of such revocation or cancellation.

X. NOT JOINT VENTURERS

10.1 Grantee and User are not, and shall never be considered as, joint venturers, partners, or agents of each other, and none shall have the power to bind or obligate the other except as set forth in this Agreement.

XI. NONDISCRIMINATION

11.1 Nondiscrimination: User, for itself, its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of

any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

XII. MISCELLANEOUS

12.1 Waiver: No failure of any party hereto to exercise any right or power given it hereunder, or to insist upon strict compliance by any other party hereto of any obligations hereunder, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

12.2 Integration: This Agreement contains the entire agreement of the parties, and no representation, inducement, promise, or agreement, oral or otherwise, not embodied herein shall be of any force or effect, and cannot be altered or amended except in writing and signed by all parties hereto. The terms of this Agreement take precedence over any conflicting provisions contained in the Zone Schedule issued by Grantee.

12.3 Binding Effect: This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Provided, however, that this paragraph is in no way to be construed as granting to User the right to assign this Agreement or any interest herein without the express prior written approval of Grantee, which may be withheld for any reason.

12.4 Nonassignability: User shall not assign this Agreement or any interest hereunder to any other party without the prior written approval of Grantee, which may be withheld for any reason.

12.5 Construction: This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, except where federal law has preempted such application. If any provision of this Agreement, is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect the validity of any other provision of this Agreement which shall continue in full force and effect.

12.6 Notices: All notices required or permitted by this Agreement, unless otherwise provided, shall be mailed to Grantee by first class mail at the following address:

Preferred Legal Mailing Address

All notices required or permitted by this Agreement, unless otherwise provided, shall be mailed to User by first class mail at the following address:

User legal mailing address

12.7 Confidentiality: Grantee hereby acknowledge and agree that they and their respective directors, officers, agents, representatives, and employees are subject to the Trade Secrets Act as it relates to confidentiality of information concerning User's operations at the subzone site.

IN WITNESS WHEREOF, the parties hereto set their hands on the date first written above.

City of Roswell

ATTEST:

BY: _____

BY: _____

Its: _____

Its: _____

User name

ATTEST:

BY: _____

BY: _____

Its: _____

Its: _____

Exhibit B

**Schedule of Subzone Fees
Foreign-Trade Zone No. 256**

Start-up Fee

Amount: Sxxxxxxxx

Payable upon activation

Annual Maintenance Fee

Amount: Sxxxxxxxx