

TABLE OF CONTENTS

Chapter 1

INTRODUCTION, PURPOSE, AND INTERPRETATIONS

1.1 Introduction	1
1.2 Purpose	1
1.3 Referenced material	2
1.4 Instructions vs. Guidelines	3
1.5 Port Director Authority	3
1.6 Customs Issuances	3
1.7 Rulings and Disagreements	3
1.8 Disclosure of Information	3
1.9 Local Customs Procedures	3
10.1 Automated Procedures	4

Chapter 2

LAWS, REGULATIONS, ORGANIZATION, DUTIES, AND GENERAL INFORMATION CONCERNING FOREIGN TRADE ZONES

2.1 Laws, and Regulations	5
(a) Foreign-Trade Zones Act	5
(b) Foreign-Trade Zone Regulations	5
(c) Customs Laws and Regulations	5
(d) Other Federal Laws	6
(e) State and Local Laws and Regulations	6
(f) Zone Grantee Schedules	7
2.2 Foreign-Trade Zones Board	7
(a) Makeup and Authority of Board	7
(b) Presidential Direction to Furnish Records	8
(c) Committee of Alternates	8
(d) Executive Secretary	9
(e) Customs Service Role	9
(f) Other Agencies	10
2.3 Grantee, Operator, and User Duties and Responsibilities	10
(a) Grantees	10
(b) Operators	11
(c) Zone Users	11
2.4 Subzones	11
2.5 Vessels and other Carriers	12
(a) Movement of Zone Merchandise	12
2.6 Supplies Used in Zone	12
(a) Receipt of Supplies	12
(b) Use	13

2.7 Production Equipment.....	13
2.8 Customs Forms	13
2.9 Place of Filing and Merchandise Examination	14
(a) Exceptions	14
(b) Delivery Procedures	15

Chapter 3

SUPERVISION OF FOREIGN-TRADE ZONES, GRANTEE AND OPERATOR RESPONSIBILITIES, AND CUSTOMS FEES

3.1 General	16
3.2 Audit-Inspection Supervision	16
3.3 Customs Supervision	17
(a) Physical Supervision	17
(b) Security Service	17
(c) Access to Zones	17
3.4 Audits	18
(a) Notification and Arrival	18
(b) Closeout	18
3.5 Compliance Reviews	18
(a) Notification and Arrival	19
(b) Duration, Frequency, and Conduct	19
(a) Completion and Closeout	20
3.6 Coordination of Audits and Compliance Reviews	20
3.7 Monitoring Foreign Trade Zone Regulations	20
3.8 Supervision by Operator	21
3.9 Operator Responsibilities	21
(a) Enforcement of Operator's Requirements	21
3.10 Grantee Liability	21
3.11 Customs Reimbursement and Fees	22
(a) Activation and Alteration Fees	22
(b) Merchandise Processing Fee (MPF)	22
(c) Harbor Maintenance Fee (HMF)	24

Chapter 4

ESTABLISHMENT, ACTIVATION, ALTERATION, AND OTHER CHANGES

4.1 General	27
4.2 Application and Approval of Foreign-Trade Zone	27
(a) Location Requirement	27
(b) Grantee Sponsorship	28
(c) Qualification of Applicant	28
(d) Subzones	28

(e) Application Fees	28
(f) Criteria for Grants	28
(g) Initiation of Procedure	28
(h) Application Review	29
4.3 Grant Limits Lapse and Termination	32
4.4 Expansion or Boundary Modification	32
(a) Minor Boundary Modification	32
(b) Description of Approved Zone Area	33
4.5 Other Changes to the Zone Project	33
(a) Change to Grantee Organizations	33
4.6 Commencement of Operations	33
4.7 Application for Activation	33
(a) Initiation of procedure	34
(b) Review of Application	35
(c) Decision on Application	36
4.8 Application for Alteration	38
(a) Application Procedure	38
(b) Bonded Warehouse Within Approved Foreign-Trade Zones	38
4.9 Deactivation of Zone Site	38
4.10 Reactivation	39
4.11 New Bond	39
4.12 New Zone Operator	39
(a) Interim Responsibility of Existing Operator	40
4.13 Other Changes	40
(a) Change in Ownership of Operator	40
(b) Name, Address, or Organizational Status Change	40
4.14 Permanent File Requirements	40

Chapter 5

ZONE STATUS

5.1 General	42
5.2 Merchandise Not in Zone Status	42
5.3 Application for Zone Status or Status Change	43
5.4 Foreign Status Merchandise	43
5.5 Privileged Foreign Status	43
(a) Application Requirements	44
(b) Determination of Duties and Taxes	44
(c) Privileged Foreign Status Binding	44
5.6 Non Privileged Foreign Status	45
5.7 Domestic Status	45
(a) Merchandise Qualifying for Domestic Status	46
(b) Admission Requirements	46
(c) Recordkeeping Requirements	46
(d) Loss of Identity as Domestic Status Merchandise	46
(e) Commissioner's Order to Required Permits	47

(f) Return of Domestic Status Merchandise to Customs Territory ...	47
5.8 Zone-Restricted Status	47
(a) Application for Zone-Restricted Status	47
(b) Merchandise Considered Exported	48
(c) Merchandise Entered Into a Bonded Warehouse	49
(d) Destruction	49
(e) Prohibition Against Manufacture, Processing or Manipulation	49
(f) Transfer to Customs Territory	49

Chapter 6

ADMISSION OF MERCHANDISE

6.1 General	50
6.2 Prohibited Merchandise	50
6.3 Conditionally Admissible Merchandise	50
(a) Conditionally Admissible to Zone	50
6.4 Time of Admission	51
(a) Domestic Status Merchandise	51
6.5 Non-Zone Status Transactions	51
(a) Temporary Deposit for Manipulation	51
(b) Merchandise Transiting Zone	51
(c) Temporary Deposit to Complete Documentation	52
6.6 Arrival and Retention of Merchandise	53
(a) Movements Within a Customs Port of Entry	53
6.7 Application for Admission and Permit	53
(a) Application	54
(b) Statistical Reporting	54
(c) Supporting Documents	57
(d) Document Review and Examination	58
(e) Issuance of Permit for Admission	60
(f) Blanket Application for Admission	60
(g) Admission of Certain Kinds of Shipments	61
6.8 Transfer to Zone	62
(a) Transfer Procedure	62
6.9 Receipt into Zone	63
(a) Supervision and Receipt Procedures	63
(b) Liability for Merchandise	64
(c) Recordkeeping upon Admission	64
(d) Receipt Admission of Domestic Status Merchandise	65
6.10 Direct Delivery of Merchandise	66
(a) Application for Direct Delivery Procedure	66
(b) Direct Delivery Procedure	68
6.11 Certificate of Arrival	71
6.12 BATF Requirements	71
6.13 Drawback upon Admission	72

(a) Manufacturing Drawback	72
(b) Drawback from Continuous Customs Custody	74
(c) Unused or Rejected Merchandise	74
(d) Person Entitled to Claim Drawback	75
6.14 Harbor Maintenance Fee	75

Chapter 7

OPERATOR RECORDKEEPING AND REPORTING RESPONSIBILITIES

7.1 General	76
7.2 Authority for Operator Recordkeeping	76
7.3 Authority for Importer Recordkeeping	76
7.4 Customs Authority to Examine Zone Records	76
7.5 Foreign-Trade Zone Board Authority to Examine Zone Records	76
7.6 Accessibility and Retention of Records	77
(a) Records Retention Period	77
7.7 Safekeeping of Records and Proprietary Information	77
7.8 Inventory Control and Recordkeeping System	78
(a) Operator's Procedures Manual	78
(b) Receipt and Admission to Zone	79
(c) Accountability for Zone Merchandise	81
(d) Transfer of Merchandise from Zone	85
(e) Physical Inventory	85
(f) Annual Reconciliation	85
(g) Annual System Review	86
(h) Sanctions for Recordkeeping Violations	86
7.9 Zone Admission File Maintenance	86
(a) Lot System	86
(b) UIN or Other Customs Authorized Systems	89
7.10 Transfer of Merchandise History to Another Zone	89
7.11 Record of Foreign-Trade Zone Activity Under Customs Permit	90
(a) Blanket Application	90
7.12 Reporting of Merchandise Discrepancies	90
7.13 Grantee Responsibilities	90
(a) Accounts and Records	90
(b) Annual Reports	90
(c) Operator Responsibilities to Grantee	90

Chapter 8

OPERATIONS IN ZONES

8.1 General	91
(a) Operations Involving Nonexempt Merchandise	91

(b) Supervision by Operators	91
(c) Safekeeping of Merchandise and Records	91
(d) Transfer of Title	91
(e) Third Party/Toll Processing	92
(f) Storage	92
8.2 Storage Conditions	92
(a) Safety and Sanitary Conditions	92
(b) Separate Storage	93
(c) Storage Outside Activated Area	93
8.3 Manipulation, Processing, or Manufacture	94
(a) Application	94
(b) Decision on Application	95
(c) Revocation of Approval	95
(d) Recordkeeping	95
8.4 Destruction Under Permit	96
(a) Alcoholic Beverages	96
(b) Application for Destruction	96
(c) Decision on Application	97
(d) Supervision	97
(e) Removal from Zone for Destruction	98
(f) Recordkeeping of Destruction	98
8.5 Merchandise Marking Requirements	98
(a) U.S. Origin Marking for Goods Manufactured in a Zone	98
(b) False Country of Origin Marking	98
(c) Copyrighted Articles	99
8.6 Abandonment, Bankruptcy, and Absconding	99
(a) Abandonment	99
(b) Insolvency Absconding, or Arrearage	99
(c) Bankruptcy	99
8.7 Security of Zone	99
(a) Customs Security Requirements	100
(b) Guard Service	100
(c) Cargo Security Standards and Specifications	100
(d) High-Security Storage for Title II Firearms	101
(e) Compliance Reviews of Cargo Security	101
(f) Full Security Surveys	101
(g) Action on Cargo Security Deficiencies	101
(h) Theft Reporting	102
(i) List of Persons	102

Chapter 9

TRANSFER OF MERCHANDISE FROM ZONE

9.1 General	103
9.2 Temporary Removal	103

(a) Application	103
(b) Conditions	103
(c) Return to Zone	104
(d) Violation of Conditions	104
9.3 Domestic Status Merchandise	104
9.4 Articles Exempt from Entry Requirements	105
9.5 Constructive Transfer	105
(a) Procedure	105
9.6 Entry Procedures	105
(a) Place of Filing	106
(b) Administrative Requirements	106
(c) Penalties for False or Inaccurate Information	106
9.7 Entry for Consumption	106
(a) Entry Filing Procedure	106
(b) Entry Bond	111
(c) Deposit of Duties	112
(d) Entry Processing and Release	112
(e) Admissibility and Restricted Merchandise	112
(f) Merchandise Examination	112
(g) Tariff Classification	113
(h) Valuation	114
(i) Liquidation	116
(j) Antidumping and Countervailing Duties	116
9.8 Weekly Entries for other than Quota Class Merchandise	116
(a) Purpose of Weekly Entries	117
(b) Specific Estimate of Quantities and Value	117
(c) Filing of Entry Summary	118
(d) Limitations and Prohibitions	118
(e) Exceptions to Other Provisions	118
(f) Inventory Relief Point	119
9.9 Entries for Bonded Warehouse, TIB, Trade Fair, or U.S. Government Importations	119
(a) Bonded Warehouse Entries	119
(b) Entry Under Temporary Importation Bond	120
(c) Trade Fair Entries	120
(d) Entries of U.S. Government Importations	121
9.10 Entries for Diplomatic and Foreign Military Use	121
(a) Regulatory Provisions for Exemption from Duties and Taxes ...	121
(b) Zone Admission File Records	122
(c) Transfer to Other Ports after Entry	122
(d) Refused Merchandise	122
9.11 Transfer to Another Zone or Port	122
(a) Transfer to Another Zone in Same Port	123
(b) Transfer to Zone at Another Port	124
(c) Transfer to Another Port for Entry for Consumption or Warehouse	126

(d) Liability and Payment of Internal Revenue Tax	127
9.12 Transfer from Zone for Exportation	127
(a) Export Statistical Reporting	128
(b) Exportation for Purposes of Other Agency Laws	129
(c) Shipments to Insular Possessions	129
(d) Direct Exportation	129
(e) Immediate Exportation	130
(f) Indirect Exportation	130
(g) Filing of Entry	131
(h) Exportation by Mail	131
(i) Supervision and Control of Exports	132
(j) Merchandise Not Laden	132
(k) Relanding of Goods	132
(l) Reimportation of Textile Articles Changed in Zone	132
(m) Reimportation of Merchandise Manufactured in Zone	133
9.13 Weekly Entry for Transportation or Exportation	133
(a) Purpose of Weekly Permit	133
(b) Preparation of Application	133
(c) Individual Entries on Customs Form 7512	134
(d) Weekly Statement of Merchandise Entered	134
9.14 Transfers for Vessel or Aircraft Supply	135
(a) Entry Procedures	135
(b) Eligibility for Duty-Free Entry	135
(c) Supply Use vs. Exportation Requirements	137
(d) Filing of Withdrawal	137
(e) Bond Requirements	138
(f) Delivery to and Retention on Dock	138
(g) Special Permit and Procedure for Fishing Vessels	138
(h) Special Procedures for Cigars and Cigarettes	139
(i) Supervision and Cancellation of Bonds	139
9.15 Transfer of Zone-Restricted Status Merchandise	139
(a) Entry for Consumption	139
(b) Entry for Warehouse Pending Exportation	140
(c) Transfer to Customs Territory	140
(d) Transfer for Other Purposes	140
9.16 Release and Transfer from Zone	140
(a) Liability for Discrepancies	141
(b) Sealing of Conveyances	141
(c) Recordkeeping and Accounting for Transfers	141
(d) Time Limit for Removal from Zone	141
(e) Time of Transfer from Zone	142
9.17 Retention or Return of Zone Merchandise	142
(a) Purposes	143
(b) Exceptions	143
(c) Entry into Commerce	143
(d) Actions in Lieu of Entry Cancellations	144

(e) Erroneous Entry	144
(f) Readmission in Domestic Status	144
9.18 Drawback on Zone Merchandise	144

Chapter 10

DISCREPANCY REPORTING AND LIABILITY

10.1 General	146
10.2 Foreign-Trade Zone Operator Responsibility	146
10.3 Sealing of Containers and Conveyances	146
10.4 Discrepancies Found upon Receipt	146
(a) When Operator Becomes Responsible	146
(b) Manifest Discrepancy Reporting	147
(c) Breakbulk, Conveyance Not Sealed	147
(d) Concealed Within-Case Shortage or Discrepancy in Sealed Conveyance	148
(e) Conveyance With Seals Not Intact	148
(f) Bulk Merchandise	149
(g) Overages upon Admission	149
(h) Damage upon Admission	149
(i) Temporary Deposit and Direct Delivery Procedures	149
10.5 Discrepancies Found After Admission	150
(a) Operator Responsibility After Admission	150
(b) Discrepancy Reporting and Recording Requirements	150
(c) Identification of Discrepancy	151
(d) Netting Policy	151
(e) Offsetting Error	151
(f) Shortages Over 1 percent and \$100 Duty	151
(g) Shortages Not Over 1 percent and \$100 Duty	152
(i) Casualty and Similar Losses	153
(j) Damage to Merchandise in Zone	153
10.6 Discrepancies Found Upon Transfer to Customs Territory	153
(a) Seal Concurrence	154
(b) Customs Physical Supervision	154
(c) When Operator Is Relieved of Responsibility	154
10.7 Discrepancy Recordkeeping	154

Chapter 11

PROHIBITIONS, RESTRICTIONS, AND SPECIAL MERCHANDISE PROVISIONS

11.1 General	155
--------------------	-----

11.2	Prohibited Merchandise	155
11.3	Public Interest Exclusion	155
11.4	Limitations to Scope of Authority	155
11.5	Prohibitions and Restrictions on Admission	156
	(a) Bonded Warehouse Shipments	156
	(b) Grant Restricted Steel Products	156
	(c) Motor Vehicles for EPA/DOT Conversion in Zone	156
	(d) Non Tax-paid Alcohol and Tobacco Products	156
	(e) Firearms and Other Weapons	157
	(f) Merchandise Subject to Antidumping or Countervailing Duties	157
	(g) Other Foreign-Trade Zone Grant Restrictions	157
11.6	Prohibitions and Restrictions on Zone Activities	158
	(a) Residence in Zone	158
	(b) Retail Trade	158
	(c) Motor Vehicles Owned by Individuals	159
	(d) Articles Subject to Internal Revenue Code	159
	(e) Watches and Timekeeping Devices	162
	(f) Bicycle Parts	162
	(g) Steel Products	162
	(h) Textiles and Textile Products	162
	(i) Sugar and Sugar Products	163
	(j) Petroleum Products	164
	(k) Alcohol/Gasohol	164
	(l) Explosives	164
	(m) Firearms	164
	(n) Meat Processing	164
	(o) Pigments and Printers Ink	164
	(p) Tires	165
	(q) Chain Saws	165
	(r) Golf Carts	165
	(s) Television Tubes	165
	(t) Pistachios/Nuts	165
	(u) False Marking of Merchandise	165
	(v) Zone-Restricted Status Merchandise	165
11.7	Restrictions on Transfer to Customs Territory	166
	(a) Entry for Warehouse	166
	(b) Entry under Temporary Importation Bond	166
	(c) Zone-Restricted Status Merchandise	166
	(d) Textiles and Textile Products	166
	(e) Export-Only Restrictions	166
	(f) Meat Subject to Quota	167
	(g) Toxic Substances	167
	(h) Motor Vehicles Pending EPA/NHTSA Approval	167
	(i) Sugar and Sugar-Containing Products	167
	(j) Petroleum Products	168
	(k) Alcohol/Gasohol	168

11.8 Time Limits on Grant	168
11.9 Space Limits on Grants	168
11.10 Special Merchandise Provisions	168
(a) Semi-Conductors	168
(b) Break Bulk Concentrated Orange Juice	169
(c) Textile Visa Controls	169

Chapter 12

BONDS AND LIQUIDATED DAMAGES

12.1 General	171
12.2 Bond Administration	171
12.3 Agreements of Zone User in Importation and Entry Bond	172
(a) Agreements to Pay Duties, Taxes, and Charges	172
(b) Reimbursement and Exoneration of United States	172
(c) Agreement on Duty-Free Entries or Withdrawals	172
(d) Consequences of Default	173
12.4 Agreement of Operator in Foreign-Trade Zone Operators Bond ..	173
(a) Agreement Concerning Receipt Handling and Disposition of Merchandise	173
(b) Agreement to Pay Duties, Taxes, and Charges	173
(c) Reimbursement and Exoneration of United States	173
(d) Consequences of Default	173
12.5 Consequences of Default	174
(a) Consequences of Merchandise Default	174
(b) Consequences of Non-Merchandise Default	174
(c) Customs Determination of Nature of Default	174
12.6 What Constitutes Merchandise Default	174
12.7 What Constitutes Non-Merchandise Default	174
(a) Application and Examples of Non-merchandise Defaults	175
12.8 What Constitutes Restricted Merchandise	175
12.9 Value of Merchandise	176
12.10 Payment of Duties by Operator on Missing Merchandise.....	176
12.11 Issuance of Claims of Liquidated Damages	176
(a) Liquidated Damage Claims	176
(b) Petitions for Relief	177
(c) Where Filed	177
(d) Supplemental Petitions for Relief	177
12.12 Waiver or Cancellation of Claim Without Payment	177
(a) Mitigation or Cancellation	178
(b) Mandatory Cancellation	178
(c) Discretionary Cancellation for Merchandise Default	178
(d) Discretionary Waiver for Minor Losses	178
(e) Discretionary Cancellation for Non-merchandise Default	179

(f) Discretionary Cancellation (Entry Bond)	180
(g) Effect of Discretionary Waiver or Cancellation	180
12.13 Prior Disclosure	180
12.14 Cancellation upon Payment of Smaller Amount (Foreign-Trade Zone Operators Bond)	180
(a) Defaults Involving Merchandise	180
(b) Defaults Not Involving Merchandise	182
12.15 Cancellation upon Payment of Smaller Amount (Entry Bond)	182
(a) Defaults Involving Merchandise	182
(b) Defaults Not Involving Merchandise	184
12.16 Offers In Compromise	184
12.17 Suspension o Activation for Nonpayment of Claim	184

Chapter 13

FOREIGN-TRADE ZONE ENFORCEMENT ACTIONS

13.1 General	185
13.2 Warning Notices	185
13.3 Assessment of Liquidated Damages	185
13.4 Fines	185
(a) Notice of Fine	186
(b) When Fine Assessed	186
13.5 Revocation of Blanket Permit	186
13.6 Physical Supervision	186
13.7 New Bond Requirement	187
13.8 Suspension Procedure	187
(a) Grounds for Suspension.....	187
(b) Show Cause Notice to Operator	188
(c) Notice to Grantee	188
(d) Hearing	189
(e) Decision After Hearing	189
(f) Placing Suspension in Effect	189
(g) Extension of Suspension by Board	190
13.9 Suspension of Privilege	190
(a) Notice to Show Cause	190
(b) Effect of Suspension of Privilege	190
13.10 Suspension of Activation	191
(a) Effect of Suspension of Activated Status	191
13.11 Revocation of Activated Status or Privilege	191
(a) Restoration of Approval	191
13.12 Revocation of Grant	191
(a) Recommendation of Port Director for Revocation	192
(b) Procedure and Decision	192
13.13 Removal of Merchandise	192

(a) Procedure	192
13.14 Responsibility of Operator After Removal	193
13.15 Penalties for Fraud, Gross Negligence, or Negligence	193
(a) Application to Zones	193
(b) Procedural Protections	194
(c) Payment of Duties	194
13.16 Criminal Violation	194
13.17 Search, Arrest, and Seizure	197
(a) Search Authority	197
(b) Arrest Authority	198
(c) Seizure Authority	198
 GLOSSARY OF FOREIGN-TRADE ZONE TERMINOLOGY	 202

INTRODUCTION

This Manual has been compiled by the United States Customs Service, as a joint effort with The Foreign-Trade Zones Board, the Bureau of Census and the National Association of Foreign-Trade Zones, for the use of existing and prospective foreign-trade zone grantees, operators and users in addition to Customs personnel responsible for supervising zone operations. It may also be useful to customhouse brokers, freight forwarders, bonded and international carriers and other members of the import-export community.

The purpose of the Manual is to place together the various laws, regulations, policies and procedures, scattered among numerous documents, that grantees, operators and users need to know in their daily operations.

Many laws and regulations are paraphrased for the sake of simplicity and easier reading. Existing and prospective zone grantees, operators, users and other readers are therefore urged to study the actual text of the cited laws and/or regulations before making any costly investment decisions initially based on information in this manual. The Manual is not itself law, it is intended as a guide, and readers may seek rulings from Customs concerning matters covered by the Manual under procedures of 19 Code of Federal Regulations Part 177 (Customs Regulations).

This Manual is also designed for the use of Customs officers and it supersedes the previous FTZ Manual issued in October, 1996. Customs internal instructions not intended for public disclosure are not included in this manual, but are still in effect.

Any new measures taken by Customs affecting the Zone Program, after issuance of this Manual will be announced through various methods, e.g.: electronic bulletin board, e-mail and facsimile transmission, directives and rulings. These issuances will be provided as

supplements for inclusion in the Manual upon release. This Manual is intended to be maintained with current information to better serve all parties.

Customs welcomes any suggestions from readers as to any additions, corrections, or deletions to improve this Manual. Please forward any correspondence concerning the Manual to: Commissioner of Customs, U.S. Customs Service, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229.

Chapter 1

INTRODUCTION, PURPOSE, AND INTERPRETATIONS

1.1 Introduction - A Foreign-trade zone (FTZ) is a restricted access site in or adjacent to a Customs port of entry. Authority for establishing these facilities is found in the Foreign-Trade Zones Act of 1934, as amended 19 USC 81a-81u (Act or FTZA). The purpose of foreign-trade zones as stated in the Act is to “expedite and encourage foreign commerce and other purposes.” The act is administered in a context of evolving U.S. economic and trade policy and economic factors relating to international competition. The Act authorizes the Foreign-Trade Zones Board, consisting of the Secretaries of Commerce and Treasury, to grant corporations the privilege of establishing, operating and maintaining foreign-trade zones. The Secretary of the Treasury assigns customs officers to FTZ’s to protect the revenue and provide for admission of foreign merchandise into the Customs territory from FTZ’s. It is operated pursuant to public utility principles under the sponsorship of a corporation granted authority by the Foreign-Trade Zones Board, (the Board), located in the Department of Commerce, and under the supervision of the U.S. Customs Service. Zones are treated for purposes of the tariff laws and Customs entry procedures as being outside the Customs territory of the United States. That is, merchandise is admitted into a zone and is not subject to Customs entry procedures. Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, manipulation, destruction, assembly, manufacture and processing, without being subject to formal Customs entry procedures and payment of duties, unless and until the foreign merchandise enters the Customs territory for domestic consumption. 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, at the rate applicable to the emerging product. Quota restrictions do not normally apply to foreign goods in zones. The Board can, however, 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 from 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. 15 CFR 400.1(c).

1.2 Purpose - The purpose of this Manual is to set forth in one document all the instructions, guidelines, and other information that Customs Officers and existing and prospective foreign-trade zone grantees, operators and users, need to know for effective operation, supervision, and use of zones and zone procedures, as set forth in the Customs regulations. This Manual itself does not have the force of law, and is

intended only as a convenient compilation of the reference material cited in Section 1.3 of this manual, and of Customs policies and procedures included, or previously included, in the Customs Issuance System.

1.3 Referenced Material - Some portions of this Manual are taken directly from the Foreign-Trade Zones Act, the Foreign-Trade Zone Regulations, the Tariff Act, the Customs Regulations, and other sources. In other cases, the Manual paraphrases the appropriate regulation for clearer understanding. However, in all cases, the applicable reference will be cited accordingly. The reader may wish to review the referenced citation before taking any definitive action on a particular matter. The references contain abbreviations as follows:

Abbr. Reference

CD	Customs Directive
CFR	Code of Federal Regulations
CR	Customs Regulations (Title 19 CFR)
CSD	Customs Legal Decision published in Customs Bulletin
FR	Federal Register
FTZA	Foreign-Trade Zones Act of 1934, as amended (19 USC 81a-81u)
FTZM	Foreign-Trade Zone Manual
FTZO	Foreign-Trade Zone Board Order
FTZR	Foreign-Trade Zone Regulations (15 CFR Part 400)
HQ. Ltr.	Unpublished Customs Headquarters Letter
HTS	Harmonized Tariff Schedule of the U.S.
HQR	Published Headquarters Rulings
LD	Unpublished Customs Legal Determination
MS	Customs Manual Supplement
OCOD	Office of Commercial Operations Decision published in Customs Bulletin
PL	Public Law
Slip Op	Slip Opinion of the Court
TA	Tariff Act of 1930, as amended (Title 19 USC and 18 USC 541-552)
TD	Treasury Decision published in Customs Bulletin
USC	United States Code
UST	United States Treaties in Force

1.4 Instructions vs. Guidelines - As previously stated in Section 1.2 herein, this Manual does not have the force of law and is intended only as a convenient compilation of cited reference materials. Generally, mandatory instructions for Customs officers or zone grantees or operators are conveyed through use of the word "shall" and are based on requirements of law, regulation, or in the case of Customs officers, direction from Customs Headquarters. Guidelines are also provided in this manual. Guidelines do not have the force of law; however, they do express Customs preference, or an area in which Customs management may exercise some discretion or judgement. These guidelines are conveyed through use of the word "may" or "should," the wording of section headings, or the context of the section or paragraph. While every effort was made to carefully choose the correct words for this manual, it must be understood that distinctions between instructions and guidelines may not be easy to determine. All questions concerning what is or is not legally required should be referred to the Office of Field Operations at U.S. Customs Service Headquarters at 202-927-0300.

1.5 Port Director Authority - Whenever the term "Port Director" appears in this Manual, it refers not only to Customs Port Directors themselves, but also to any Customs officer to whom a Port Director delegates authority to carry out a task. Thus, the term may refer to Port Directors, Customs inspectors, import specialists, entry specialists, or any other Customs officer.

1.6 Customs Issuances - The Customs Issuance System is used to provide instructions, guidelines, and other information to Customs officers as to interpretations and procedures for carrying out U.S. laws and regulations. Most of the issuances are Customs Directives (CD's) which superseded, in 1983, an older format known as Manual Supplements (MS's).

1.7 Rulings and Disagreements - Anyone who desires an interpretation or explanation of any law or regulation administered by Customs may request a ruling on the matter under the procedures in Part 177 of the Customs Regulations, 19 CFR Pt. 177. A ruling issued under this procedure represents the official position of the Customs Service in the matter. Any question or disagreement concerning a Customs issuance should be directed to the issuing office. Any disagreement or question concerning a matter involving the judgement or discretion of the Port Director should be directed to Customs Headquarters after the matter has been fully discussed with the Port Director.

1.8 Disclosure of Information - Information in Customs possession affecting foreign-trade zone grantees, operators, and users is subject to the Freedom of Information Act (FOIA) (5 USC 552). Information exempt from disclosure is listed in section 103.12 of the Customs Regulations, 19 CFR 103.12, which includes trade secrets, confidential financial and business information and material involving personal privacy.

1.9 Local Customs Procedures - This Manual contains and describes instructions, guidelines, and procedures authorized by Customs Headquarters for use throughout the U.S. Customs territory. Customs ports may adopt additional service-wide procedures which are within the confines of the regulations and are not covered by the Manual. If local

procedures conflict with service-wide procedures and/or this Manual, operators and users are invited to identify the conflict to Customs Headquarters, Office of Field Operations, for resolution, or request that the port resolve the matter through an Internal Advice procedure under 19 CFR 177.11. Zone users are also encouraged to confer with their grantees and/or operators to ensure that issues of conflict are not simple misunderstandings.

1.10 Automated Procedures - Certain activity involving zones utilize federal agency automated procedures. The U.S. Census Bureau maintains automated procedures for the monthly direct transmittal of CF 214 data. If they are approved for direct transmission of data to the Census Bureau zone operators may be eligible for blanket CF 214 (19 CFR 146.32(d)) procedures or for cumulative CF 214 (19 CFR 146.40(c)(1)) if approved for direct delivery. If these procedures are utilized notification to Customs is required by marking Box 14 of the CF 214 document. Customs entries for merchandise transferred to the Customs territory may utilize the Customs ABI/ACH System. The CF 7501 may be utilized for Customs entry with the entry being treated as a live entry. (Entry summary filed at the time of entry with estimated duties attached or electronic payment). Customs continues to encourage zone operators and users to develop and implement automated systems which are effective in reducing unnecessary paperwork, simplifying procedures, and reducing the need for direct Customs supervision, consistent with maintaining the integrity of audit-inspection supervision and which are within the confines of the Customs regulations. However, users and operators must understand that those procedures may be superseded by future automation efforts developed by Customs. The use of such automated systems permits, in some cases, greater exercise of Port Director discretion to supplement and amplify service-wide procedures.

Chapter 2

LAWS, REGULATIONS, ORGANIZATION, DUTIES, AND GENERAL INFORMATION CONCERNING FOREIGN-TRADE ZONES

2.1 Laws and Regulations - Foreign-trade zones operate under the Foreign-Trade Zones Act and two sets of regulations; the Foreign-Trade Zones Regulations (15 CFR Part 400) and the Customs Regulations (19 CFR Part 146). They are also affected by other laws and regulations. This section deals with the interplay among the various laws and regulations and how they are applied in zones. Whenever the term "zone" or "FTZ" is used in this manual, it is understood to include subzones, unless the context indicates otherwise.

(a) Foreign-Trade Zones Act - The principal statute governing foreign-trade zones is the Foreign-Trade Zones Act of 1934 (FTZA), which has been codified in the United States Code as Title 19, Sections 81a through 81u. The FTZA has been periodically amended. The FTZA generally covers how and where zones are established, how they are administered, and what may and may not be done in them. Every zone grantee and operator, and most zone users, should have a copy of the FTZA, updated with recent amendments.

(b) Foreign-Trade Zone Regulations - The Foreign-Trade Zones Regulations provide regulations and procedures on how zones are established and modified; how they are to be managed and administered by zone grantees and operators; and how the Foreign-Trade Zones Board conducts its business.

(c) Customs Laws and Regulations - Merchandise of every description, except such as is prohibited by law, may be brought into a foreign-trade zone and stored or processed there under certain circumstances without being subject to the Customs laws of the United States. (19 USC 81c(a)). "Customs laws" means, generally, the laws codified in Title 19 of the U.S. Code, including the Harmonized Tariff Schedule of the United States. The Foreign-Trade Zones Act itself is a Customs law, since it is codified in Title 19. "Customs laws" also includes Sections 541 through 552 of Title 18, U.S. Code, since they were included in the original Tariff Act of 1930, most of which was codified in Title 19.

(1) Applicability of Customs Laws - Except as otherwise provided, Customs laws are not usually applicable in zones. However, they are applicable to merchandise passing through U.S. Custom's territory before admission to, or after transfer from, foreign-trade zones. Customs laws are also applicable to prohibited merchandise in a zone (see Section 6.2 FTZM), vessels and aircraft entering or leaving a zone (see Section 2.5 FTZM), and merchandise which has been brought into a zone for purposes not specified in the Act. (Section 15 CFR 400.1(c)).

(2) Significance of Customs Regulations - The Secretary of the Treasury has authority to prescribe rules and regulations for zones concerning protection of the revenue. (19 USC 81c, 81a and 81o(b)). This authority has been carried out through the Customs Regulations (19 CFR Part 146).

(d) Other Federal Laws - Since the FTZA specifically excludes, under certain circumstances, only the application of Customs laws, most other federal laws are applicable in zones, such as those affecting public health, immigration, labor, welfare, and income tax. Many laws and regulations governing exportation which are enforced by Customs are applicable in zones, such as those in 15 CFR Parts 772 and 773 and in 22 CFR Parts 121 through 130 (see Section 9.12(2)(b) FTZM). Furthermore, various Federal regulations may be applicable to zones, many of them dealing with specific kinds of merchandise or activities concerning merchandise in zones. The Board shall cooperate with Customs and such other Federal agencies that have jurisdiction in ports of entry. (19 USC 81i and 15 CFR 400.12(e)). All FTZ participants should carefully consider the impact of Federal Agency laws. Federal agencies with the most direct involvement with zones include Bureau of Alcohol, Tobacco and Firearms (BATF); Federal Communications Commission (FCC); Environmental Protection Agency (EPA); Food and Drug Administration (FDA); Department of Agriculture (USDA); and Fish and Wildlife Service (USF&W). All such agencies normally have specific regulations, guidelines, etc. that directly relate to zone activity.

(e) State and Local Laws and Regulations - Generally, state and local laws are applicable in zones, except to the extent they are preempted by Federal laws or the constitution. The Board is directed to cooperate with the state, subdivision, and municipality in which a zone is located in the exercise of their police, sanitary, and other powers in connection with the zone. (19 USC 81i and 15 CFR 400.41).

(1) Commerce Clause of the Constitution - The Constitution reserves to Congress the power to regulate commerce with foreign nations (Article I, Section 8, Clause 3, U.S. Constitution) and prohibits states from levying duties on imports and exports (Article 1, Section 10, Clause 2, U.S. Constitution). State laws and regulations are not applicable in foreign-trade zones to the extent that they would contravene the Constitution and federal laws under the Constitution. Federal law may implicitly preempt state law to the extent that state law conflicts with federal regulations. To the extent that a state law would encumber ease of legal transshipment through a foreign-trade zone by requiring unnecessary regulation of goods in which the state has no interest, the law frustrates the goal of the FTZA to facilitate use of United States ports for the legal transshipment of goods in foreign commerce. [3M Health Care, Ltd. v. Grant, 908 F.2d 918 (11th Cir. 1990)].

(2) State and Local Ad Valorem Taxes - The FTZA specifically prohibits state and local ad valorem taxation of imported tangible personal property stored or processed in a zone, or of tangible personal property produced in the U.S. and held in a zone for exportation in either its original or its processed form. (19 USC 810(e); Deer Park Independent School District v. Harris County Appraisal Dist., 132 F. 3d 1095 (5th cir. 1998) cert denied, 118 S. Ct. 2343, 141 L. Ed 2d 714).

(3) State Tax Laws - Some states have specific legislation conferring certain benefits on zone users.

(4) Ad Valorem Personal Property Taxes - The FTZ Act provides an exemption for certain merchandise held in a foreign-trade zone. Some states have other laws that may apply to the merchandise.

(5) Enabling Legislation - Foreign-Trade Zones Board Regulations requires that all states have specific legislation conferring authority to submit applications to the Foreign-Trade Zones Board. This legislation should be analyzed for specific requirements on a state-by-state basis. (15 CFR 400.22(b)).

(f) Zone Grantee Schedules - A foreign-trade zone shall be operated, maintained, and administered by the grantee in accordance with the schedule fixed by the grantee and reviewed and accepted by the Foreign-Trade Zones Board prior to the start of operations. The schedule shall be available for review at the offices of the zone grantee and operator with a copy submitted to the Port Director. All persons entering the zone for any reason whatsoever are bound by the schedule in addition to applicable government regulations. Specifications for zone grantee schedules are set forth in 15 CFR 400.42(b).

2.2 Foreign-Trade Zones Board - The Board is responsible for the establishment, maintenance, and administration of foreign-trade zones under the FTZA. In addition, any questions regarding the specific scope of authority (in terms of products, components and activities allowed) are determined by the FTZB. The U.S. Customs Service is responsible for carrying out the Tariff Act and various other laws and regulations in respect to foreign-trade zones. This section identifies the duties and responsibilities of the members of the Board and the role of the Customs Service in zones.

(a) Makeup and Authority of the Board - The Foreign-Trade Zones Board consists of the Secretary of Commerce, who is chairman and executive officer of the Board and the Secretary of the Treasury. (19 USC 81a(b)). As set forth in Section 15 CFR 400.11 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 15 CFR Pt. 400;
- (4) Make determinations on matters requiring Board decisions under 15 CFR Pt. 400;
- (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 zone 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 Foreign-Trade Zones 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) Presidential Direction to Furnish Records - The President may direct Federal agencies to cooperate with the Board to facilitate Board investigations and duties in the establishment, operation, and maintenance of zones. (19 USC 81j). Through Executive Order 7104, the President did direct that Federal agencies furnish records and detail officers as may be required by the Board.

(c) Committee of Alternates - The Secretaries of Commerce and Treasury have rarely, if ever, convened in person to conduct Board business. Instead, they are authorized to appoint alternates authorized to act in an official capacity for them. (15 CFR 400.11(c)). The secretaries or their alternates meet periodically as necessary to consider policy issues involving the Board. However, routine official Board business is conducted by memoranda and other correspondence circulated among the alternates.

(d) Executive Secretary - The Executive Secretary of the Board is appointed by the Secretary of Commerce, as chairman of the Board, to be the chief operating official of the Board. The principal duties of the Executive Secretary, are set forth in 15 CFR 400.12.

The Executive Secretary has a staff in the International Trade Administration, Department of Commerce headquarters office, which assists in carrying out these duties.

(e) Customs Service Role - The U.S. Customs Service carries out most of the duties and responsibilities of the Secretary of the Treasury, under the FTZA. This includes the preparation and implementation of the rules and regulations approved by the Secretary of the Treasury under Sections 81 c, e, and o (b) of the FTZA and the assignment of the necessary Customs officers to perform zone related work under 19 USC 81d. However, the Customs Service does not represent the Secretary of the Treasury in any matter pertaining to zones which is (1) of a policy-making nature; or (2) within the authority of another agency of the Department of the Treasury, for which authority has not been delegated to the Commissioner of Customs, such as the Bureau of Alcohol, Tobacco and Firearms or the Internal Revenue Service.

(1) Principal Customs Concern - The principal interest and concern of Customs in zones is control of merchandise moving to and from the zone, to see that all revenue is collected properly and that all zone procedures are in compliance with the FTZA and all laws and regulations pertaining to zone use.

(2) Port Director as Representative of the Board - The Port Director who has jurisdiction over a port containing a zone is, in addition to his or her other duties as an officer of the Customs Service, is the local representative of the Board. He or she may call upon local representatives of other government agencies for advice in matters pertaining to the operation, maintenance, and administration of zones. (15 CFR 400.41 and 19 CFR 146.2).

(a) Duties as Representative - In his or her role as local representative of the Board, the Port Director acts as the "eyes and ears" of the Executive Secretary and the Board. The duties include, conducting general oversight of the activities of the grantee, operator, and zone users, and reporting exceptions to the Executive Secretary. The Port Director will consult with and make recommendations to the Executive Secretary on any zone boundary modification upon request of the grantee or the FTZB staff. (15 CFR 400.26(a)(2) and Section 4.4(a) FTZM) Custom's approval is always subject to activation conditions, and shall be so stated in the Port Director's comments. The Port Director has no enforcement authority as local representative of the

Board beyond that conferred by the FTZR or Board Order. However, the Executive Secretary usually relies on the Port Director's advice on local zone matters. C.D. 089-3210-025.

(3) Customs Neutrality Policy - Consistent with its role as a law enforcement agency, it is the policy of the Customs Service to neither encourage nor discourage the establishment or the use of foreign-trade zones. Customs officers are not authorized to advise any party whether to use one zone in preference to another, or to use a zone at all instead of another facility or administrative mechanism in the Customs territory.

(f) Other Agencies - Since the Board and other Federal agencies are directed to cooperate with one another (19 USC 81i and 81j), zone operators and users may expect to deal with a number of agencies, other than Customs, concerning merchandise or activities in the zone falling within their jurisdiction.

2.3 Grantee, Operator, and User Duties and Responsibilities - The Foreign-Trade Zones Board does not own or operate any zones. Rather, it provides grants of authority to applicants to establish, operate, and maintain zones. The grantee may execute a contract with another party, usually in the private sector, for the operational management of the zone. Various tenants may lease space or construct buildings in the zone and physically manage their operations in the buildings, while others may pay a zone operator a fee for handling their merchandise and performing related services.

(a) Grantees - A grantee is a public or private corporation, as defined in section 400.2, Title 15, Code of Federal Regulations, to which the privilege of establishing, operating, or maintaining a foreign-trade zone project has been given. The principal responsibilities of a grantee are to:

(1) provide and maintain facilities in connection with a zone according to the provisions of 19 USC 81i:

(2) operate the zone as a public utility with fair and reasonable rates and charges for all zone services and privileges, and afford to all who apply for the use of the zone and its facilities and provide uniform treatment under like conditions, in accordance with 19 USC 81n and 15 CFR 400.42(b);

(3) make to the Board annually, and at such other times as it may prescribe, reports containing such information as the Board may require (19 USC 81p (b) and 15 CFR 400.46(d));

(4) maintain books, records, and accounts in accordance with the provisions of 15 CFR 400.46(a), (b);

(5) apply to the Board for a grant of authority to establish a subzone or to expand or otherwise modify its zone project (15 CFR 400.22(d), 400.26(a)(1));

(6) to permit the erection of buildings necessary to carry out the approved zone project in accordance with 19 USC 81m and 15 CFR 400.28(a)(6);

(7) operate, maintain, and administer the zone project under the FTZA, FTZR, CR, applicable laws and regulations administered by Customs for other agencies or administered directly by other agencies, and the schedules of rates and charges made and fixed by the grantee, in accordance with 15 CFR 400.41, 400.42(b)(1);

(8) make written application to the Port Director for approval of a new zone operator, pursuant to 19 CFR 146.7(e), (f);

(9) the grantee may make application if acting as the operator or must provide concurrence to a request for activation, de-activation or reactivation.

(b) Operators - An operator is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. (19 CFR 400.2(q)). For Customs purpose, the term "operator" includes a zone grantee that operates its own zone. (19 CFR 146.1(b)). Activation of a zone requires the execution of a Foreign-Trade Zone operator's bond on Customs Form 301, which contains the bond conditions required by 19 CFR 113.73. (19 CFR 146.6(d), (c)). The bond insures the principals' agreement to comply with the pertinent laws and Customs regulations, and section 146.4, Customs regulations and delineates the particular responsibilities of the operator. The grantee may also be considered the operator for Customs Regulation purposes.

(c) Zone Users - A zone user is a corporation, partnership, or person that uses a zone under agreement with the zone grantee or operator for storage, handling, processing, or manufacturing of merchandise in zone status, whether foreign or domestic. (15 CFR 400.2(t) and 19 CFR 146.1(b)). Usually, the zone user is the entity which requests a Customs permit to admit, process, or remove zone status merchandise. In subzones, the operator and user are usually the same entity. They may be permitted by the grantee to construct their own buildings or structures in which they conduct their own business, according to the provisions of 19 USC 81m and 15 CFR 400.28(a)(6). They are sometimes referred to as "tenants", but the more inclusive term "users" is used in this Manual.

2.4 Subzones - A subzone is a special-purpose zone established as part of a zone project for a limited purpose that cannot be accommodated within an existing zone. (19 CFR 146.1(b)(17) and 15 CFR 400.2(n)). A subzone may be authorized if the Board finds that the operation cannot be served in the existing zone project and meets the required public

interest test in 15 CFR 400.23(b). Subzones were originally authorized in 1952 under FTZO 29, and the courts have approved subzone designations. See, e.g., *Armco Steel v. Stans*, 431 F.2d 779 (2d Cir. 1970).

2.5 Vessels and Other Carriers - Vessels and carriers entering and leaving a zone are subject to the laws of the United States, except as otherwise provided in the FTZA. Vessels leaving a zone and arriving in the Customs territory are subject to regulation under Title 19 CFR Part 4 to protect the revenue and carry out laws concerning navigation. Foreign-flag vessels are not permitted to carry goods shipped from one zone to another zone or port or points within the zone in the protected U.S. coastwise trade. (19 USC 81e and 19 CFR 146.12(b)). Through the operation of 19 USC 1644a, the foregoing vessel provisions are applicable also to aircraft entering and leaving a zone. The docking, loading, and unloading facilities of a zone are intended primarily for the use of vessels, aircraft, and vehicles loading or unloading zone merchandise. Their use for other purposes may be terminated if found to endanger the revenue or impede the primary use of the facility. (19 CFR 146.12(a)).

(a) **Movement of Zone Merchandise** - Imported merchandise, including that imported in mail shipments, being transported to and from foreign-trade zones through the Customs territory must be transported in bond under the provisions of 19 CFR Parts 18, 112, and 125. (19 CFR 146.11 and 144.37(g)). Domestic goods transported to a zone or goods removed from a zone comprised wholly of domestic status products need not be transported in bond.

2.6 Supplies Used in Zone - Supplies brought into a zone for use in a manner other than those uses enumerated in 19 USC 81c(a) are not entitled to exemption from applicable duties, taxes and fees under the FTZA, and therefore do not have zone status. Such supplies may include, but are not limited to, office furniture, office machines, and office equipment, food to be eaten in the zone; and water and fuel which do not become part of a zone product (except certain fuel noted in Section 2.6(a) FTZM which is exempt under the FTZA).

(a) **Receipt of Supplies** - If such supplies are imported, they cannot be brought into a zone without first being entered for consumption. Supplies which are produced in a zone from imported material and consumed in the zone are considered by Customs to have lost their exemption from duty under the FTZA, and must be entered for consumption, except for certain petroleum refinery fuels covered by the fact situation cited in *Hawaiian Independent Refinery v. United States*, 460 F. Supp. 1249 (Cust. Ct. 1978). (See CSD 79-418 and Section 11.6(j) FTZM).

(b) Use - If imported merchandise in stock is withdrawn from stock for a use which causes it to lose its exemption from duty under the FTZA, the article must be entered for consumption. An example of use would be: a zone wholesaler dealing in office furniture takes an office desk from stock and uses it in its own office operation in the zone. What uses in a zone cause merchandise to be subject to, or exempt from, duty under the FTZA are determined from the particular facts in a situation. Borderline issues that may be raised concerning zone use should be referred to Customs Headquarters, Office of Regulations and Rulings, for a ruling under the procedures in Title 19 CFR Part 177.

2.7 Production Equipment – Section 81c(e), Title 19, US Code, allows zone users to defer duty on production equipment that is intended for use in zone FTZ Board authorized activity. It allows a zone user to admit equipment into the zone and assemble the equipment prior to entry for consumption. Payment of duty would be deferred until such equipment goes into use as production equipment as part of FTZ activity, at which time the equipment is entered for consumption as equipment. Alternatively, production equipment that is not for use within a zone may continue to be treated as normal merchandise. Questions regarding the definition of production equipment shall be directed to the Foreign-Trade Zone Board staff.

2.8 Customs Forms - Customs forms unique to zones are Customs Forms 214 and 216. Their uses are described in Parts 6 and 8 and the Appendix to the FTZM. These forms are authorized to be printed by foreign-trade zone grantees and operators, customhouse brokers, importers, and other parties using foreign-trade zones, in a format which complies with the forms as approved by the Office of Management and Budget and on a quality of paper commensurate with that used by Customs. The letterhead of the foreign-trade zone grantee or operator, in its own design, may appear in the space designated in these forms for zone location and address. The forms may be printed in color-coded copies, in multiple carbon copies, or as continuous forms for automated use, so long as they conform to the format of the approved forms. Continuation sheets are also authorized to be printed, so long as the header information and the format of the sheet clearly identify the continued information. Operators and users are authorized to use computer-generated forms, as long as the forms comply with the provisions listed above. Additional authorization must be obtained from the Bureau of the Census to ensure that any computer-generated information meets the requirements of that agency. The Customs Service prints and maintains a small stock of FTZ forms for occasional use by the public at its port offices and as a starter supply for newly-established foreign-trade zones for copying and reproduction purposes. A camera ready copy of Customs Forms, e.g., Customs Forms 214, 214A, 216, etc., may be obtained upon request from the following by mail or telephone:

U.S. Customs Service
Paperwork Management Branch
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229
(202) 927-0674
<http://www.customs.gov>

Note: The camera copy will provide the user with the current version of the requested Customs Form and ensure clarity in reproduction and copying.

2.9 Place of Filing and Merchandise Examination - It is Customs policy that all admission and entry documentation, and all other applications for permits, for merchandise destined to, in, or being transferred from, a foreign-trade zone will be presented to Customs at a location within a port of entry, even if the zone is outside the port of entry. Such documentation may be delivered to Customs by customhouse brokers, messengers, couriers, electronic transmission, facsimile or any other means that is administratively acceptable and within the law and regulations. (See, e.g., CSD 87-2). It is also Customs policy that, if merchandise is to be physically examined or inspected before admission to a zone or upon transfer from a zone, the examination or inspection, with the exceptions noted below, will be conducted only within a port of entry. Customs may choose to examine zone merchandise within the zone. (See Sections 6.7(d), 9.6(a), and 9.7(f) FTZM) Otherwise, a bonded carrier or cartman will be required to deliver the merchandise to a location designated by Customs for the examination of the merchandise. Section 112.2, Customs Regulations, governs procedures by which FTZ operators can move merchandise without utilizing a carrier or cartman.

The port of entry covered by this policy will normally be the port of entry having supervisory responsibility for the zone where the merchandise is destined or located. However, at the discretion of the affected Port Directors, the documentation or merchandise may be delivered to a different port of entry for processing or examination.

(a) Exceptions - Foreign-trade zone merchandise may be examined or inspected outside a port of entry when:

- (1) it is in the interest of Customs;
- (2) proper examination or inspection requires the use of special facilities or equipment which the Port Director is satisfied cannot be made available within a port of entry;
- (3) the merchandise is incapable of being delivered to the port of entry, e.g., oversized article or component; or,

(4) there is a concurrence, under unusual and isolated circumstances, by Customs Headquarters, Assistant Commissioner, Office of Field Operations, in such an examination or inspection.

(b) Delivery Procedures - Merchandise covered by this policy will be delivered to and from the examination or inspection site by a bonded carrier or licensed cartman under the procedures specified in 19 CFR Parts 18 and 125. Foreign-trade zone operators who carry their own merchandise may be designated as private carriers under the procedures of 19 CFR Part 112, Subpart B. Any qualifying operator may be licensed as a cartman under the procedures of 19 CFR Part 112, Subparts C and D. Pursuant to 19 CFR 112.2 b, any FTZ operator is authorized to transfer merchandise to their zone from within the geographic boundaries of its former Customs district without the necessity of obtaining a cartmans license.

Chapter 3

SUPERVISION OF FOREIGN-TRADE ZONES, GRANTEE AND OPERATOR RESPONSIBILITIES, AND CUSTOMS FEES

3.1 General - All regulations concerning protection of the revenue are approved by the Secretary of the Treasury. (19 USC 81o(b)). The Commissioner of Customs, through authority delegated from the Secretary of the Treasury, assigns the necessary Customs Officers to protect the revenue and to provide for the entry of foreign merchandise into Customs territory. (See 19 USC 81d). The cost of maintaining the additional Customs service required under the FTZA will be paid by the operator of the zone. (19 USC 81n). However, see Section 3.11(a) FTZM concerning the suspension of foreign-trade zone fees and charges. For many years, Customs protected the revenue in zones through physical supervision of all merchandise receipts and deliveries to and from the zone, and of all zone processing operations. Zones and subzones are now managed by Customs under an audit-inspection method which means that Customs does not maintain inventory records and Customs officers are not routinely physically assigned to the premises. TD 86-16.

3.2 Audit-Inspection Supervision - The 1986 amendments did not change the law, and the Secretary of the Treasury, through the U.S. Customs Service, is still charged with protecting the revenue in zones. However, the operator now exercises physical supervision of zones, while Customs exercises general supervision through the audit-inspection program. Audit-inspection is a comprehensive program based on the following 6 principles:

- (a) determination by Customs of the identity and nature of merchandise before or upon its deposit in the zone so that the initial responsibility of the operator for the merchandise can be reliably determined;
- (b) issuance of a prior permit by Customs to the operator for receipt, delivery from the zone, and any processing in the zone;

(c) assumption of responsibility by the operator for the merchandise in the zone, including physical supervision, security, recordkeeping, storage conditions, and processing (quantities of merchandise received or delivered are determined jointly by the operator and the delivering or receiving carrier);

(d) performance by Customs of audits and compliance reviews (formerly spot checks) to verify whether the operator is properly supervising the zone and maintaining the records in compliance with the laws and regulations;

(e) adequate bonding of the operator and assessment of liquidated damages by Customs to assure compliance with the requirements for proper supervision by the operator; and

(f) authority for Customs to suspend activated status for a period not to exceed 90 days, or by Board order, to continue suspension of activated status of any zone operation that cannot or does not comply with the laws and regulations for zones. (19 CFR 146.82). The Port Director may at any time recommend to the Board that the grant of authority be revoked for willful and repeated violations of the Act. (19 CFR 146.83).

3.3 Customs Supervision- The extent and character of Customs supervision of zones and zone transactions shall be in accordance with 19 USC 81a-u, 1646a, 19 CFR 161.2, and 19 CFR Part 146. The Port Director may detail, assign or request a Customs officer to supervise any transaction or procedure at a foreign-trade zone. Customs supervision may be exercised through but not limited to audits of records, quantity counts of merchandise in inventory, compliance reviews (formerly spot checks) of selected transactions or procedures, or reviews of record-keeping, security, or storage conditions. (19 CFR 146.3)

(a) Physical Supervision - The Port Director may order the physical supervision by a Customs officer of any merchandise transaction in a zone regarding zone status merchandise for which a Customs permit is required, (19 CFR 146.3(b)), in the same manner as such supervision was performed prior to the inception of the audit-inspection program under TD 86-16 (see Section 3.1 FTZM). However, supervision is usually conducted through the audit-inspection method. (See Sections 10.4(e) and 13.6 FTZM)

(b) Security Service - Although the operator may contract for guard service to provide the necessary security service at zones (19 CFR 146.4(c)) this does not limit the authority of the Port Director to assign Customs Officers to the zone to protect the revenue as provided in Section 81d, Title 19. (19 CFR 146.4(g) and Section 8.7(b) FTZM).

(c) Access to Zones - The zone operator must permit Customs officers access to the zone. (19 CFR 146.4(b)). Customs officers will properly identify themselves to company security personnel at the company's initial security point. To permit proper access, the operator must furnish to Customs officers special equipment

(and, where applicable, the personnel to properly use the equipment) for conducting compliance reviews (formerly spot checks) or audits, such as weighing, gauging, and measuring equipment; protective clothing (for cold storage, hazardous substances, safety hardhat, etc.); and provide access to available computers and peripheral equipment. Providing proper access also includes the explanation by the operator of procedures and transactions in the operator's or user's inventory and recordkeeping system. The operator should cooperate in any compliance review (formerly spot checks), audit, or other lawful Customs action, including the location of records and merchandise, so as to achieve its prompt completion and assure a rapid return to normal zone operation. Customs officers should respect operator and zone user security, health, safety, and union work rule procedures, to the extent that they do not interfere with a proper audit or compliance review (formerly spot checks) of the zone. At the discretion of the Customs officer zone personnel may accompany the Customs officer during a compliance review (formerly spot check).

3.4 Audits - An audit is a systematic and thorough check of the operator's (and sometimes a user's) inventory and financial records against zone lot numbers (see Section 6.7(a)(4) FTZM) or unique identification number (UIN's) and against the actual quantity of merchandise in the zone. Audits are conducted by non-uniformed Customs regulatory auditors. Audits are conducted much less frequently than Compliance Reviews (formerly spot checks) (See Section 3.5 FTZM). Their frequency is closely held information, which is not disclosed by Customs. Audits are much more intense and of longer duration than compliance reviews, (formerly spot checks) and may generally be expected to last from a week to several months, depending on the size of the inventory, initial problems disclosed, kinds of merchandise in the zone, and many other factors. Auditors may be expected to look at all kinds of zone transactions, conditions, and requirements, for not only the current year but also for past years. For companies using lot systems, auditors may request access to closed as well as open lot files.

(a) Notification and Arrival - Auditors, in contrast to inspectional compliance review (formerly spot check) officers, provide advance notification of an audit, except when it is in Customs interest to conduct an unannounced audit. Upon arrival, auditors shall announce themselves to the appointed representative of the operator or users. The operator or users may request appropriate government identification of the auditors. (19 USC 1509(b)).

(b) Closeout - Auditors shall provide a closeout interview with the operator and users to discuss their findings. Their findings are tentative, since they must be reviewed by Field Regulatory Audit management before presentation to the Port Director. The Port Director, not the auditor, takes management action on the audit findings.

3.5 Compliance Reviews (Formerly Spot Checks) - Port Directors are required to conduct compliance reviews (formerly spot checks) based on the port's risk assessment of the individual zone, as outlined in the Compliance Review Handbook (formerly Customs

Directive 3210-27 dated July 6, 1989). (19 CFR 146.3(b) and 161.1). A compliance review (formerly spot check) is a visit by one or more Customs officers usually uniformed Inspectors, from a port office to physically observe or examine transactions, records, procedures, or conditions in the zone. The purposes of compliance reviews (formerly spot checks) are to (1) determine whether the operator and users are in compliance with applicable laws, regulations, and Customs procedures; (2) provide Customs auditors with information in planning and conducting audits of the zone records, and (3) to determine the risk associated with each zone within the ports' jurisdiction. Customs officers shall not conduct audits or compliance reviews (formerly spot checks) under unsafe conditions, e.g., where there are tottering stacks of merchandise or damaged and exposed containers of hazardous substances, until the deficiency has been corrected (19 CFR 146.4 (f)).

(a) Notification and Arrival - Compliance reviews (formerly spot checks) are made without advance notification to the operator or user except when prior notification is in the interest of Customs. However, the officers shall announce their arrival to the manager or person in charge at the zone and at the user's premises before the compliance review (formerly spot check) is started. Operators and users may request identification by badge number from uniformed officers and by U.S. Government identification card from non-uniformed officers. The officers may invite the manager or person in charge to have a representative present during the compliance review (formerly spot check), but they will not be required to have a representative present, except as needed to locate records or merchandise, move merchandise, operate special equipment, or otherwise provide access to the merchandise and records. Customs officers should seek to minimize disruption of the day-to-day operations of the zone.

(b) Duration, Frequency, and Conduct - A compliance review (formerly spot check) will generally be limited to a day or two, to allow the widest possible Customs presence at zones. However, a compliance review (formerly spot check) may be extended in duration, at the discretion of the Port Director, for a further check on the basis of initial findings. The frequency of compliance reviews (formerly spot checks) will depend on Customs assessment of the risk represented by the zone. Risk is the degree of exposure to the chance of non-compliance that would result in loss or injury to trade, industry or the public.

The following four steps should be applied to the risk management process:

- Step 1: Collect Data and Information
- Step 2: Analyze and Assess Risk
- Step 3: Prescribe Action
- Step 4: Track and Report

Based on the port's risk assessment, the annual minimum frequency is: High - not fewer than three compliance reviews (formerly spot checks) per year; Medium - not fewer than two compliance reviews (formerly spot checks) per year; and Low – for

low risk manufacturing subzones, schedule at least one compliance reviews (formerly spot checks) per year. Customs officers will usually conduct a quantity count of selected zone lots or inventory categories of merchandise (UIN's), and reconcile the quantity count with the quantity reported in records in the zone admission file and/or the operator's inventory and recordkeeping system. However, they may at times focus compliance review (formerly spot check) efforts on security, safety, housekeeping, receipt or delivery procedures, deletion of merchandise from zone inventories, or other conditions or transactions considered significant in their assessment of the zone's risk. Compliance reviews (formerly spot checks) in manufacturing subzones generally focus on the operator's records and de-emphasizes quantity counts of physical inventory.

(c) Completion and Closeout - If Customs officers are unable to reconcile a discrepancy between their quantity count, and the balance in the operator's inventory recordkeeping system, they shall give the operator (and user, if applicable) an opportunity to resolve the discrepancy before the compliance review (formerly spot check) is completed. At the end of the compliance review (formerly spot check), the officers shall conduct a closeout interview with the person in charge at the zone facility to relate their findings. In some cases, the officers may issue an oral warning to correct a minor violation. Their findings are tentative, since they must be reviewed by port management before any specific action is taken. However, any action subsequently taken should come as no surprise to the operator or user. The person in charge may provide comment to port management during the closeout interview or later to explain apparent violations or to seek to avoid a claim for liquidated damages. Customs officers shall make follow-up visits to the zone to determine whether minor violations have been corrected or to verify assertions made by the operator.

3.6 Coordination of Audits and Compliance Reviews (FORMERLY SPOT CHECKS) - Audits and compliance reviews (formerly spot checks) are separate and independent, but mutually supporting, methods of verifying compliance by the operators with the laws, regulations, and procedures.

3.7 Monitoring Foreign-Trade Zone Regulations - The Port Director, as resident representative of the Board, may inspect zone operations for the purpose of informing the Board whether the provisions of the FTZA and are being met. (See 15 CFR 400.41). The operator shall comply with the Port Director's requirements, and make available such records and reports as are necessary for a thorough and proper inspection of zone activities. (15 CFR 400.46(a), (b)). The grantee shall act in compliance with the Foreign-Trade Zones Board Regulations. (15 CFR 400.41).

3.8 Supervision by Operator - Under audit-inspection, the operator is responsible for all aspects of physical supervision of the zone, except to the extent that the Port Director chooses to conduct physical supervision. Generally, the operator is responsible for supervising all receipts, deliveries, sampling, recordkeeping, manipulation, destruction,

manufacturing, security, and storage conditions, in compliance with the laws and regulations. The degree of supervision is that expected of a prudent manager of a storage, manipulation, or manufacturing facility, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise. (19 CFR 146.4(a)).

3.9 Operator Responsibilities - The operator's responsibilities are set out in a number of provisions of 19 CFR Parts 146 and 113. These responsibilities are significant in that failure to carry them out may result in claims of liquidated damages against the operator, or fines against the operator, as an agent of the grantee. (See Section 13.4 FTZM).

(a) Enforcement of Operator's Requirements - To assist in overall zone supervision, all applications for permits to admit, manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator. (19 CFR 146.9). Provision is made in Customs Forms 214 and 216 for the operator's signature for concurrence. However, concurrence may be indicated by a separate specific or blanket concurrence which states clearly what the concurrence covers. No concurrence is required when the operator is the owner or purchaser of the merchandise for which the permit is requested. No operator concurrence is required for transfers of merchandise from a zone because, under 19 CFR 146.71(a), the merchandise is released by Customs to the operator, not to the person making entry. The operator may subsequently release the merchandise to the appropriate party. (19 CFR 146.9, 146.71 see; Section 8.6 FTZM). An operator may, in its discretion, refuse to release merchandise to any person unwilling to be bound by the FTZR or the grantee's regulations, or in violation of those regulations. The Port Director shall deny any application for a permit which does not have the concurrence of the operator, when required.

3.10 Grantee Liability - A grantee is a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted. (15 CFR 400.2(h), (r)). The grant shall not be sold, conveyed, transferred, set over, or assigned. (15 CFR 400.28(a)(8)) Customs holds the operator and surety responsible for compliance in the conditions of the Foreign-Trade Zone Operator's Bond. (19 CFR 113.73). However, the execution of the bond by the operator does not lessen the liability of the grantee to comply with the FTZA and the implementing regulations, in Titles 15 and 19 of the Code of Federal Regulations. (19 CFR 146.6(e)). The grantee is not automatically liable for violations by operators, users, or other parties when it delegates its authority to operate and maintain a zone to another person and does not itself operate the zone. (15 CFR 400.28(a)(9)).

3.11 Customs Reimbursement and Fees - Section 81n, Title 19, USC, (19 USC 81n), requires the operator to reimburse Customs for the additional service required to carry out the FTZA. An annual fee was established under the regulation changes of TD 86-16 and Section 19 CFR 146.5 to collect this reimbursement. However, collection of the fee was suspended under the Omnibus Budget Reconciliation Act of 1987 (now codified as 19 USC 58c(e)(6)(C)(I)), during any period when fees are authorized under 19 USC 58c(a).

Since such fees are now authorized (such as the merchandise processing fee described below), operators shall not pay the annual fee and Customs officers shall not collect it. In effect, the cost of additional service is considered by Congress to be covered by the merchandise processing fee.

(a) Activation and Alteration Fees - Operators were also subject under 19 CFR 146.6(b), and 146.7(a) to fees for applications to activate a zone, or to alter or relocate the activated area of the zone. (See Sections 4.7(a) and 4.8(a) FTZM). The purpose of these fees was to reimburse Customs for the cost of reviewing the applications, including the cost of conducting security surveys and background investigations. These fees were authorized under the Independent Offices Appropriation Act (31 USC 9701), which requires Federal agencies to be as self-sustaining as possible. However, the fees were suspended by the Omnibus Budget Reconciliation Act, along with the annual fee, and shall not be paid by the applicants.

(b) Merchandise Processing Fee (MPF) - Importers of record are responsible for paying the merchandise processing fee as authorized under 19 USC 58c(a)(9) and (b)(8). The amount of the MPF is 0.21 percent of the value of the merchandise for a formal entry or release; however, the amount of the MPF may not exceed \$485 or be less than \$25. A \$3 surcharge is added for any manual entry or release. (19 CFR 24.23(b)(B)). The amount of the MPF for an informal entry is \$2 for an automated entry or release, and \$6 for a manual entry or release not prepared by Customs, or \$9 for any automated or manual release if it is prepared by Customs officers. Except as noted in Section 3.11(b)(2) FTZM, the value of merchandise subject to the MPF is determined according to the provisions of 19 USC 1401a (i.e. dutiable value of the foreign non-duty paid merchandise, in the case of foreign-trade zones). The MPF shall be deposited at the same time as the applicable duties as provided in 19 CFR 141.101 (formal entries) or 19 CFR 143.28 (informal entries), and reported on Customs Form 7501 under Code 499 (formal entry), 311 (informal entry), or 500 (manual surcharge), as applicable. (See sample in the Appendix to the FTZM)

(1) Exemptions: See 19 CFR 24.23(c). The merchandise processing fee may not be charged for the entry or release of any article that is:

(i) provided for under any item in Chapter 98 HTS, except subheading 9802.00.60 or 9802.00.80 (see Section 3.11(b)(2)(iii) and (iv) FTZM);

(ii) a product of an insular possession of the United States;

(iii) products of least-developed beneficiary developing countries (General Note 4(b)(i), HTS) and of beneficiary countries under the Caribbean Basin Economic Recovery Act (General Note 7, HTS); 19 U.S.C. 58c (b) (8) (B);

(iv) a product of Israel if an exemption with respect to the fee is implemented under Section 112 of the Customs and Trade Act of 1990 (i.e., through negotiation of U.S.-Israel Free Trade Agreement); 19 USC 58c(b)(11) or

(v) covered by an entry for consumption filed to document shortages reported to Customs under the provisions of Sections 19 CFR 146.53, since these are not considered to be true entries or releases as envisioned in 19 USC 58c.

(vi) merchandise described in General Note 19 HTSUS, merchandise released under 19 USC 1321, and merchandise imported by mail.

(2) Partial Exemptions - A reduced merchandise processing fee is paid as provided in this subsection

(i) Domestic Agricultural Products in Zone - In the case of agricultural products of the U.S. which have been processed and packed in a foreign-trade zone, the fee will be applied only to the value of the foreign non-duty paid material used to make the containers for such merchandise. (19 USC 58c(b)(8)(D)(v)).

(ii) North American Free Trade Agreement – If PF status was attained prior to June 30, 1999, the Merchandise Processing Fee is owed for entries made after June 30, 1999. If PF status was attained on or after June 30, 1999, no Merchandise Processing Fee is owed. For NPF status merchandise, no Merchandise Processing Fee is owed. Since January 1, 1994, goods originating in Canada, within the meaning of General Note 12 of the HTS, and where such goods qualify to be marked as goods of Canada, have not been subject to the Merchandise Processing Fee.

(iii) Metal Articles Exported and Returned - In the case of merchandise classifiable under subheading 9802.00.40 (metal articles which were exported for repairs or alterations and have been reimported for further processing), the fee will be applied only to the value of the foreign repairs or alterations.

(iv) Articles Exported for Assembly and Returned - In the case of merchandise classifiable under subheading 9802.00.80 (articles which were exported for assembly and have been reimported), the fee will be applied to the full value of the product less the cost or value of the component U.S. products.

(3) Weekly Entries - In the case of weekly entries under Section 19 CFR 146.63(c), the \$485 maximum and \$25 minimum fees are applicable to the total amount covered by the entry summary, and not to the individual zone transfers under 19 CFR 146.63(c), since there is only one entry or release. However, a separate fee will be applied to any supplemental entries filed if actual removals from the zone will exceed the amount estimated for the weekly entry. (Section 9.8 FTZM).

(c) Harbor Maintenance Fee (HMF) - When imported cargo is unloaded from a commercial vessel at a qualifying U.S. port and admitted into a foreign-trade zone, the applicant for admission of that cargo into the zone may be subject to the harbor maintenance fee as set forth in 19 CFR 24.24. (19 CFR 146.22(e)). It is important to note that the zone status of the merchandise is irrelevant to the application of the HMF. Commercial cargo loaded or unloaded from a commercial vessel is subject to a port use fee, of .125 percent of its value. (26 USC 4461 and 19 CFR 24.24(a)). The fee applies only if the cargo is loaded or unloaded at certain ports listed in Section 19 CFR 24.24(b)(1). Foreign-trade zone users, not zone operators (unless, they are also the applicant for admission, i.e., subzone operator), are subject to the fee, although operators are encouraged to see that users are aware of their responsibility to pay the fee. Users may also be subject to the fee for domestic shipment(s) (19 CFR 24.24(e)(1)).

(1) Exemptions and Special Rules - The harbor maintenance fee is applicable only to cargo loaded or unloaded from a commercial vessel in qualifying ports. Therefore, cargo first unloaded from aircraft, land vehicles, or otherwise not from a commercial vessel is exempt from the fee. Cargo first unloaded from a vessel at a port not listed in 19 CFR 24.24(b)(1) is also exempt from the fee. Other exemptions are set forth in 19 CFR 24.24(c). Special rules applicable to intraport activities are set forth in 19 CFR 24.24(d)(1), (2).

(2) Import Vessel Movements - In cases where imported cargo is first unloaded from a commercial vessel at a port within the definition of 19 CFR 24.24(b)(1) and admitted into a foreign-trade zone, the applicant for admission (the person or corporation responsible for bringing the merchandise into the zone) becomes responsible for the fee at the time of unloading. The fee shall be paid on a quarterly basis by mailing a check or money order payable to the U.S. Customs Service for all fees for the quarter, and Customs Form 349 (see sample in the Appendix to the FTZM) covering those fees, to U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673-0915. An amended quarterly summary report, if applicable, shall be filed on Customs Form 350 (see sample in the Appendix to the FTZM). Fees shall be paid for all shipments unloaded and admitted to the zone during the quarter or in the case of direct deliveries under 19 CFR 146.39 and 146.40,

unloaded and received in the zone under the bond of the zone operator. (19 CFR 24.24(e)(3)(iii)) A properly filled-out sample of Customs Form 349 is shown in the Appendix to the FTZM. The fee will not be assessed on any shipment entitled to be entered under the informal entry procedures of 19 CFR 143.21, nor collected in the quarterly payment if the total value of all shipments for which a fee was assessed during the quarter does not exceed \$10,000. (19 CFR 24.24(d)(3)(l), (4)).

(3) Domestic Vessel Movements - If merchandise is transferred from a zone for transport on a commercial vessel to another U.S. port, the fee is payable by the shipper (the person who pays the freight) on a quarterly basis in the manner specified in 19 CFR 24.24(e)(1), and reported on Customs Form 349 (see sample in the Appendix to the FTZM), or on Customs Form 350 (see sample in the Appendix to the FTZM), if applicable. Special intraport rules apply to domestic movements as specified in 19 CFR 24.24(d)(1), (2). The fee is not assessed on any domestic shipment whose value does not exceed \$1,000, nor collected if the total value of all shipments for which a fee was assessed for the quarter does not exceed \$10,000. (19 CFR 24.24(d)(3)(iii), (4)).

(4) Administration of Harbor Fee - Quarterly payments are due no later than 31 days after the close of the quarterly period ending on the last day of March, June, September, and December. (19 CFR 24.24(f)). Each applicant for admission responsible for payment of the fee must maintain records necessary for Customs to verify the accuracy of the fee computations and to otherwise determine compliance with the law. These records must be maintained for five years from the date of the fee calculation, and must be made available for inspection or other official use by Customs. The applicant for admission to the zone must advise the Director, Accounting Services, Accounts Receivable, the name, address, EIN/IRS number, and telephone number of a responsible officer of the payer who will verify records required to be maintained as well as any changes to this information. The address is:

P.O. Box 68903
Indianapolis, IN 46268

The penalty for failure to pay the harbor maintenance fee and file the summary sheet at the time specified is an amount equal to the liquidated damages assessable for late filing of an entry summary under 19 CFR 24.24(h).

Chapter 4

ESTABLISHMENT, ACTIVATION, ALTERATION, AND OTHER CHANGES

4.1 General - Putting a foreign-trade zone into operation is a two-stage process. The first stage is gaining approval by the Board for a grant to establish, operate, and maintain the zone. The FTZB issues guidelines for all types of applications. The guidelines can be found on the FTZB website. The second stage is gaining approval by Customs for activation to allow merchandise to be admitted to the zone in zone status. Only after the approval of activation will users gain the benefits conferred under the FTZA. The same two-stage process applies to changes in the approved area of the zone.

4.2 Application and Approval of Foreign-Trade Zone - Zone applications are approved under the authority and procedures of the FTZA (19 USC 81), and the FTZR. (15 CFR 400.21 through 400.33). Zone economic, financial, and physical requirements are set forth in 15 CFR 400.21 through 400.33. However, Board policy may call for other requirements, and applicants are advised to consult with the Executive Secretary during the early stages of interest in a zone to determine the specific filing and exhibit requirements for their zone or subzone.

(a) Location Requirements - Foreign-trade zones are located in or adjacent to a port of entry. (19 USC 81b). Ports of entry are listed in 19 CFR 101.3. Zones may be located in communities that have Customs stations. The Board considers a general-purpose location "adjacent" to a port of entry if it is within 60 statute miles or 90 minutes driving time from the outer limits of a port of entry as determined by the Port Director. This mileage and driving time limitation is specific to general-purpose zones, and not subzones. (15 CFR 400.21(b)(2)(i)). Subzones may be approved at more distant locations. A subzone meets the adjacency requirement if; (a) proper Customs oversight can be accomplished with physical and electronic means; (b) all electronically produced records are maintained in a format compatible with the U.S. Customs Service for the duration of the record period; and (c) 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. (15 CFR 400.21(b)(2)(ii)).

Each port of entry is entitled to at least one zone project. Additional zones may be approved if the port of entry is located within more than one state, if two cities separated by a body of water are embraced in one port of entry, or if the Board finds that existing zones will not adequately serve the convenience of commerce. (19 USC 81(b) and 15 CFR 400.21(a)).

(1) User Fee Airports - User fee airports established under 19 USC 58b may be accepted by the Board as the equivalent of ports of entry for the purposes of the location requirements of Section 81b, Title 19 (19 USC 81b). Operators of such airports must reimburse Customs for the cost of Customs services to the airport, including any service to a zone established at or in the vicinity of the airport. (19 USC 58b(f); 15 CFR 400.2(i)). This is an exception to the general prohibition against charging any Customs costs to zones. (19 USC 58c(e)(2), (6) and see Section 3.11 FTZM).

(b) Grantee Sponsorship - The Foreign-Trade Zones Board Regulations define eligible grantees when there is more than one zone project for a subzone project. Normally, the closest grantee would be the sponsor of a subzone. However, section 15 CFR 400.22(d)(ii) specifically provides that the zone grantee of another zone in the same state is eligible to apply for a grant of authority if the Board, or the Executive Secretary, finds that such sponsorship better serves the public interest.

(c) Qualifications of Applicant - Grants to public and private corporations will not be approved unless the applicant has been authorized by an act of the state legislature. (15 CFR 400.22(b)(c)). The applicant must demonstrate its ability to adequately finance and conduct the undertaking. (15 CFR 400.23(a)(2)).

(d) Subzones - Applications for subzones must be submitted by a grantee of an existing general-purpose zone within the same state, or a state agency specifically authorized to submit such an application by an act of the state legislature. (15 CFR 400.22(d)(i)(iii)). A subzone may be authorized by the Board if the Board finds that the operation cannot be accommodated in the existing multi-purpose zone facilities within the zone project and meets the required public interest test in Sections 15 CFR 400.31 (c) and 400.23(b). In practice, the Board requires additional information from the applicant zone to describe the particular zone benefit(s) sought for the subzone and why such benefits are in the public interest.

(e) Application Fees - In certain circumstances, a fee may be required with the submission of the application to the FTZB. Information regarding the fees may be found in Section 15 CFR 400.29.

(f) Criteria for Grants - When determining whether to issue a grant, the board will consider the need for zone services in the port area, adequacy of operational and financial plans, suitability of site and facilities, extent of state and local support, and views of persons or firms likely to be affected by the project when determining whether to issue a grant. Any zone project that involves manufacturing will have to be evaluated against the criteria in Section 15 CFR 400.3.

(g) Initiation of Procedure - The application procedures and requirements are set out in detail at 15 CFR 400.24 through 400.26. All applications will be filed with the

Secretary of Commerce, Attention: Executive Secretary, Foreign-Trade Zones Board.

(1) Zone applications will consist of a letter of transmittal, executive summary, and five exhibits. (15 CFR 400.24).

(2) Subzone applications will be the same as above except Exhibit #4 will show the specific activity proposed for the subzone and its net economic effect. (15 CFR 400.25).

(3) Modifications of existing zone projects fall into two categories, major and minor. A grantee may submit requests for modifications to the Executive Secretary with sufficient information and documentation to determine whether the change is major or minor. The Executive Secretary, in consultation with the Port Director, will make that determination. (15 CFR 400.26 and see Section 4.4).

(h) Application Review - The examiner, appointed by the Executive Secretary, thoroughly reviews the application and the comments presented orally or in writing. If there are public interest issues involved, the examiner may solicit the views of Federal or State government agencies or trade associations. The Executive Secretary will ask that the Customs representative submit his/her written views on the application. Customs Headquarters may ask its representative to include in his or her views special information it considers relevant to approval of the application. When these letters are received and the application has been fully reviewed, the examiner submits a recommendation in writing to the Board.

(1) Procedures for Review - Board procedures for review of applications set forth standard time frames for each step of procedural review. Applications involving manufacturing or processing may be completed within 1 year. Those applications not involving such activity may be completed within 10 months. The Executive Secretary will determine if all applications satisfy the requirements of 15 CFR Part 400.

(i) The Executive Secretary will provide notice to the applicant within 20 days of receipt of the application should any deficiencies need correcting. The applicant will make any necessary corrections and return the application within 30 days (15 CFR 400.27(b)(1)).

(ii) If the application needs no corrections, the Executive Secretary will formally file the application, assign a case docket number and notify the applicant within 45 days. (15 CFR 400.27(b)(2)).

(2) Comment Period - The Executive Secretary will designate an examiner, and publish a notice of the application in the Federal Register for public comments.

(a) The comment period will normally close 60 days after the date the notice appears. In the event a hearing is scheduled, the general comment period does not close until 15 days after the hearing. (15 CFR 400.27(c)(2)).

(b) An additional 15 days will be allowed for rebuttal comments after the closing date of the public comment period. (15 CFR 400.27(c)(2)).

(c) Customs field representative will review the application and submit a technical report to the Executive Secretary within 45 days of the close of the public comment period. (15 CFR 400.27(d))

(1) Customs Special Requirement - The Customs Service requires for its review a statement of commitment to electronic interface with Customs in the following form:

"(Name of applicant) hereby commits itself to the establishment of an electronic interface with the U.S. Customs Service through its electronic data interchange system, when the specifications and requirements of that interface have been developed and implemented by Customs. We understand that this commitment is applicable to our agents and any operator of the zone. It is also understood that, if we have not established that interface, Customs will not activate any portion of the approved zone covered by this application."

This statement should be submitted with the application, but will be accepted later during the review. If submitted later, it shall be provided to the examiner for transmittal to the Executive Secretary.

(2) Customs will conduct a background investigation of the foreign-trade zone applicant, their officers, and their key employees, as a routine part of the review of the zone application. If the investigation discloses derogatory information, e.g. a criminal record involving theft or smuggling, the Executive Secretary will be advised of the facts, to the extent permitted under the Freedom of Information and Privacy Acts, as amended. (5 USC 552 and 552a). Derogatory

information is an important factor in Customs decision whether to support the application. (CD 3210-07).

(3) Examiners Review - The examiner will prepare a report with recommendations to the Board and submit it to the Executive Secretary within 120 to 150 days of the close of the period for public comment.

(a) Report unfavorable to applicant:

(1) Applicant notified within 5 days;

(2) Applicant has 30 to 45 days from notification date to present new evidence.

(b) Applicant presents new evidence:

(1) New evidence may be published in Federal Register for a 30-day comment period followed by a 15-day period for rebuttals.

(c) The Customs Service shall submit any additional comments within 45 days after notification by the Executive Secretary if there are additional Customs issues. (15 CFR 400.27(d)(2)(i)).

(d) The examiners report shall be submitted to the Executive Secretary within 30 days after receipt of additional evidence.

(4) Special Conditions - Public interest issues are normally resolved before they get to the final approval stage. The Board may require special conditions be placed in the grant for a zone to protect the public interest, health or safety. (15 CFR 400.33(a)). Reviews of these special conditions can be instituted by the Executive Secretary to ensure that they continue to be in the public interest. (15 CFR 400.12u, 400.43)).

(5) Amendment or Withdrawal - The Board may permit the amendment or withdrawal of the application during the review period. (15 CFR 400.24(f))

(6) Completion of Review - A copy of the examiners report is sent for review to the Headquarters offices of the U.S. Customs Service. Customs provides its findings on the report and application to the Deputy Assistant Secretary (Enforcement) of the Treasury. If the findings are accepted, resolution to approve the application is signed by Treasury and forwarded to the Executive Secretary of the Board. The time period for Customs and Treasury review is thirty (30) days. (15 CFR 400.27(e)).

(7) Final Action - When the Treasury resolution is received, the Executive Secretary prepares final action papers for review by the Secretary of Commerce or its designee. After final action, a copy of the Board Order is sent to the applicant. A public notice of the decision on the application is published in the Federal Register notifying the public of the decision on the application. The total period from the date of filing until receipt of the grant is normally from 10 to 12 months.

4.3 Grant Limits Lapse and Termination - Foreign-trade zone grants are limited by the provisions of the FTZA and FTZR, and by any special conditions which were inserted in the grant. Grants may not be sold, conveyed, transferred, set over, or assigned by the grantee. (19 USC81 q, 15 CFR 400.28(a)(8)). However, the Board may reissue a grant from one grantee to another upon approval of a zone application by the intended recipient of the grant. Grants are issued for an indefinite period of time, unless a special time limit has been placed in the grant. Grants may lapse, terminate or be limited in any one of the following ways:

1. revocation by the Board for willful and repeated violations of the FTZA by the grantee or subzone operator, under 19 USC 81r and Section 15 CFR 400.28(c);
2. effective 11/7/91, a grant will lapse unless the zone or subzone is activated and in operation not later than 5 years after the Board order establishing a zone. "In operation" has been defined by the Board as open for operations and does not require the admission of foreign status merchandise. (61 FR 53305, "Rule Related Notice," dated 10/11/96.)
3. voluntary relinquishment of a grant by the grantee (there is no mention of this method in the FTZA or FTZR, but it has been accepted by the Board on several occasions); or
4. expiration without renewal of a special time limit placed in the grant. (see Section 11.5(g) FTZM).
5. restrict or prohibit activity for a zone site or subzone for public interest reasons (15 CFR 400.43).

4.4 Expansion or Boundary Modification - An expansion of the area of an established zone shall be made and approved in the same manner as an original application. (19 USC 81f (b) and procedures are noted in Section 15 CFR 400.26).

(a) Minor Boundary Modification - Grantees may submit requests to the Executive Secretary for minor modifications of zone boundaries. Because this is an expedited procedure, grantees normally discuss such proposals with the Customs Port Director and seek comments prior to submission to the FTZ Board. The Customs

Port Director comments normally accompany the grantee's request. Customs approval is always subject to activation conditions, and shall be so stated in the Port Director's comments. The Executive Secretary is authorized to determine the requirements for exhibits for such applications. These exhibits will include a report from the Port Director of Customs. If the Port Director recommends approval, the Executive Secretary is authorized to approve the application. (15 CFR 400.26(c)). If the proposed boundary change is not a minor modification, the procedure in Section 15 CFR 400.24 will be generally followed. (15 CFR 400.26(b)).

(b) Description of Approved Zone Area - Copies of maps, charts, layouts, and legal descriptions of metes and bounds of the approved zone area, including any expansions or boundary modifications shall be retained in a permanent file by the Port Director and shall be retained also by the operator or grantee, so it is clear at all times what the approved area covers. (15 CFR 400.46(c)). Any application for activation should be compared with the approved zone area to assure that the activated area will be within with the approved zone area.

4.5 Other Changes To the Zone Project – There are other changes which affect the zone project which are not considered boundary modifications or expansions.

(a) Change to Grantee Organizations - Foreign-Trade Zone Board Regulations allow a grantee of a subzone project to be replaced with another grantee subject to Foreign-Trade Zones Board approval. A request with necessary documents must be submitted in writing to the Foreign-Trade Zones Board explaining the circumstances, with a copy to the Customs Port Director (15 CFR 400.26).

4.6 Commencement of Operations - A zone may commence operations after approval by the Port Director of an application to activate (19 CFR 146.6(a)). Any proposed manufacturing or processing activity must be approved in advance by the FTZB. The definition of manufacturing by the FTZB is any activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use (15 CFR 400.2(g)). The definition of processing by the FTZB is 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 (15 CFR 400.2(k)). Prior to commencement of operations in a zone, the grantee must have available a zone schedule (See Section 2.1 (f) FTZM).

4.7 Application for Activation - The FTZB regulations require approval from the grantee and the Port Director pursuant to 19 CFR Part 146, prior to the activation of any portion of a zone project. (15 CFR 400.28(a)(1)). Customs regulations define activation as approval by the grantee and the Port Director for operations and for the admission and handling of merchandise in zone status. (19 CFR 146.1(b)(2)). The term activation also includes the resumption of operations of a previously deactivated zone under a new operator. (CFR 146.1(b)(17)).

(a) Initiation of Procedure - (See 19 CFR 146.6) - A zone operator (or where there is no operator, a grantee) shall make written application to the Port Director of the port with jurisdiction over the zone to obtain approval for activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application for activation, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted. No fee is charged or collected by Customs in connection with an application for activation. (Omnibus Reconciliation Act of 1987). The application must be accompanied by the following:

1. a blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;
2. a gauge table, when appropriate, showing the capacity in metric units of any tank certified to be correct by the operator of the tank;
3. a procedures manual in the English language describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of 19 CFR Part 146, Subpart B;
4. the written concurrence of the grantee when the operator applies for activation. (19 CFR 146.6(a) and (b)(5) CR).

(1) Format of Application - No particular form is required for an application for activation; a written request on the letterhead of the applicant will suffice. The application procedure will be required of any new zone or subzone, or of any zone site having a different operator from that of an already-activated zone site.

(2) Treatment of Operator's Procedures Manual - The operator's procedures manual is furnished for Customs use in conducting compliance reviews (formerly spot checks) and audits. Customs officers may initially read the manual for familiarization purposes. Receipt of the manual by Customs does not constitute approval or certification of the procedures manual nor is approval of the manual allowed. (19 CFR 146.21 (b)(4)). The Port Director may advise the applicant, as a matter of courtesy, of any apparent failure(s) of the system to meet the criteria. Neither the Port Director's reading, courtesy advice, or approval of the application for activation constitutes any representation by Customs that the system does or does not meet the criteria of 19 CFR Part 146, Subpart B. The applicant's certification that the

recordkeeping system meets the requirements of Subpart B will be taken at face value by Customs at the time of application, and will be evaluated only through compliance assessments, Compliance Reviews (formerly spot checks), and audits conducted after approval of activation.

At the option of the Port Director, the procedures manual may be returned to the zone operator for retention at the zone as Customs copy of the manual. The operator shall keep the Customs copy updated (19 CFR 146.21(b)(2)) and furnish it to the appropriate Customs officer upon demand. The Port Director will retain the operator's certification of the procedures manual in a permanent file. The procedures manual is exempt from disclosure under 5 U.S.C. 552(b)(4) and 19 CFR 103.12(d), and Customs officers will maintain its confidentiality. Sanctions for violation of confidentiality by Customs employees are set forth in 19 CFR 103.34.

(b) Review of Application - As a condition of approval of the application, the Port Director will order an inquiry by a Customs officer into:

1. the qualifications, character, and experience of an operator and/or grantee, principle officers, and/or key employees that are responsible for the zone;

2. the security, suitability, and fitness of the facility to receive merchandise in zone status (security survey). (19 CFR 146.6(c)).

(1) Background Investigation - The background investigation is made of the operator firm itself, management involved in the operation of the zone, and key employees that have access to or could cause changes to the inventory and recordkeeping system. If a background investigation was done of the operator in connection with the original zone application, no additional investigation will be made if the information from the original investigation is still current. Checks are not usually made of zone user firms. Checks of employees in subzones are limited to key management and employee positions. The background investigation should be limited to those employees that have access to or could cause changes to the inventory and recordkeeping system. Subjects of investigation may be required, as a condition of approval of the application for activation, to complete Customs fingerprint cards and establish their true identity for investigation purposes. (19 CFR 146.6(a), TD 93-18). Any information disclosed in this inquiry is confidential and will not be disclosed to unauthorized persons, except as provided in the Freedom of Information and Privacy Acts, as amended. (5 U.S.C. 552 and 552a). An employer may wish to obtain a Privacy Act waiver, which would allow disclosure of information from Customs to the employer, from employees at the time of employment. If the background investigation discloses derogatory information, the Port Director may deny

the application to activate. "Derogatory information" includes such information as:

1. fraud or misstatement of a material fact in the application;
2. failure to furnish, upon request, a complete and accurate list of persons as specified in 19 CFR 146.7(g);
3. presence in the management of the operator of a person who has been convicted of a felony or misdemeanor involving theft, smuggling, fraud or similar property crime; or
4. employment of persons convicted of such crimes that would jeopardize the security of merchandise in the zone.

(2) Cargo Security Survey - The surveying officer may prepare a survey report addressing Customs physical and procedural standards. The surveying officer shall present his or her findings to the applicant in a conference with the understanding that the survey findings do not constitute a decision on the activation application. The applicant shall be afforded an opportunity to correct any deficiencies noted in the conference before the Port Director makes a decision on approval of the application.

After presentation of the survey report to the facility operator, the facility shall be reinspected at an appropriate date to determine whether recommendations for improvements have been carried out. If the facility operator declines or is unable to institute improvements to correct significant deficiencies, the Port Director shall deny the application.

(3) Other Considerations - Other factors may be considered by the Port Director in making a decision whether to approve the application. (Examples: Before the application is approved, the operator firm is sold to another party; or the operator manifests or demonstrates an inability or unwillingness to comply with the law, regulations, or grant conditions). There is no specific limit on the grounds for denial of an application to activate, except that the Port Director may not deny it in an arbitrary or capricious manner.

(c) Decision on Application - The Port Director shall promptly notify the applicant in writing of his or her decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial, which need not be limited to those listed in Section 19 CFR 146.82(a). The decision of the Port Director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign-Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of Section 19 CFR

113.73. Upon the Port Director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated and merchandise may be admitted to the zone in zone status. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations. (19 CFR 146.6(d), (e)).

Because of the requirements for the background inquiry, applicants may normally expect the Port Director's decision on the application any time from 1 to 4 months after the application was submitted to Customs. The application will not be provisionally approved pending the completion of a regulatory or administrative requirement, e.g. the completion of a background inquiry. Thus, if an application is approved, it will be suspended or revoked only as provided in 19 CFR 146.82, or 146.83, (see Sections 13.8 through 13.11 FTZM).

(1) Admission of Merchandise Already in Zone - Domestic and duty-paid merchandise which is already in the activated area at the time of activation will be treated as having been admitted to the zone in domestic status as authorized in 19 CFR 146.43, and the provisions of Subpart B of part 146 shall become applicable to the merchandise. Merchandise not qualifying for domestic status which is in the area at the time of activation shall be admitted to the activated area under the procedures in 19 CFR 146.32 (and see Section 6.7 FTZM), or removed therefrom for other disposition according to law.

(2) Foreign-Trade Zone Operator's bond - The Foreign-Trade Zone Operator's Bond shall be in the amount set by the Port Director, but will not be less than the amount set by the bonding guidelines. The bond may cover all zones of the same operator in the United States. The amount of the bond shall be determined by the Port Director in accordance with the guidelines set forth in 19 CFR 113.13(b) and CD 3510-004. The initial standard should be based upon the Customs duties and fees owed on the average value of foreign status non-duty paid merchandise held in the zone. An operator may engage in cartage or lighterage under his bond only for merchandise destined for his foreign-trade zone and may also transport merchandise to his zone from anywhere within the district boundaries where the FTZ is located. (19 CFR 112.2(b)). Any other bonded operations by the zone operator, such as of a private carrier, container freight station, or bonded warehouse may not be incorporated in the Foreign-Trade Zone Operator's bond, but rather must be covered under a separate custodial bond, containing the conditions set forth in 19 CFR 113.63. No foreign or zone-restricted status merchandise will be admitted to a zone until the Foreign-Trade Zone Operator's bond has been properly executed and is on file with Customs. An entry of merchandise for consumption into the U.S. must be covered by a separate entry bond. See Section 9.7(b) FTZM.

4.8 Application for Alteration - "Alteration" means a change in the boundaries of an activated zone or subzone; activation of a separate site of an already activated zone or subzone with the same operator at the same port; or the relocation of an already activated site with the same operator. (19 CFR 146.1(b)(4)). The term also includes discontinuance of activated status of part of a zone site (19 CFR 146.1(b)(8)) and resumption of activated status of a previously deactivated area, but with different boundaries (19 CFR 146.1(b)(17)). Because the boundary of the activated area is new or changed, the Port Director may review the security, suitability and fitness of the area and shall reply to the applicant. (19 CFR 146.7(a)).

A foreign-trade zone may be altered so as to have multiple operators, so long as responsibility and liability for the goods under each operator's bond is clearly identified.

(a) Application Procedure - An operator shall make written application to the Port Director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. (19 CFR 146.7(a) and Section 4.4(a) FTZM).

No Customs fee is charged for an application for alteration of an activated area while Merchandise Processing Fees are active. (The Omnibus Reconciliation Act of 1987). The application must be accompanied by a blueprint or layout of the area to be activated, showing the changes from the presently activated area, and showing all openings and buildings. If the newly activated area contains any tanks for the storage of liquids, all inlets, outlets, and pipelines to the tank must be shown, and a gauge table showing the capacity of the tank in metric units, certified by the applicant to be correct, must be attached. If the inventory control and recordkeeping system is different from that of the already-activated area, a certified procedures manual for the newly activated area must accompany the application. Because no background investigation is required, and a security survey is at the discretion of the Port Director, approval of an application for alteration can be expected to be approved or denied in about 2 or 3 weeks after application.

(b) Bonded Warehouse Within Approved Foreign-Trade Zones - Whenever any contiguous non-activated area is a portion of a building which has been approved as a bonded warehouse, the port director shall designate the means for effective separation of the bonded warehouse from the rest of the facility. (19 CFR 19.4(b)(6)). Any portion of an approved general-purpose zone or subzone that is not activated may be utilized as a Customs bonded warehouse, container freight station, or Customs examination station upon approval of the application by the U.S. Customs Service and filing of the appropriate CF 301 bond.

4.9 Deactivation of Zone Site - "Deactivation" means voluntary discontinuation of the activation of an entire zone or subzone site by the grantee or operator. (19 CFR 146.1(b)(8)). A grantee or an operator with the concurrence of a grantee, shall make written application to the Port Director for deactivation of a zone site, indicating by layout or

blueprint the exact site to be deactivated. The Port Director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator, or a consumption entry has been filed for the merchandise. The Port Director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. (19 CFR 146.7(b)). No Customs fee is charged for deactivation.

4.10 Reactivation - "Reactivation" means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is an alteration, not a reactivation. If the operator is different, it is an activation, not a reactivation. (19 CFR 146.1(b)(17)). A zone or zone site may be reactivated through the same application procedure that was used for deactivation, if a sufficient Foreign-Trade Zone Operator's bond is on file. (19 CFR 146.7(b)). No Customs fee is charged for reactivation.

4.11 New Bond - The Port Director may require an operator to furnish, on 10 days notice, a new Foreign-Trade Zone Operator's bond on Customs Form 301 under 19 CFR 146.7(d). Alternatively, the Port Director may require, on 30 days notice, a new Foreign-Trade Zone Operator's bond under 19 CFR 113.13(c). If the operator fails to furnish the new bond within the allotted time, no more merchandise shall be received in the zone in zone status. Merchandise in zone status (other than domestic status) shall be removed at the risk and expense of the operator, or the merchandise shall be entered for consumption. A new bond may be required if (1) the activated zone area is substantially altered; (2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (3) the existing bond lacks good and sufficient surety; or (4) for any other reasons substantially affecting liability of the operator under the bond. (19 CFR 146.7(d), see Section 13.7 FTZM).

4.12 New Zone Operator - It is permissible to change Foreign-Trade Zone operators. In the existing zone operation, the grantee sponsor should be careful not to terminate contractual relationships until the U.S. Customs Service Port Director has approved a new foreign-trade zone operator, background investigations have been completed, foreign-trade zone operator's bond has been accepted and is in force for an agreed amount. A contract between the grantee and operator should govern the relationship between the parties. A grantee of an activated zone site shall make written application to the Port Director for approval of a new operator, submitting with the application a certification by the new operator that the inventory control and recordkeeping system meets the requirements of 19 CFR Part 146 Subpart B and a copy of the procedures manual if different from the previous operator's manual. The Port Director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers or key employees responsible for the zone. The bond specified in 19 CFR 146.6(d) shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The Port Director shall promptly notify the grantee, in writing, of the approval or disapproval of the application. (19 CFR 146.7(e), (f)). The same background

inquiry considerations apply to background investigations of the new operator as noted in Section 4.7(b)(1) FTZM.

(a) Interim Responsibility of Existing Operator - The existing operator remains responsible for merchandise in zone status and for compliance with the laws and regulations, under its Foreign-Trade Zone Operator's Bond until the new operator is approved and a new bond is executed. The existing operator is relieved of responsibility in the interim only if the zone is deactivated or activated status is suspended, and all merchandise in zone status (except domestic status merchandise for which no permit is required) has been removed from the zone or entered for consumption.

4.13 Other Changes - There are other changes which affect the activated status of a zone which do not necessarily constitute alteration, relocation, deactivation, or reactivation:

(a) Change in Ownership of Operator - If ownership of the operator firm changes hands through sale or other transfer, the procedure to be followed depends on whether the firm is individually-owned, a partnership, or a corporation.

If the firm is individually owned or a partnership, a new application for activation shall be made under the procedures in 19 CFR 146.6 and Section 4.12 FTZM. If the firm is a corporation and the change in ownership does not result in a new corporate entity with a different corporate charter, the change will be treated as a name change as described in Section 4.13(b), below, FTZM. If the firm is a corporation and the change results in a new corporate entity, a new application for activation shall be made under the procedures in 19 CFR 146.6 and Section 4.12 FTZM.

(b) Name, Address, or Organizational Status Change - If the name of the operator firm is changed, the operator should see that Customs is notified through a rider to the Foreign-Trade Zone Operator's Bond under the procedure in 19 CFR 113.24. The same procedure should be used if there is a change in the address of the principal or a change in the trade names and unincorporated divisions of an operator, which is a corporate principal on the Foreign-Trade Zone Operator's bond. If an address change is due to relocation of the zone, the procedures for alteration of the activated zone shall be followed in 19 CFR 146.7(a) and Section 4.8(a) FTZM shall also be followed.

4.14 Permanent File Requirements - Port Directors shall retain copies of applications for activation, alteration, deactivation, and reactivation; applications for new operators; and the

current Foreign-Trade Zone Operator's bond; in an updated permanent file for the use and reference of appropriate Customs officers pursuant to 19 CFR part 146, Subpart B. Operators should keep the same information in a permanent file, along with the original zone approval (including any grant restrictions specified by the FTZ Board) and boundary modifications as noted in Section 4.4(b) FTZM and 15 CFR 400.46(c).

Chapter 5

ZONE STATUS

5.1 General - "Zone status," means the legal status of merchandise, which has been admitted to a foreign-trade zone, thereby becoming subject to the provisions of the FTZA. The CR has established four (4) kinds of zone status under the FTZA, which determines how the merchandise will be handled in the zone and treated upon its transfer to the Customs territory. The choice, of which zone status is applicable to merchandise, is normally at the option of the applicant for admission or the owner of merchandise in the zone. However, in some cases, the kind of status is dictated by law because of the definition of the status in the CR, the operation of other laws in conjunction with the FTZA, or special conditions in the zone grant.

5.2 Merchandise Not in Zone Status - Not all merchandise in a zone has zone status. Examples of merchandise without zone status include, but are not limited to:

1. merchandise, when a question exists whether it may be prohibited, pending a final determination of its status; (19 CFR 146.31(a))
2. merchandise temporarily deposited for manipulation under 19 USC 1562 and 19 CFR 19.11; (19 CFR 146.33)
3. merchandise transiting a zone; (19 CFR 146.34)
4. merchandise temporarily deposited with incomplete documentation; (19 CFR 146.35)
5. merchandise retained at a zone pending examination and subsequent approval of an application for admission as specified in 19 CFR 146.36;
6. merchandise received under direct delivery procedures pending admission; (19 CFR 146.40(a)).
7. merchandise which has been constructively transferred to Customs territory, but remains in the activated area of the zone; (19 CFR 146.61 and 146.71(c) and CSD 79-249)
8. excess merchandise (overages) which have not yet been admitted to a zone; (CSD 81-70)
9. articles used in the zone (e.g. office supplies) for purposes not specified in the Act. (15 CFR 400.1(c))

5.3 Application for Zone Status or Status Change - An applicant for admission shall select a zone status for merchandise or Customs will return the application on the grounds that it was prepared improperly or incompletely. Multiple lines of merchandise can have different zone statuses and they may be admitted under a single admission. Where permissible under the law and regulations, a zone user may apply for a change in zone status for merchandise already admitted to the zone. The description of the merchandise must be sufficiently clear so as to leave no doubt to the approving Customs officer which merchandise is covered by the application.

5.4 Foreign Status Merchandise - "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in the Customs territory. (19 CFR 146.1(b)). Domestically-produced merchandise which has been exported and re-imported into the United States, but not properly released from Customs custody prior to entry, is foreign merchandise.

5.5 Privileged Foreign Status - Under this provision, an importer chooses to have the merchandise treated, for tariff purposes, in its condition at the time of admission to the zone, although the choice of that status need not be exercised at the time of admission. The effect of these provisions is to "freeze" the rate of duty and tariff classification in the condition of the merchandise at the time of filing the application for PF status. (See, for example, Section 9.7(g)(1) FTZM). However, note the provision for BATF excise taxes at Section 11.7(k) FTZM and floor stocks taxes in Section 11.6(d)(5) FTZM. Also, privileged foreign status is not in effect until the merchandise is received in zone status in a zone. (Section 6.4 FTZM). Freezing of the rate of duty and tariff classification does not, however, freeze the quota status of merchandise in the case of an absolute quota. (CSD 79-471). Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted. (Section 19 CFR 146.41(d) and 146.65(a), see 9.7(g)(1) FTZM and see *Inter-Maritime Forwarding Co. v. U.S.*, 51 CCPA 95 (1964)). Whenever the privilege has been requested and there has been no manipulation, manufacture (or processing) in the zone effecting a change in tariff classification, the Port Director shall take under supervision any (zone) lot or part of a (zone) lot (including inventory categories or Unique Identifier Number (UIN's)) of foreign merchandise in a zone and cause it to be appraised and taxes determined and duties liquidated thereon. In Section 81c, Title 19, United States Code, is the legal authority for privileged foreign status. Specific applications of this provision to waste and scrap and for valuation purposes are dealt with in Section 9.7(g)(1) and (h)(1) FTZM.

Notwithstanding this provision, the Bureau of Alcohol, Tobacco and Firearms excise taxes will be paid at the rate in effect at the time of transfer from the zone for consumption regardless of the zone status; further BATF may impose a floor stocks tax on non-tax paid distilled spirits, tobacco, and tobacco products in a zone. (P.L. 101-508, 26 USC 5001 note, see Section 11.6(d)(5) FTZM).

Applicants usually choose PF status when the rate of duty on a product manufactured in a zone is higher than the rate of duty on some or all of the components as introduced into the zone. Special conditions have been placed in some zone grants to require applicants to choose privileged foreign status, in order to preserve the protective effect of a rate of duty for a particular component or to identify components so as to impose antidumping or countervailing duties on them. The rate of antidumping or countervailing duties to be deposited are those in effect at the time of entry of the merchandise into the commerce of the United States. (See Section 11.5(f) FTZM)

(a) Application Requirements - Application for privileged foreign status shall be made on Customs Form 214 or electronically at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been processed or manufactured in the zone in a manner which has effected a change in tariff classification. Each applicant for this status shall submit to the Port Director with the application, an invoice notated as provided for in 19 CFR 141.90, i.e. showing the claimed rate of duty and HTS number applicable to the merchandise in PF status. (19 CFR 146.41(a), (b) and (c). Note: Section 19 CFR 141.92 provides for a waiver of the invoice requirements). An application for PF status must be made for a specific kind and quantity of merchandise, and not, for example, for "sufficient parts to manufacture 400 trucks". The specification of the kind and number of parts must be made before the merchandise is manufactured. (See CSD 81-192).

(b) Determination of Duties and Taxes - Upon receipt of the application and accompanying invoice, the Port Director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to tariff classification according to its character, condition, and quantity at the rate of duty and tax in force on the date of filing in complete and proper form the application for privileged status. (19 CFR 146.41(d) and 146.65(a)(1)).

(c) Privileged Foreign Status Binding - A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manufacture, processing or manipulation except in the case of recoverable waste (19 CFR 146.42(b)), as long as the merchandise remains within the purview of the FTZA. It may not be entered for warehouse or under a Temporary Importation Bond. (19 CFR 146.64 (a) and CSD 81-213). However, privileged foreign status merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with (19 CFR 146.67 and 146.69). Recoverable waste remaining from merchandise in PF status as the result of a casualty or an Act of God (not from manufacture or manipulation in a zone) retains its PF status. (See CSD 86-7).

5.6 Nonprivileged Foreign Status - By selecting NPF status, an importer chooses to have the merchandise treated, for tariff purposes, in its condition and quantity as it is constructively transferred to Customs territory and entered for consumption. (19 CFR 146.65(a)(2)). Restricted merchandise in NPF status, which cannot be entered for consumption may be transformed in a zone into merchandise which may be entered for consumption in that form into the commerce of the U.S. unless prohibited under the operation of another law. (For examples, see CSD 79-41 and CSD 79-471). NPF status merchandise may also be transferred to Customs territory for warehousing, exportation, vessel or aircraft supply use, temporary importation bond, or transfer to another zone or port. After the merchandise is admitted to a zone, nonprivileged foreign status may be changed to privileged foreign or zone-restricted status at the option of the zone user, if the merchandise is legally entitled to receive that status. For example, merchandise may not be changed to privileged foreign status if it has already been manufactured, processed or manipulated so as to change its tariff classification. (19 USC 81(c)); 19 CFR 146.41(b) and see Section 5.5(a) FTZM). All of the following will have the status of nonprivileged foreign merchandise, if requested in proper form by the applicant for admission:

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

(2) Waste - Waste recovered from any manipulation or manufacture of privileged (or nonprivileged) foreign status merchandise in a zone; and

(3) Certain Domestic Merchandise - Domestic merchandise in a zone which by reason of noncompliance with the CR has lost its identity as domestic status merchandise will be treated as nonprivileged foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the Port Director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest. Customs may consider domestic status identity maintained when it can be established through inventory control and accounting procedures approved by Customs. (19 CFR 146.42 and see Section 5.7(d) FTZM).

5.7 Domestic Status - Subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles which are the growth, product, or manufacture of the United States on which all internal revenue taxes (if applicable) have been paid, or articles previously imported on which duty and/or tax has been paid, or which have been entered for consumption free of duty and tax, may be taken into a zone, placed under the supervision of Customs and, whether or not they have been combined with or made part of other articles in the zone,

may be brought back to Customs territory free of quota, duty, or tax. Section 81c, Title 19 of the United States Code, is the legal authority for domestic status in zones. An importer or other zone user does not choose domestic status, as he or she may choose privileged foreign, nonprivileged foreign or zone-restricted status. Rather, domestic status is determined by the qualifications of the merchandise as noted below.

(a) Merchandise Qualifying for Domestic Status - Domestic status will be granted to merchandise which is:

- (1) the growth, product, or manufacture of the U.S. on which all internal-revenue taxes, if applicable, have been paid;
- (2) previously imported and on which duty and tax has been paid; or
- (3) previously imported and entered free of duty and tax. (19 CFR 146.43(a)).

Domestic merchandise on which not all internal revenue taxes have been paid is not eligible for domestic status. Neither is it eligible for privileged or nonprivileged foreign status. It may be admitted to a zone only in zone-restricted status. (CSD 82-112).

(b) Admission Requirements - No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except: (1) when it is mixed or combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he/she may also order the procedures, forms, and terms under which the permit will be received and processed. (19 CFR 146.43(b) and see Section 5.7(e) FTZM).

(c) Recordkeeping Requirements - All domestic status merchandise in a zone must be accounted for under the procedures of 19 CFR Part 146 Subpart B. (See 19 CFR 146.21(a)(1) and see Section 7.8(c)(4) FTZM).

(d) Loss of Identity as Domestic Status Merchandise - When identity of domestic status merchandise has been lost due to noncompliance with Customs Regulations, it shall be treated upon entry to Customs territory as foreign merchandise under the provisions of the tariff and Internal Revenue laws in force at that time. Customs may consider domestic status identity maintained when it can be established through inventory control and accounting procedures approved by Customs. (CSD 81-67). Domestic status merchandise shall not be considered

to have lost its identity if the zone inventory control and recordkeeping system accurately identifies both domestic and foreign status fungible merchandise. In a UIN system involving fungible merchandise of multiple statuses, the zone inventory control and recordkeeping system shall be sufficient for these purposes. (See also Section 7.8(c)(4) FTZM on maintaining the record identity of domestic status merchandise).

(e) Commissioner's Order to Require Permits - Customs will not require permits for domestic status merchandise which has not been manufactured, manipulated or otherwise processed with other status merchandise unless and until an order of the Commissioner has been placed in effect, and then only to the extent of the provisions of the order. (19 CFR 146.43(b)).

(f) Return of Domestic Status Merchandise to Customs Territory - Upon compliance with the regulation in Section 19 CFR 146.43(c), any of the merchandise specified in Sections 5.7(a) FTZM remaining in domestic status may subsequently be returned to Customs territory free of quotas, duty, or tax. (19 USC 81(a) and 9 CFR 146.43(c) and see Section 9.3 FTZM).

5.8 Zone-Restricted Status - Articles which have been taken into a zone from Customs territory for the purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage, shall be considered to be exported for the purposes of drawback, warehousing, bonding and other provisions of the TA, and the drawback, refund, or exemption from tax, and other purposes of the Internal Revenue laws. Such a transfer may also be considered an exportation for the purpose of other Federal laws insofar as Federal agencies charged with enforcement of those laws deem it advisable. Section 81c, Title 19, United States Code, is the legal authority for zone-restricted status.

(a) Application for Zone-Restricted Status - Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, even after it has been manufactured, but cannot be abandoned once granted, except by order of the Foreign-Trade Zones Board. Application for zone-restricted status will be made on Customs Form 214 or electronically. (19 CFR 146.44(a), (b)). Zone-restricted status may be approved for either foreign or domestic merchandise. Application for ZR status is normally at the option of the party in interest. However, it may be mandatory for certain merchandise, such as merchandise transferred from a bonded warehouse or non-tax paid alcoholic beverages or tobacco products. (See Section 5.8(b)(2) and (3) FTZM below), or merchandise whose entry into U.S. commerce has been rejected by a Federal agency. Merchandise which arrives at a port on an entry for exportation or transportation and exportation (IE or T&E) will usually be admitted in ZR status; however, the Port Director may approve admission in another status if

he or she is satisfied that exportation is not required by any Federal law or regulation.

(b) Merchandise Considered Exported - Merchandise may be considered exported, for Customs or other purposes, upon its admission to a zone in zone-restricted status.

(1) For Customs Purposes - If the applicant desires zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law or regulation, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation and a copy of the approved Customs Form 214 or a copy of the approved electronic version may be accepted in lieu of any proof of shipment required in cases of actual exportation. (19 CFR 146.44(c)(1)). Zone-restricted status is used most often, for Customs purposes, to serve as a notice of exportation for drawback purposes or to close out a temporary importation bond. Procedures for satisfying these requirements are described in Sections 6.7(g)(1) and 6.13 FTZM.

(2) For Other Purposes - If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the Port Director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 or the electronic version is approved. (19 CFR 146.44(c)(2)). A certificate of arrival shall be executed by the Port Director and/or the operator as specified in 19 CFR 146.38 and see Section 6.11 FTZM. The Bureau of Alcohol, Tobacco and Firearms is the most frequent user of this provision, to satisfy the requirement for exportation of non-tax paid alcoholic beverages and tobacco products. Procedures for satisfying those requirements are specified in 27 CFR Parts 252 and 290 and see Section 6.12 FTZM. Non-tax paid alcoholic beverages and tobacco products may be admitted to a zone only in zone-restricted status. (CSD 82-112). Whether zone-restricted status may be used to satisfy exportation conditions or requirements of state or local governments is dependent on state or local laws.

(3) Admission for Manufacturing - Merchandise in a status other than zone-restricted, cannot be considered to be exported pursuant to the FTZA when it is sent to a zone for the purpose of manufacturing. (TD 89-4, and Chrysler Motor Corporation v. United States, Slip Op 90-130, (CIT 1990) (755 F. Supp. 388 (1990), aff'd, 945F. 2d 1187(Fed. Cir. 1991)).

(c) Merchandise Entered Into a Bonded Warehouse - Merchandise entered into a bonded warehouse for storage and transferred to a zone, other than temporarily for manipulation and returned to Customs territory as provided for in section 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application for admission for merchandise originally entered for warehouse must request zone-restricted status. Otherwise, Customs will return the application for admission. (19 CFR 146.44(d), 146.11(d) and 144.37(g))

Merchandise which has been placed in a bonded warehouse for a purpose other than entry for warehouse, such as general order or under seizure, may be admitted to a zone in any eligible status.

(d) Destruction - Destruction requires that the merchandise, and its residue from the destruction, have been rendered valueless (CSD 80-67); otherwise, the process will be treated as a manipulation. However, partial destruction, combined with exportation and/or storage, meets the requirements of the FTZA and CR for treatment of merchandise in zone-restricted status. Any remaining valuable residue may be removed from the zone for entry for consumption only with the approval of the Board. (CSD 80-67). Alcoholic beverages may not be admitted to a zone for the purpose of destruction, but if they have been admitted and subsequently become unmerchantable or unfit for export, they may be destroyed with the permission of the BATF (compliance) under the procedures in 27 CFR 252.35 through 252.38.

(e) Prohibition Against Manufacture, Processing or Manipulation - Since zone-restricted status is granted for the sole purpose of storage, exportation, or destruction, merchandise in ZR status may not be manufactured or processed in the zone. Merchandise may not be manipulated except to the extent necessary for its exportation, destruction, or storage, i.e., except for packing, unpacking, repacking, testing or similar operation incidental to exportation or destruction. After merchandise in nonprivileged foreign or domestic status has been manufactured, processed or manipulated in the zone, the Port Director may approve a change to zone-restricted status. (See Section 5.8(a) FTZM).

(f) Transfer to Customs Territory - Merchandise in zone-restricted status may not be returned to Customs territory for domestic consumption except when the Foreign-Trade Zones Board deems such return to benefit the public interest, in which event the articles shall be subject to the provisions of Chapter 98, Subchapter I, Harmonized Tariff Schedules. 19 USC 81c (a), 19 CFR 146.70(b). The provisions for transfer of zone-restricted merchandise to Customs territory are described in 19 CFR 146.70 and see section 9.15 FTZM.

Chapter 6

ADMISSION OF MERCHANDISE

6.1 General - Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the Customs laws of the United States, except as otherwise provided in the FTZA, be brought into a zone. 19 USC 81c(a). To "admit" merchandise means to bring it into a zone with zone status. (19 CFR 146.1(b)).

6.2 Prohibited Merchandise - Prohibited merchandise is merchandise the importation of which is prohibited by any law of the United States, or any merchandise which is excluded from a zone by Board Order under Section 81o(c), Title 19, US Code. (19 CFR 146.1(b) and see Section 11.2 FTZM). If a Customs Port Director has any reason to suspect that an admission of merchandise into an FTZ might raise a public interest or scope of authority issue, the Port Director has the authority to request that the importer seek an opinion or decision from the FTZB prior to such admission. (Arbor Foods, Incorporated v. United States 97F.3d 534 (Fed. Cir. 1996)). Port Directors will not permit the admission of prohibited merchandise into a zone. If there is a question as to whether the merchandise is prohibited, Port Directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise. (19 CFR 146.31(a)). Prohibited merchandise which is found in a zone is not exempt from the Customs laws, including those providing for seizure of the merchandise. (CSD 82-16).

6.3 Conditionally Admissible Merchandise - Conditionally admissible merchandise is merchandise which may be imported into the U.S. under certain conditions, such as merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies. (19 CFR 146.1(b)). The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned, which could include a prohibition on its admission to a zone. (19 CFR 146.31(b)). An example of conditionally admissible merchandise is a substance subject to the Toxic Substances Control Act (15 USC 2601 et seq.) which has not received approval by the Environmental Protection Agency for use in the United States. (19 CFR 12.118-12.127).

(a) Conditionally Admissible to Zone - Merchandise sent to a zone is conditionally admissible, since it may be admitted only if the administrative requirements are met, e.g. completely and properly filled out application, signature of authorized persons on form, etc. However, certain specific merchandise or kinds of shipments may be admitted to a zone only under certain conditions. (See Sections 6.7(g) and 11.5 FTZM).

6.4 Time of Admission - Merchandise is admitted to a zone only when (1) the Port Director or his designee has properly signed the application for admission for approval; and (2) the operator has signed for receipt of the merchandise into the activated area of the zone. Usually, the Port Director's approval precedes receipt into the zone, but in some cases, e.g. permits for direct delivery to the zone, the operator may properly receive the merchandise before the Port Director approves its admission. The merchandise receives zone status only when the Port Director signs the approval of admission. Also, when an application for admission of merchandise in privileged foreign status is presented before the merchandise is brought into a zone, such status will not be deemed to be in effect until the operator signs for receipt of the merchandise in the zone.

(a) Domestic Status Merchandise - Domestic status merchandise for which no permit is required (19 CFR 146.43(b)) is deemed admitted when it is (1) recorded in a receiving report or document as provided in Section 19 CFR 146.22(a); and (2) physically brought into the activated area of a zone.

6.5 Non-Zone Status Transactions - As noted in Section 5.2 FTZM, there are a number of circumstances where merchandise may be received in a zone, but not have zone status. Procedures for some of these transactions are covered by this Section. Procedures for direct delivery under 19 CFR 146.39 and 146.40 are covered in Section 6.10 FTZM.

(a) Temporary Deposit for Manipulation - Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily into a zone for manipulation and returned to Customs territory under Customs supervision, pursuant to Section 562 TA (19 USC 1562). That merchandise will not be considered within the purview of the FTZA, but will be treated as though remaining in the Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of Section 562 and other Customs laws while in a zone. (19 CFR 146.33). Such manipulations are at the risk and expense of the importer under the importer's importation and entry bond (19 CFR 113.62(g)), not under the Foreign-Trade Zone Operator's Bond. Physical supervision of the manipulation may be conducted by Customs officers as provided in 19 CFR 101.2(c).

(b) Merchandise Transiting Zone - The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or when it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone. (See 19 CFR 146.34)

(1) Application - Application for permission to lade or unlade will be filed with the Port Director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(2) Permit - The Port Director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with Section 146.32(a).

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

(4) Delay in zone transit - Merchandise delayed while transiting a zone shall be made the subject of an application for admission in accordance with 19 CFR 146.32 or it will be removed from the zone. (19 CFR 146.34).

(c) Temporary Deposit to Complete Documentation - Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in 19 CFR 146.35(a) and 146.36. (See 19 CFR 146.35).

(1) Application - An application for temporary deposit will be made to the Port Director on a properly signed and uniquely numbered Customs Form 214, annotated clearly "Temporary Deposit in a Zone". The zone admission number will be distinct from those assigned to applications for admission under 19 CFR 146.32(a). CF 214 Data Elements 1 through 10, 15, 16, and 24 through 30 must be filled out, if applicable. The description in Element 16 must be at least as complete as that on the manifest bringing the merchandise to the port. The other elements should be filled out to the extent information is available to the applicant. (See Section 7.8(b)(5) FTZM).

(2) Supervision - The operator will open and maintain a file by zone admission number or in bond manifest number of all applications for temporary deposit in a zone under Section 19 CFR 146.35, and shall see that such files are properly maintained until a CF 214 zone admission, entry, or transfer to general order occurs. Merchandise temporarily deposited in a zone will be subject to periodic compliance reviews (formerly spot checks) by Customs to assure compliance with the Customs Regulations.

(3) Conditions - Merchandise temporarily deposited under 19 CFR 146.35 has no zone status and is considered to be in the Customs territory. It will be

(i) physically segregated from all other zone merchandise;

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

(iii) manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate Customs Form 214 admission or entry documentation. (19 CFR 146.35(c)).

(4) Approval - The Port Director will approve the application for temporary deposit if the provisions of Section 6.5(c)(3)(i) through (iii) FTZM above are met. (19 CFR 146.35(d)).

(5) Admission to Zone - A complete and accurate Customs Form 214 will be submitted as provided in 19 CFR 146.32 within 15 calendar days or the merchandise shall be placed in general order. (19 CFR 146.35(e)).

(6) Difference from Suspense Account Requirement - Temporary deposit to complete documentation is distinct from the suspense account requirement of 19 CFR 146.22(c) and Section 7.8(b)(1) FTZM. The suspense account is required for merchandise which has already been admitted to a zone, but for which some kind of action is required because some information necessary for inventory control by the operator is missing, incomplete, or incorrect.

6.6 Arrival and Retention of Merchandise - Merchandise may be admitted directly to a zone from any place within or outside the Customs territory. Foreign merchandise destined to a zone and transported in bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in bond between two places in Customs territory. (19 CFR 146.11(a), (b)). Except for direct delivery procedures provided for in 19 CFR 146.39, all merchandise covered by a Customs Form 214 may be retained for Customs examination, pending approval of admission, at the place of unloading, the zone, or other location, as designated by the Port Director. (19 CFR 146.32(c)(3), 146.36). Port Directors are reminded that Customs has the right to inspect any shipment for enforcement purposes.

(a) Movements Within a Customs Port of Entry – When authorized by the Port Director, direct delivery procedures under 19 CFR 146.39 are available for merchandise arriving from a foreign country to be delivered within the same Customs port of entry boundaries. (19 CFR 146.66(a)). Either a bonded carrier must be utilized or the operator moves the merchandise under their Foreign-Trade Operator's Bond.

6.7 Application for Admission and Permit - Merchandise does not achieve zone status until a permit is given by the Port Director for its admission (except in the case of

domestic status merchandise for which no permit is required), and the zone operator signs for receipt of the merchandise into the zone. (Section 6.4(a) FTZM).

(a) Application - Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered Customs Form 214, "Application for Foreign-trade zone Admission and/or Status Designation", and issuance of a permit by the Port Director. The applicant for admission shall present the application to the Port Director and shall include a statistical copy on Customs Form 214A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct (electronic) transmittal of statistical information to that agency. The form shall bear the signature of approval of the operator in the appropriate block, unless a separate individual or blanket approval has been given. (19 CFR 146.9 and 146.32(a)).

(1) Who May Make Application - Application for admission may be made only by the person with the right to make entry. (19 CFR 146.32(b)(2)) Right to make entry shall be determined according to the provisions of "Section 484(a) TA, CD 099 3530-002, and other pertinent Service wide instructions. However, a Customhouse broker or foreign-trade zone operator may prepare and/or file the application on behalf of the person with the right to make entry, if a proper power of attorney is on file as provided for in 19 CFR Part 141, Subpart C, for the precise acts authorized. (See CSD 84-23).

(2) Printing and Preparation of Customs Form 214 - Blank Customs Form 214 may be printed and distributed as specified in Section 2.8 FTZM. The form shall be prepared by the applicant according to the instructions set forth in the Appendix to the FTZM.

(3) Place of Filing - As noted in 19 CFR146.37 (d) and see Section 2.9 FTZM, Customs Form 214 will be presented to the location within a port of entry designated by the Port Director with jurisdiction over the zone.

(4) Assignment of Sequential Zone Admission Number - Zone operators will establish and assign the sequential zone admission numbers on Customs Form 214 under 19 CFR 146.32(a), so long as the header information identifies the zone to which admission has been requested.

(b) Statistical Reporting - Information reported on Customs Form 214 is very important in preparing national trade statistics, including those for foreign-trade zones. The information is gathered by the Foreign Trade Division, Bureau of the Census, from the statistical copy of Customs Form 214 required under 19 CFR 146.32(a). The statistical copy, designated as Customs Form 214A, must be printed on salmon or pink colored stock and must be identified as "Statistical

Copy." Forms printed on any other stock will be rejected by Customs and the Bureau of the Census.

(1) When Statistical Customs Form 214 not Required – The statistical copy on Customs Form 214A will not be required, or accepted by Customs, for the admission of:

(i) merchandise in domestic status, whether or not a permit is required by the Commissioner of Customs; (19 CFR 146.43)

(ii) merchandise of U.S. origin, not previously exported, which is admitted in zone-restricted status;

(iii) merchandise of foreign origin which was entered for consumption prior to admission in zone-restricted status;

(iv) merchandise of any status which has been transferred by a zone to zone transfer from another foreign-trade zone where it had been admitted and so reported for statistical purposes.

(2) When Statistical Reporting is Required - The providing of statistical information is mandatory, by order of the Secretaries of Commerce and Treasury under 13 USC 302. The responsibility for obtaining and providing the information rests with the applicant zone user for admission to the zone.

(i) Statistical Form (paper) required –

The statistical copy on CF 214A shall include the data required in Items 1 through 8, 14 through 21, 23, 47, and 49 of the form, before it is accepted by Customs for transmittal to Census.

(a) Review and Verification - Customs officers shall assure that the foregoing information is provided on Customs Form 214A before transmittal to Census. Customs officers shall not, however, attempt to verify the correctness of the information, except to the extent correct information is required for Customs purposes or to correct obvious errors. When the information is missing, incomplete, or illegible, the form shall be returned to the applicant for addition or correction. The admission of goods to the zone shall not be delayed pending receipt of the additional or corrected information, unless it is necessary for proper Customs supervision of the zone or a determination of the admissibility

of the goods to the zone. When Census discovers errors or anomalies in statistical reports, the appropriate Census officer will review the transaction directly with the applicant for zone admission.

(b) Enforcement of Requirements - Penalty procedures shall not be invoked against any person who in good faith attempts to comply with statistical instructions for Customs Form 214A. However, violations of the instructions may be punishable by a fine imposed by the Secretary of Commerce under Title 13 USC 305. If an applicant refuses to comply with the instructions, the Port Director shall deny the application for admission on the grounds it was improperly executed. False or fraudulent statistical information on Customs Form 214A may also subject the applicant to penalties under 19 USC 1592.

(c) Correction or Completion of Information - When goods are admitted to the zone with missing or incomplete statistical information, the applicant must provide the missing or corrected information by the fifth day of the month following that in which the goods were admitted to the zone. Customs officers shall maintain controls appropriate to see that all statistical copies on Customs Form 214A are provided to Census for each admission to a zone, except for those admissions where Customs Form 214A is not required.

(d) Transmittal to Census - Customs Forms 214A shall be gathered by Customs officers and transmitted to Census as soon as possible but not later than ten days after the merchandise has been admitted to the zone (after the operator signs the CF214A in Block 47). Box 14 of the Customs Form 214A must be marked as "No." The last Customs Form 214A for a particular month shall be mailed to Census as soon as possible, but not later than the tenth calendar day following the last day of the month in which the goods were admitted to the zone. These forms must be mailed to the following address:

Puerto Rico Trade Data Staff
GSA Center
651 Federal Drive
Suite 325-08
Guaynabo, P.R. 00965-5703

(ii) Direct Statistical Monthly Reporting (Electronic) –

(a) Applicants for direct statistical reporting must apply in writing to the Bureau of the Census for approval. (19 CFR 146.32(d)(2)(ii) or 146.40(c)). Zone operators electing to submit statistical reports directly to Census may provide the data in acceptable format on a monthly basis by direct transmission via diskette or direct computer transmission. The report must be received by Census no later than the tenth calendar day following the month covered by the report. For information regarding the use of this reporting procedure, zone operators should direct their inquiries to:

Data Collection Coordination Branch
Foreign Trade Division
Bureau of the Census
Foreign Trade Division
Room 2179, FOB 3
Washington, D.C. 20233
Phone: (301) 457-2259

(c) Supporting Documents - The following documentation shall be submitted with or in support of the Customs Form 214, to the extent indicated.

(1) Commercial Invoice - The applicant shall submit with the application two copies of an examination invoice meeting the requirements of 19 CFR Part 141, Subpart F, for any merchandise, other than domestic status merchandise for which no permit is required, to be admitted into a zone. The notation on the invoice of tariff classification and value required by 19 CFR 141.90 need not be made, unless the merchandise is to be admitted in privileged foreign status. (19 CFR 146.32(b)(1)).

(2) Evidence of Right to Make Entry - The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under 19 USC 1484. (19 CFR 146.32(b)(2)).

(3) Release Order - Customs officers shall not authorize any merchandise for delivery to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone. (See 19 USC 1484). When a release order is required, it shall be made on any of the forms specified in 19 CFR 141.11 or by the following statement attached to Customs Form 214:

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

Name of Carrier _____

Signature and title of carrier representative

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in 19 CFR 141.11 and 146.32(b)(3).

(4) Application to Unlade - For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 shall be supported by an application to unlade on Custom Form 3171. (19 CFR 146.32(b)(4)).

(5) Other Documentation - The Port Director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective processing criteria, or to determine whether the merchandise is admissible to the zone. (19 CFR 146.32(b)(5) and see Section 6.3(a) FTZM). This includes documentation such as export certificates for certain steel products and machine tools under voluntary restraint agreements (see Sections 11.5 and 11.6 FTZM) and information needed for selectivity processing such as importers' and manufacturers' numbers.

(d) Document Review and Examination - Customs will review the application and supporting documentation for completeness and to determine whether the application may be approved without physical examination of the merchandise. Customs approves permits of admission for most low-risk shipments without examination, if the conditions for issuance of a permit under 19 CFR 146.32(c) otherwise exist. The decision whether to examine the merchandise is made according to various commodity and enforcement criteria maintained by Customs. Documentation will be reviewed and examinations conducted only at locations within a port of entry except as specified in Section 2.9 FTZM.

(1) Authority for Examination - The Port Director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce. (19 CFR 146.10). The Port Director may authorize release of the merchandise without examination, as provided in 19 CFR 151.2. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices. (19 CFR 146.36).

(2) Purposes of Examination - The overall objectives of Customs examination of merchandise to be admitted to a foreign-trade zone are to:

(i) determine if the goods are admissible to the zone;

(ii) determine the true liability of the zone operator for merchandise received in a zone under its bond;

(iii) reduce the need for further examination of the merchandise if it is later transferred to Customs territory, in the same condition, for consumption or warehouse; and

(iv) ensure full compliance with all applicable laws and regulations.

(3) Centralized Examination Station - Most examinations are done at Centralized Examination Stations (CES's). These facilities allow Customs to position its officers at fewer locations, where they can perform quicker and better examinations. The procedure for establishing and operating CES's (some of which may be located at foreign-trade zones) under a custodial bond (19 CFR 113.63) is set forth in 19 CFR Part 118. If Customs determines that examination at a CES is necessary, transfer to a CES may be authorized by Customs by a stamp on the Customs Form 214 or other document requesting transfer of the merchandise to the zone. (19 CFR 151.15). Transfer is done under the bond of a licensed cartman, importing carrier, bonded carrier, or container freight station operator, depending on the situation or by the zone operator, under its FTZ operator's bond, from the CES. Payment of transfer costs to and from the centralized examination station or other place of examination is the responsibility of the applicant for admission, or consignee, not the zone operator.

(4) Examination at Other Locations - At ports where there is no CES, the merchandise will be examined at the place of unloading or arrival of the merchandise at the port, unless the Port Director requires or allows the merchandise to be examined at another place. The applicant for admission

may request examination at another place including a foreign-trade zone. However, Customs will not examine any merchandise at a location outside a port of entry, except as provided in Section 2.9(a) FTZM.

(5) Report of Examination - Reports of examination will be made by Customs examining officers on both examination invoices in the same manner as for merchandise entered for consumption. Approval of admission will not be denied or withheld for minor discrepancies found upon examination, unless there is an apparent intent to circumvent or violate a U.S. law or regulation. Such minor discrepancies will be faithfully reported on the invoices. If the discrepancies are not minor or there is an apparent intent to circumvent or violate a U.S. law or regulation, admission will be denied on the grounds that an application does not cover the merchandise, and the admission documentation may be referred to the Enforcement Evaluation Team for further action. The operator shall, upon request of the applicant for admission or the Port Director, provide a copy of the examination report to the person making entry to transfer the merchandise from the zone. (19 CFR 146.37(b) and see Section 9.7(a)(5) FTZM).

(e) Issuance of Permit for Admission - After document review and physical examination, as appropriate under the foregoing provisions, the Port Director shall issue a permit for admission of merchandise to a zone when:

(1) the application is properly executed (and includes the zone status desired for the merchandise);

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

(3) the merchandise has been retained for examination at the place of unloading, the zone, or other location designated by the Port Director, except for merchandise for direct delivery to a zone under 19 CFR 146.39 and 146.40; and

(4) all requirements have been fulfilled. (19 CFR 146.32(c)).

(f) Blanket Application for Admission - Merchandise may be admitted to a zone under a blanket application upon approval by the Port Director of a Customs Form 214 covering more than one shipment of merchandise. A blanket application for admission may be approved for:

(1) shipments which arrive under one transportation entry as described in 19 CFR 141.55; or

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

(i) present the examination invoices required by section 146.32(b)(1) to the Port Director before the merchandise is admitted into the zone;

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

(iii) have examination invoices containing a number to trace the shipment to the manifest, bill of lading, or air waybill of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and recordkeeping system of the operator. (19 CFR 146.32(d)).

(g) Admission of Certain Kinds of Shipments - Some kinds of shipments presented for admission to a zone require special treatment or consideration.

(1) Temporary Importations Under Bond - Merchandise entered under 19 CFR 10.31 as a Temporary Importation Under Bond may be admitted to a zone in zone-restricted status for cancellation of bond charges under 19 CFR 10.39. This is one of the purposes the Fourth Proviso, 19 USC 81c(a) was meant to serve. Upon receipt of Customs Form 214 for admission in zone-restricted status, the appropriate Customs officer shall examine the merchandise and execute Customs Form 3495 as provided in HB 35300-03, 1995 and CD 099 3240-062. A certificate of arrival in zone-restricted status on Customs Form 214 provided by the zone operator under the provisions of 19 CFR 146.38 and see Section 6.11 FTZM shall constitute evidence of exportation sufficient for cancellation of TIB bond charges under 19 CFR 10.39. TIB bond charges may not be canceled upon admission to a zone in any status other than zone-restricted. (See Section 5.8(b)(3) FTZM) However, admission in zone-restricted status is at the option of the applicant for admission. The merchandise may be admitted in a foreign status, but the merchandise will not be considered exported. The TIB bond charges will not be canceled upon admission under these circumstances. Unless the bond charges are otherwise canceled by actual exportation or destruction as provided in 19 CFR 10.39, the importer may be assessed liquidated damages after the merchandise has been admitted.

(2) Transfer from a Bonded Warehouse - Merchandise entered for warehouse and transferred to a zone, other than temporarily for the purpose of manipulation, may be admitted only in zone-restricted status, as provided in 19 CFR 146.44(d) and see Section 5.8(c) FTZM

(3) Transfer from an ATF Bonded or Controlled Premises - Non-tax-paid alcoholic beverages or tobacco products transferred from ATF-bonded or controlled premises may be admitted only in zone-restricted status, as determined in CSD 82-112. (See Section 6.12 and 11.5(d) and (e) FTZM)

(4) Trade Fair Entries - Any merchandise entered for a trade fair under 19 CFR Part 147 may be transferred to a foreign-trade zone at any time before, or within 3 months after, the closing date of the fair. (19 CFR 147.42(a)). Such merchandise may be admitted in privileged foreign, nonprivileged foreign or zone-restricted status, at the option of the applicant for admission, unless otherwise restricted by law.

(5) Admission of Merchandise from Another Zone - Merchandise transferred from another zone at the same or a different port will be admitted under the procedures in 19 CFR 146.32 and 146.66(d) (and see Section 6.7 FTZM). However, no statistical copy on Customs Form 214A shall be provided, and the Port Director may waive the presentation of a commercial invoice and the examination of the merchandise. The merchandise will not be admitted to the zone until a Customs permit is issued, except in the case of direct deliveries under 19 CFR 146.39 and 146.40. Merchandise must retain the zone status from the transferring zone upon the admission to the new zone. Any subsequent application to change status designation must consider all activity since the first zone admission.

6.8 Transfer to Zone - The cartage of merchandise for admission to a zone shall be done by a cartman licensed by Customs who shall give bond to protect the government against any loss of merchandise while being carted. (See 19 USC 1565). The importer shall select the cartman who will deliver the merchandise to the zone, subject to checks by the Port Director to see that the cartman and its employees are properly licensed under the procedures in 19 CFR Part 112, Subparts C and D. A foreign-trade zone operator may engage in cartage or lighterage under his bond only for merchandise destined for his foreign-trade zone and may also transport merchandise to his zone from anywhere within the approved boundaries where the foreign-trade zone is located. (19 CFR 112.2(b)(1) and (2)). Zone operators may be designated private bonded carriers for the transportation in bond and cartage of their own merchandise. (19 CFR 112.12(b)(3)). Any operator may be licensed as a cartman under the procedures in 19 CFR Part 112, Subparts C and D. Bonded carriers are authorized for cartage to zones. (T.D. 86-16). Payment of cartage costs is the responsibility of the importer, not the operator. The procedures for transferring merchandise from one zone and receipt into another zone are explained in Sections 9.11 and 6.7(g)(5) FTZM.

(a) Transfer Procedure - Merchandise shall be transferred to a zone from the place of unloading, Centralized Examination Station, or other location upon the order or approval of the Port Director on Customs Form 6043, or Customs Form 7512 (in case of in bond shipments), or the "Permit to Transfer" part of Customs Form 214.

(19 CFR 125.31). The cartman shall sign the form upon pickup, acknowledging receipt of the merchandise. (19 CFR 125.34) Generally, merchandise will not be transferred to a zone until it has been released from the place of unloading, CES, or other location. However, the Port Director may authorize transfer to a zone for the purpose of examination, as provided in 19 CFR 151.6 and 151.7. In that case, the merchandise will be released to the operator after examination at the zone.

6.9 Receipt into Zone - The zone operator shall accept for admission only merchandise for which an admission permit has been given by the Port Director. (19 CFR 146.32(a)). Acceptable evidence of the permit is a signature by an authorized Customs officer in Block 31 of Customs Form 214 with an accompanying date in Block 33, or approval for direct delivery procedures.

(a) Supervision and Receipt Procedures - The Port Director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer. (19 CFR 146.37(d)) In that case, the operator shall supervise the receipt of merchandise into the zone and report the receipt and condition of the merchandise. (19 CFR 146.4(a) and 146.37(d)). Upon delivery of the merchandise to the zone, the operator shall:

(1) check to see that the appropriate signature and date for permit of admission appear on Customs Form 214, unless under direct delivery procedures;

(2) check the description of the merchandise on Customs Form 214 and the commercial invoice against the merchandise, unless under direct delivery procedures;

(3) check the quantity in the shipment against the quantity in the cartage documentation on Customs Forms 6043, 214, 7512, or other supporting documentation. This is important, since the cartage transaction may cover only a part of the merchandise approved for admission, or there may have been a quantity discrepancy upon pickup by the cartman;

(4) where applicable, check any and all of the seals affixed to the conveyance, request the concurrence of the carrier as to their condition, and report any broken, missing, or replaced seals to the Port Director. If there is a seal or conveyance discrepancy (i.e., any condition that would allow the removal or switching of merchandise without breaking the seal), the operator shall hold the conveyance and its contents intact pending the advice of the Port Director. The Port Director may choose to physically supervise the unloading of the conveyance. Otherwise, the Port Director will authorize the operator to break the seal. If there is no seal discrepancy, the operator may break the seal unless specific instructions have been issued

in advance by the Port Director to hold the conveyance intact. (19 CFR 146.8 and see Sections 10.4(c), (d), and (e) FTZM);

(5) have the merchandise unladen and received directly into the activated area (the merchandise should not be stored, even temporarily, outside the activated area);

(6) report to the Port Director any discrepancy in the quantity or condition of the merchandise found upon receipt in the zone; (19 CFR 146.37(c) and see Section 10.4 FTZM);

(7) in a zone lot number management system, mark the packages with the unique CF 214 number so that the merchandise can be traced to a particular Customs Form 214. (This marking requirement shall be deemed met if the packages (or unitized or palletized groups of packages) are marked at sufficient intervals of space to allow Customs to distinguish one zone lot from another during compliance reviews (formerly spot checks) and audits);

(8) adequately identify merchandise that is accounted for under a Customs-authorized inventory method other than specific identification, so that Customs can conduct an inventory count (the merchandise need not be marked with a zone lot number or a Customs Form 214 number). (19 CFR 146.37(d)).

(b) Liability for Merchandise - The operator shall be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as described on the Customs Form 214, except as modified by a discrepancy report:

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

(2) submitted on a Manifest Discrepancy Report (MDR) under the provisions of 19 CFR Part 158 Subpart A, and CD 099 3240-067A, within 20 days after admission of the merchandise. The operator may file an MDR on behalf of the person who applied for admission of merchandise to the zone. (19 CFR 146.37(c)). Liability and discrepancy reporting are discussed in more detail in Section 10.4 FTZM.

(c) Recordkeeping upon Admission - Upon receipt of merchandise which has been admitted to the zone, the operator shall:

(1) open a sequential zone admission number file marked with the sequential zone admission number of the Customs Form 214 as the file

number, and place the Customs Form 214, the examination invoice, the cartage documentation, and any other required documentation in the zone admission number file folder; (19 CFR 146.37(a)(1))

(2) where a Customs-approved inventory method other than a zone lot system is used, file the Customs Form 214 in sequential order by the zone admission number; (19 CFR 146.37(a)(2))

(3) record the merchandise in a receiving report using the zone lot number or unique identifier (for merchandise under an authorized inventory method), so that the merchandise is traceable or attributable to a specific Customs Form 214; (19 CFR 146.22(a))

(4) reconcile the quantities received in the zone to the receiving report, such as the invoice or similar document; (19 CFR 146.22(b))

(5) record in an admission suspense account any merchandise admitted for which documentation is incomplete or which is unacceptable to the inventory system (19 CFR 146.22(c)). (The difference between an admission suspense account and a temporary deposit to complete documentation is explained in Section 6.5(c)(6) FTZM); and,

(6) record the receipt of the merchandise in the inventory system records from the receiving report, using the zone lot number or unique identifier for traceability or attribution, stating the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number. (19 CFR 146.22(d))

Further information on recordkeeping upon admission is set forth in Section 7.8(b) FTZM.

(d) Receipt Admission of Domestic Status Merchandise - The operator shall supervise the admission of domestic status merchandise for which no permit is required, and shall account for its admission in its normal inventory control and recordkeeping system. (19 CFR 146.4(a) and 146.21(a)(1)). If merchandise is formally admitted to the zone by being placed on the Customs Form 214, then upon delivery of the merchandise to the zone, the operator shall:

(1) record the merchandise in a receiving report using a zone lot number or unique identifier for traceability or attribution;

(2) reconcile quantities actually received to a receiving report or document, such as an invoice;

(3) record in a suspense account any merchandise received without complete documentation or which is unacceptable to the inventory system; and,

(4) record the merchandise receipt in the inventory system from the receiving report using the zone lot number or unique identifier for traceability or attribution; and record the quantity and date admitted, cost or value where appropriate, zone status, and description of the merchandise including any part or stock number. (19 CFR 146.22)

In addition, the operator should for their own safeguard:

(1) check the merchandise against the carrier's documentation, acknowledge receipt by signing and dating the receipt document, noting any exceptions in quantity or condition of the merchandise in the required spaces, and accept a copy of the receipt document;

(2) check any seals, if used, and note any seal irregularities in the receipt document; and

(3) have the merchandise unladen and promptly received into the activated area of the zone.

6.10 Direct Delivery of Merchandise - This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214. (19 CFR 146.39(a)). It is designed for low-risk, repetitive shipments for which the operator is the owner or purchaser of the goods.

(a) Application for Direct Delivery Procedure - An operator meeting the criteria of 19 CFR 146.39(c) as explained by Section 6.10(a)(1) FTZM below shall file a written application with the Port Director at least 30 days before the direct delivery procedure is to become effective. The application will describe the merchandise to be handled or processed and the kind of operation which it will undergo in the zone. (19 CFR 146.39(b)). The application may cover all or a part of the merchandise expected to be admitted to the zone. The merchandise covered by the application shall be described in sufficient detail to enable Customs officers to determine whether the merchandise covered by the application is eligible for direct delivery procedures.

(1) Criteria for Approval - The Port Director will approve the application if all of the following criteria are met:

(i) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone. (19 CFR 146.39(C)(I)).

Examples Which Do Not Meet This Criterion:
Products subject to quota or visa. (19 CFR 146.39).

Merchandise which the Port Director has reason to believe has been, or will be, described inaccurately or incompletely in admission documentation presented by the operator under 19 CFR 146.40

(ii) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site. (19 CFR 146.39(c)(2)). Any new class or kind of merchandise must first be approved in writing by the Foreign-Trade Zones Board. This criterion excludes from consideration any merchandise not within the scope of authority as set out in the application to the Board and approved by the Board Order. Customs must have an opportunity to examine and become familiar with any such merchandise before it may be included in an application for direct delivery. Supplemental applications for direct delivery procedures may be filed for any merchandise meeting the requirements and not included in the original application.

(iii) The operator is the owner or purchaser of the goods. (19 CFR 146.39(c)(3)). A finding as to whether the operator is the owner or purchaser of the goods is determined by Customs interpretation as to what constitutes the "owner or purchaser" under 19 USC 1484(a)(2)(B) CD 099 3530-002. The Port Director may demand documentation to ascertain the operator is the owner or purchaser of the goods. There may be more than one operator of a general purpose zone.

(2) Decision on Application - The Port Director shall approve the application for direct delivery procedures if the criteria in 19 CFR 146.39(c) are met. The Port Director shall promptly notify the operator in writing of Customs decision on the application. If the application is denied, the Port Director shall specify the reason for denial in his reply. The Port Director's decision will constitute the final Customs administrative determination concerning the application. (19 CFR 146.39(d)).

(3) Revocation of Approval - The Port Director may revoke the approval given under this section if it becomes necessary for Customs to routinely examine the merchandise or documentation before or upon admission to the zone. (19 CFR 146.39(e)). The revocation may cover all or part of the merchandise for which approval for direct delivery had previously been

given. Upon revocation, the merchandise may be admitted to the zone only under a prior permit issued under 19 CFR 146.32(c).

(b) Direct Delivery Procedures - The primary responsibility for direct delivery procedures rests with the operator, as a means of expediting the delivery of merchandise to the zone without having to await a prior approval for admission by Customs. If a shipment to be admitted to a zone includes both merchandise approved for direct delivery procedures and merchandise not approved for direct delivery procedures, none of the shipment will be authorized for direct delivery to the zone, unless the applicant segregates the packages containing merchandise not approved for direct delivery from the rest of the shipment, and holds the segregated portion intact at a secure location designated by the Port Director pending approval of a separate application for admission. Operators are advised to have a secure area of their zone approved by the Port Director to accommodate this situation prior to application for direct delivery. If the segregation and separate admission requirements are met, the portion of the shipment approved for direct delivery may be delivered to the zone pursuant to the provisions of 19 CFR 146.40 and CD 099-3210-015.

(1) Arrival of Conveyance - Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise for direct delivery, the operator shall:

(i) collect in bond or cartage documentation from the carrier;

(ii) check the condition of any seal affixed to the conveyance and, if broken, missing, or improperly affixed, so notify the Port Director and receive instructions before unloading the merchandise;

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

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

(v) forward the in bond or cartage documentation so as to reach the Port Director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

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

(vii) notify the Port Director, by annotation on Customs Form 214, when the entire contents of a shipment have been admitted. (19 CFR 146.40(a)). The Port Director should cooperate with the operator in seeing that operator personnel are properly trained to obtain in bond and cartage documentation from the carrier and transmit it to Customs as specified in 19 CFR 146.40(a). When the documentation is received by Customs, the appropriate in bond and cartage transactions under Customs control will be closed out. Merchandise which has been received by the operator, may be examined by Customs officers at any time on the basis of comparison with in bond, cartage, bill of lading, or manifest documentation, or information obtained independently by Customs.

(2) Admission to Zone - There are two methods of reporting admission of direct delivered merchandise, depending on whether the applicant provides statistical reports on the admitted merchandise directly (electronically) to the Bureau of the Census.

(i) Cumulative Customs Form 214 - If the operator has an agreement with the Bureau of Census for direct (electronic) transmittal of statistical information, he shall submit to the Port Director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise (except for domestic status merchandise for which no permit is required under 19 CFR 146.43(a)) recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in bond (I.T.) numbers or the numbers of any cartage documents, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system. (19 CFR 146.40(c)(1))

(a) Required Data Elements - The data elements of Customs Form 214 that must be filled out include elements 1, 2, 6, 14, 16, and 23 through 27. The description in element 16 should be sufficiently descriptive to relate the merchandise to the permit given in Section 19 CFR 146.39(d). The I.T. numbers and the number of invoices required under Section 19 CFR 146.40(c)(1) may be inserted in elements 15 through 21, if there is sufficient space elsewhere on the form, or reported on a sheet securely attached to Customs Form 214. If the application for zone status in Item 23 covers more than one status for merchandise listed on the form, the attached or supporting documentation must show clearly which status applies to which merchandise. Since statistical information

will be reported directly to the Bureau of the Census, the statistical copy, Customs Form 214A, will not be presented or accepted by Customs under this procedure.

(b) Listing of Merchandise - The Port Director may waive the requirement in 19 CFR 146.40 (c)(1) for a complete listing accompanying Customs Form 214 of all merchandise, except merchandise in domestic status for which no permit is required, recorded into the inventory and recordkeeping system during the previous business day, if the operator provides such a listing separately or makes the information available upon request of the appropriate Customs officer. This waiver is analogous to that in 19 CFR 146.62(c) and is designed to avoid any unnecessary paperwork burden. The operator must still file Customs Form 214, and the requirement for I.T. numbers and the number of invoices on the form under 19 CFR 146.40(c)(1) will not be waived by Customs.

(ii) Individual Customs Form 214 - If a cumulative Customs Form 214 is not submitted as provided in 19 CFR 146.40(c)(1) and explained in Section 6.10(b)(2)(i) FTZM, the operator shall file with the Port Director each business day an individual Customs Form 214, with a statistical copy on Customs Form 214A, covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. (19 CFR 146.40(c)(2)).

This provision also states that the Customs Form 214A shall be submitted to the Bureau of Census (by Customs) no later than ten (10) days after the end of the month in which the merchandise was received in the zone.

(3) Merchandise not Admitted - Merchandise which is not admitted to a subzone or zone site as provided in this section within 15 calendar days after its arrival there, will be sent to general order. It is the operators responsibility to notify both Customs and the G.O. warehouse of the non-admitted merchandise. (19 USC 1940) The importer of record may also file an appropriate Customs entry for the merchandise and remove it from the zone premises.

(4) Inventory and Recordkeeping System - The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after

allowance by the Port Director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within case shortage (or overage) need not be reported on an MDR under CD 099 3240-067A, if the operator is able to report that information in another manner so that the Port Director can determine whether there is liability for the discrepancy under the bond of any party to the importation. (19 CFR 146.40(c)(4)).

(5) Liability for Merchandise - The operator is responsible under its Foreign-Trade Zone Operator's bond for merchandise for which it signs for receipt under 19 CFR 146.40(c)(4), whether or not they are admitted to the zone. The operator is responsible for the merchandise in its condition and quantity as described in the cartage or in bond documentation, except as modified by a discrepancy report provided in the manner specified in 19 CFR 146.37(c) and described in Section 10.4 FTZM. This responsibility pertains to the merchandise in its packed condition as delivered. Responsibility for the contents of the package is assumed upon admission as specified in 19 CFR 146.40(c)(4) and see Section 10.4(a) FTZM

6.11 Certificate of Arrival - Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the Port Director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone. (19 CFR 146.38). Such certifications will usually be presented on a form of the concerned Federal agency, as described in Sections 6.12 and 11.5 FTZM. If no specific form is presented or required by the concerned agency, the operator may present a copy of the Customs Form 214 for admission as the certificate of arrival. Federal law and regulations do not require the operator to provide a certificate of arrival to a state or local government agency, but they do not prohibit it either.

6.12 BATF Requirements - The forms in this section are presented by applicants for exemption from internal revenue taxes or claimants for drawback of internal revenue taxes under the regulations of the Bureau of Alcohol, Tobacco and Firearms set forth in 27 CFR Parts 252 (distilled spirits and other alcohol products) and 290 (tobacco products). These regulations provide for the withdrawal of the merchandise without payment of tax from BATF-bonded or controlled premises for transfer to a foreign-trade zone. The operator shall execute the certificates in these forms upon admission in zone-restricted status. The merchandise is considered by the BATF thereupon to have been exported for the purposes of Title 27, CFR, and any BATF bond liability of the applicant or claimant is thereby relieved. The original of the forms shall be returned to the applicant for admission for transmittal to the BATF regional director (compliance).

FORM	REGULATIONS
ATF Form 5100.11 (formerly ATF Form 206) Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.	27 CFR 252.92 252.122, 252.152, 252.261 and 252.290
ATF Form 5110.30 (formerly ATF Form 1582) Drawback on Distilled Spirits Exported.	27 CFR 252.190 252.261, 252.290
ATF Form 1582-A (5120.24), Drawback on Wines Exported.	27 CFR 252.211-220 252.261 and 252.290
ATF Form 1582-B (5130.6), Drawback on Beer Exported.	27 CFR 252.222 252.261 and 252.290
ATF Form 1689 (5130.12), Beer or Beer Concentrate for Exportation.	27 CFR 252.142, 252.261 and 252.290
ATF Form 5200.14 Notice of Removal of Cigars, Cigarettes, Cigarette Papers, or Cigarette Tubes.	27 CFR 290.198 and 290.207a

6.13 Drawback upon Admission - Drawback of duties and internal revenue taxes paid to the U.S. Customs Service is authorized under Section 313 TA, (19 USC 1313) and 19 CFR Part 191. The subpart dealing specifically with drawback upon transfer and admission to a foreign-trade zone is 19 CFR Part 191, Subpart R. Drawback is authorized upon admission only in zone-restricted status. (19 CFR 191.182 and see Section 5.8(b)(3) FTZM). Merchandise admitted in zone-restricted status for the purposes of drawback must be maintained under a zone lot system. Under certain circumstances drawback may be authorized on merchandise admitted in other statuses, but only upon actual exportation from the zone and Customs territory, or upon destruction, as provided in Section 1313, Title 19 and 19 CFR Part 191, and see Section 9.18 FTM.

(a) Manufacturing Drawback - Except for the evidence of exportation procedure, the procedures for manufacturing drawback (Section 1313(a), (b), and (d), Title 19) generally prescribed in 19 CFR Part 191 shall be followed. This applies to merchandise admitted in zone-restricted status, on articles manufactured or produced in the U.S. with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol. (19 CFR 191.183(a)).

(1) Notice of Transfer (Zone Admission) - The notice of zone transfer (zone admission) on Customs Form 214 shall be used in place of the documents under 19 CFR Part 191 Subpart G, to establish the exportation effected by the admission in zone-restricted status. The notice of transfer shall be filed in triplicate with the Drawback Office where the foreign-trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign-trade zone admission number and the foreign-trade zone lot number (19 CFR 191.183(b)(2)). Each notice of transfer shall show the:

(i) number and location of the foreign-trade zone;

(ii) number and kind of packages and their marks and numbers;

(iii) description of the articles including weight (gross and net), gauge, measure, or number; and

(iv) name of the transferor, (19 CFR 191.183(b)).

(2) Action by Zone Operator - After the articles have been admitted in the zone, the zone operator shall certify on a copy of the notice of transfer the admission of the articles (see certification in 19 CFR 191.184(d)(2)), and forward the notice to the transferor or the person designated by the transferor, unless the export summary procedure provided for in 19 CFR 191.73 is used. The transferor shall verify that the notice has been certified before filing it with the drawback claim. (19 CFR 191.183(c)).

(3) Drawback Entries - Drawback entries shall be filed on the form authorized by Customs to indicate that the merchandise was transferred to a foreign-trade zone. (19 CFR 191.183(d)). The "Declaration of Exportation" on the appropriate form shall be modified as follows:

DECLARATION OF TRANSFER TO FOREIGN-TRADE ZONE

I, (member of firm, officer representing corporation, agent, or attorney), of (Name of Company), declare that to the best of my knowledge and belief the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign-trade zone for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign-trade zone for domestic consumption.

Dated: _____

Transferor or agent

(b) Drawback from Continuous Customs Custody - The procedure described in 19 CFR Part 191 Subpart O shall be followed as applicable to drawback on merchandise transferred to a foreign-trade zone from continuous Customs custody. (19 USC 1557(a)), 19 CFR 191.184).

(1) Drawback Entry - Before the transfer of merchandise from continuous Customs custody to a zone for admission in zone-restricted status, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office a direct export drawback entry on Customs Form 7551 in duplicate. Customs Form 7551 shall indicate that the merchandise is to be transferred to a foreign-trade zone. The drawback office shall forward one copy of Customs Form 7551 to the zone operator. (19 CFR 191.184(b))

(2) Certifications of Operator and Transferor - After the merchandise has been admitted in the zone, the zone operator shall certify as an attachment to the copy of Customs Form 7551 the receipt of the merchandise (see sample in the Appendix to the FTZM) and forward the form to the transferor or the person designated by the transferor, unless the export summary procedure in 19 CFR 191.73 is used. After executing the declaration as shown in the Appendix to the FTZM, the transferor shall resubmit Customs Form 7551 to the drawback office in place of the bill of lading required by 19 CFR 191.156. (19 CFR 191.184(c)).

(c) Unused or Rejected Merchandise - The procedures described in 19 CFR Part 191, Subpart C relating to unused merchandise, and 19 CFR Part 191, Subpart D relating to rejected merchandise, shall be followed. (19 CFR 191.185(a); see 19 USC 1313(c)(j)).

(1) Drawback Entry - Before transfer of the merchandise to a zone for admission in zone-restricted status, the importer or a person designated in writing by the importer for that purpose shall file with drawback office an entry on Customs Form 7551 in duplicate. Customs Form 7551 shall indicate that the merchandise is to be transferred to a foreign-trade zone. The drawback office shall forward one copy of Customs Form 7551 to the zone operator. (19 CFR 191.185(b))

(2) Certifications of Operator and Transferor - After the merchandise has been admitted to the zone in zone-restricted status, the zone operator shall certify as an attachment to the copy of Customs Form 7551 the receipt of the merchandise (see sample in the Appendix to the FTZM) and forward the form to the transferor or the person designated by the transferor, unless the export summary procedure provided for in 19 CFR 191.73 is used. After executing the certification provided for in the Appendix to the FTZM, the transferor shall resubmit Customs Form 7551 to the drawback office in place of the bill of lading required by 19 CFR 191.156. (19 CFR 191.185(c)).

(d) Person Entitled to Claim Drawback - The person named in the foreign-trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback may be claimed by, and paid to the transferor. (19 CFR 191.186).

6.14 Harbor Maintenance Fee - When imported cargo is unloaded from a commercial vessel at a U.S. port and admitted into a foreign-trade zone, the applicant for admission of that cargo into the zone may be subject to the harbor maintenance fee as set forth in 19 CFR 24.24 and 146.22(e) and see Section 3.11(c) FTZM. It is important to note that the zone status of the merchandise is irrelevant to the application of the HMF.

Chapter 7

OPERATOR RECORDKEEPING AND REPORTING RESPONSIBILITIES

7.1 General - Recordkeeping is an important aspect of zone supervision because this allows Customs to check the representation made in the records against the physical reality found in merchandise in the zone and against independent records of other parties, such as Customs, carriers, sellers to the zone, and buyers from the zone. When audit-inspection supervision was initiated in zones in 1986, Customs ceased to maintain inventory records in zones, turning responsibility over to zone operators, subject to Customs compliance reviews, (formerly spot checks) audits, and liquidated damages for operator failure to properly maintain required records.

7.2 Authority for Operator Recordkeeping - Regulations concerning protection of the revenue shall be approved by the Secretary of the Treasury. (19 USC 81p). Under this general authority, regulations have been established in 19 CFR Part 146, requiring zone operators to maintain certain records and make certain reports, as will be described in this part of the Manual.

7.3 Authority for Importer Recordkeeping - Any owner, importer, consignee, or agent thereof who imports or knowingly causes to be imported any merchandise into the United States shall make, keep, and render for examination and inspection such records which (1) pertain to any importation, or the information contained in documents required in connection with the entry of the merchandise, and (2) are normally kept in the ordinary course of business. (19 USC 1508). This requirement is further described and interpreted in 19 CFR Part 163.

7.4 Customs Authority to Examine Zone Records - The Port Director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through, among other methods, a periodic audit of the operator's records or a review of recordkeeping in the zone. (19 CFR 146.3(b)). The operator shall permit representatives of the Board access to the zone. (19 CFR 146.4(b)), and see Section 3.3(c) FTZM). Although Customs laws do not, under certain circumstances, apply in zones, when merchandise is transferred from a zone to Customs territory or is otherwise not exempt from Customs laws under the FTZA, importers become subject to the records inspection requirement of Section 1508 and to the examination of books and witnesses under Section 1509, Title 19 whether or not the books or records are physically kept in the zone activated area.

7.5 Foreign-Trade Zone Board Authority to Examine Zone Records - The Board has authority to inspect the premises, operations and accounts of zone grantees and operators. (15 CFR 400.11(a)(6)).

7.6 Accessibility and Retention of Records - Records shall be readily available for Customs review. (19 CFR 146.4(d), 15 CFR 400.28(a)(7), 400.41). UIN records, open zone lot records, and zone admission files shall be considered readily available for review if they are located within the activated area, or close enough to the activated area so as not to impede, delay, or create confusion during a Customs compliance review (formerly spot check) or audit. The records should be capable of being produced for Customs review in the zone within four (4) hours of demand by a Customs officer. Automated records will be considered readily available if they are accessible through a video terminal which is located in or close to the activated area, with a capability for printing a hard copy. Records may be stored in hard copy, electronic tape/diskette/CD ROM media microfiche or as determined by company procedures. If the original records were electronic, they may be maintained in an electronic mode; however, if the original records were hard copies, they must be maintained as such unless the recordkeeper has utilized the alternative storage procedures in Part 163, Title 19, CFR (19 CFR 163.5). Closed lot records need not be retained in or adjacent to the zone, but must be retained within the area of jurisdiction of the Customs port responsible for supervision of the zone. However, if closed lot records are retained in or close to the activated area, they should be segregated from open lot records.

(a) Records Retention Period - The operator shall maintain all records, as defined in 19 CFR 163.1, and required under 19 CFR Part 146 pertaining to zone merchandise for 5 years after the merchandise is removed from the zone. (19 CFR 146.4(d)). In the case of merchandise which has been transferred from a zone to Customs territory or is otherwise not exempt from the Customs laws, records pertaining to importation which are required or made under 19 CFR 163.3 shall be kept for 5 years after the date of entry of the merchandise. (19 CFR 163.4(a)). Note that since the five (5) year requirement begins with transfer from the zone, records must be maintained for longer than five (5) years since an entry must be traceable back to the related admission.

7.7 Safekeeping of Records and Proprietary Information - The operator is responsible for safekeeping of records concerning merchandise in a zone. The operator, at its liability, may allow a zone user to store, safeguard, and otherwise maintain inventory records pertaining to their own merchandise. (19 CFR 146.4(c)). Only authorized personnel should have access to the records concerning zone merchandise. Operators shall protect proprietary information in its custody from unauthorized disclosure. (19 CFR 146.4(d)). Generally, "proprietary information" is confidential trade or business information which would be exempt from disclosure by the Government under 5 USC 552(b)(4), such as value information on invoices or Customs forms. The disclosure of confidential information by a Customs officer is punishable by dismissal, suspension, or other disciplinary action, and if done for a valuable consideration, by criminal prosecution. (19 CFR 103.34(a)).

7.8 Inventory Control and Recordkeeping System - An operator shall maintain the inventory control and recordkeeping system of the zone in accordance with the provisions of 19 CFR Part 146 (19 CFR 113.73(a)(2), 146.4(d)). An operator shall maintain either manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems capable of:

- (1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status or status changed, stored, exhibited, manipulated, manufactured, destroyed, transferred and/or removed from a zone;
- (2) producing accurate and timely reports and documents as required by regulation;
- (3) identifying overages and shortages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;
- (4) providing all the information necessary to make entry for merchandise being transferred to the Customs territory including, but not limited to, quantities, descriptions, values, HTS classification, and status; and,
- (5) providing an audit trail to Customs of Customs forms from admission, through storage, manipulation, manufacture, destruction, exhibition and or transfer of merchandise from a zone either by a Customs-approved inventory method, i.e., zone lot number (ZLN) or unique identifier number (UIN). (19 CFR 146.21(a)).

The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system. (19 CFR 146.21(b)(3)). However, the operator remains liable for complying with all inventory control and recordkeeping requirements of 19 CFR Part 146, including 19 CFR 146.21(c).

(a) Operator's Procedures Manual - The operator shall provide the Port Director with an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of 19 CFR 146.6(b)(4) and 146.21(b). The manual shall describe, in detail, the methodology to be used in recording transactions in the operator's inventory and recordkeeping system. The purpose of the manual is to facilitate Customs compliance reviews (formerly spot checks) and audits by explaining how the recordkeeping system works; however, operators and users are responsible for further explaining their system and its operation to Customs officials upon request. The operator shall keep current its procedures manual and shall submit to the Port Director any change at the time of its implementation. (19 CFR 146.21(b)(2)).

(1) Maintenance by Zone User - An operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. An operator shall furnish Customs a copy of the zone user's procedures manual, including any subsequent changes. However, an operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failure of a system. (19 CFR 146.21(b)(3)).

(2) Significance of Customs Receipt of Manual - The operator's procedures manual and subsequent changes will be furnished to the Port Director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system. (19 CFR 146.21(b)(4) and see Section 4.7(a)(2) FTZM).

(b) Receipt and Admission to Zone - All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under 19 CFR 146.43, will be traceable or attributable to a Customs Form 214 and accompanying documentation. Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the Port Director. (19 CFR 146.22(a), (b)).

The "unique identifier" specified in 19 CFR Part 146, Subpart B, refers to the unique numerals, letters, or other characters used to identify a specific inventory category, including fungible merchandise. It is not to be confused with the sequential zone admission number of the Customs Form 214 (19 CFR 146.32(a)) which is used to admit all merchandise to a zone, other than domestic status merchandise for which no permit is required.

(1) Suspense File - Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in an admission suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it will be formally admitted to the zone under 19 CFR 146.32 or 146.40. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The admission suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made. (19 CFR 146.22(c)). The admission suspense file should not be confused with a temporary deposit due to incomplete documentation under 19 CFR 146.35. (See Section 6.5(c)(6) FTZM).

(2) Recording into Inventory Record System - Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier number for traceability or attribution. The inventory records will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number. (19 CFR 146.22(d)).

(3) Zone Admission Files - The Customs Modernization Act authorizes Customs recognition of computer records. In those situations where the zone lot records are maintained by use of a computer, there is no requirement that the operator maintain a hard copy zone lot file. Instead the files authorized for a UIN system at Section 7.8(b)(4) FTZM are permissible. Except as provided in Section 7.8(b)(4) FTZM, upon receipt of merchandise in the zone, the operator shall open and maintain a zone admission file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs form 214. The zone admission file shall be maintained in sequential order by using the sequential number assigned to each Customs Form 214 as the file reference numbers. (19 CFR 146.37(a)(1)). Under a lot number inventory system, in the instance where more than one zone lot number is received under one zone admission number, i.e. Customs Form 214, the file is still maintained in the same order. The packages of merchandise shall be marked with the zone lot number, so the merchandise can be traced back to a particular Customs Form 214 that these zone lot numbers were received under. (19 CFR 146.37(d), see Section 6.9(a)(7) and 8.2(a)(1) FTZM).

(4) Authorized Inventory Method - Where a Customs authorized inventory method other than a zone lot number system (specific identification of merchandise) is used, e.g. First-in, First-Out (FIFO), the operator shall maintain a file of all Custom Forms 214 in sequential order. (19 CFR 146.37(a)(2)). If an operator wishes to identify merchandise using a system other than zone lot or FIFO they should request approval through the internal advice procedures in 19 CFR 177.11(b)(1)(ii). The request should state the sources of the merchandise to be identified and the dutiable status of that merchandise, as well as describing the zone operation to which the merchandise is subject.

(5) Temporary Deposit - The operator shall maintain an inventory and recordkeeping system capable of accounting for all merchandise temporarily deposited in a zone, whether or not it is later admitted to

the zone (19 CFR 146.21(a)(1)). Applications for temporary deposit shall be made on a sequentially numbered Customs Form 214, clearly annotated "Temporary Deposit in Zone". (19 CFR 146.35(b); see Section 6.5(c) FTZM. The unique number shall be distinct in series, suffix, prefix, or other indicator from those assigned to merchandise under admittance to a zone. A file shall be assigned a temporary deposit number. The file shall be closed when the merchandise is removed from the temporary deposit status.

(6) Direct Delivery - Under 19 CFR 146.39, certain criteria must be met to allow direct delivery to a zone without prior permit.

(c) Accountability for Zone Merchandise - The operator shall have an inventory control and recordkeeping system(s) capable of accounting for all merchandise stored, exhibited, manipulated, manufactured, processed, destroyed, or granted a zone status change. (19 CFR 146.21 (a)(1)). Merchandise admitted to a zone can be identified by either a zone lot number inventory control method (ZLN) or a unique identification number inventory method (UIN).

Zone Lot Number (ZLN) - A collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot number. Use of this method requires maintenance of zone lot records, and physical segregation and marking of zone lot numbers.

Unique Identifier Number (UIN) - This inventory method controls merchandise in a zone by cumulative identification or record identity, i.e., by unique numbers and/or letters that identify merchandise admitted to a zone. Inventory levels are adjusted on a first in first out (FIFO) basis or foreign first (FOFI) basis pursuant to generally accepted accounting principles. Merchandise need not be segregated.

(1) Inventory Records - The inventory records will specify by zone lot number or unique identifier number:

1. location of merchandise;
2. zone status;
3. cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

4. beginning balance, cumulative receipts and removals, adjustments, and current balance on hand by date and quantity;
5. destruction of merchandise; and
6. scrap, waste, and by-products. (19 CFR 146.23(b)).

A zone lot number or unique identifier number will be used to identify and trace merchandise in a zone. (19 CFR 146.23(a)(1)).

(2) Lot Number System (Specific Identification) - Under a zone lot number system of specific identification for merchandise received and admitted to a zone, the zone lot number must be assigned at admission. A zone operator may choose whatever lot number he requires. The zone lot number may be a consecutive number assigned to the merchandise, it may be the lot number already used by the company for other purposes, or the sequential number assigned by the operator to the Customs Form 214 upon admission. If there is more than one zone lot number assigned to merchandise placed on a Customs Form 214, the zone admission number should not be utilized as a zone lot number. In an instance where every admission of merchandise is only one zone lot, the sequential zone admission number assigned to the Customs Form 214 may be utilized as the zone lot number. The zone lot number must be displayed on the merchandise cartons, boxes, etc. (19 CFR 146.37(d)); also see Section 6.9(a)(7) FTZM). The merchandise shall be physically segregated to distinguish one zone lot from another. Each zone lot number shall be identified in the operator's inventory recordkeeping system. The zone admission file will be maintained as described in Section 7.8 FTZM.

When zone lot number merchandise is manipulated by combining merchandise from different zone lot numbers, a new manufacturing or finished product lot number will be established in the record to show, in addition to the information specified in 19 CFR 146.23(b); and Section 7.8(c)(1) FTZM, the original zone lot numbers from which the merchandise has been transferred.

EXAMPLE:

100 Fishing poles admitted under zone lot #860813
100 Fishing reels admitted under zone lot #860814

50 Fishing kits (manipulated from zone lot #'s 860813 and 860814). New finished product lot #860815A must be traceable back to zone lot numbers 860813 and 860814.

Note: The zone's Grant of Authority must authorize the activity taking place in the zone.

(3) Authorized Inventory Method - A zone operator may request, under the procedures of 19 CFR Part 177, approval from Customs Headquarters for an authorized inventory method in lieu of the zone lot number system. (19 CFR 146.23(a)(2) and 146.37 (a)(2)). Customs has already approved as inventory methods First-in, First-Out (FIFO) under CSD 81-62. An operator need not request approval for his zone of an inventory method already approved for general use by Customs Headquarters. Aside from this method, the FTZA specifically authorizes Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) as an inventory method for feedstocks for petroleum refineries operating in zones. (19 USC 81c(d); See Section 11.6(j) FTZM).

FIFO as approved in CSD 81-62 applies to fungible merchandise, i.e. merchandise which for commercial purposes is identical and interchangeable in all situations. (19 CFR 146.1(b)(12)).

(i) First In First Out (FIFO) - Under the FIFO method, any merchandise withdrawn from stock is assumed, in accordance with good business practice, to be withdrawn from the oldest stock first. In applying FIFO procedures, it is important to note that each zone admission is considered a layer and the zone operator is responsible for identifying the appropriate sequence of transfers from the zone to assure the proper layer was decremented. This procedure becomes critical where different costs or values and/or different zone statuses are involved in the fungible merchandise. Since fungible merchandise, is, by definition, commercially interchangeable in all situations, it should be stored together whenever practical. Identification shall be maintained in the inventory control system records, generally, by description and part or stock number. A history file, reflecting the layers by date of admission, shall be maintained by the zone operator to provide the necessary details for Customs compliance reviews (formerly spot checks) and audits.

(4) Domestic Status Merchandise - The operator shall maintain an inventory control and recordkeeping system(s) capable of accounting for all merchandise in the zone, including domestic status merchandise. Domestic status merchandise which has lost its identity as domestic merchandise will be treated as foreign merchandise in nonprivileged foreign status. It will be considered to have lost its identity as domestic merchandise if the Port Director determines that it cannot be identified positively as domestic merchandise on the basis of an examination of the merchandise or consideration of any proof that may be submitted by a party in interest. Acceptable proof includes, but is not limited to a recordkeeping system(s). (19 CFR 146.42(c); see Section 5.7(a)(3) and 5.7(d) FTZM). There is no authority under the FTZA permitting the substitution in a zone of domestic and imported merchandise, similar to the authorization found in Section 313(b) (19 USC 1313(b)) TA relating to drawback. Merchandise manufactured in a zone under such conditions is subject to full duty if sent into Customs territory. (TD 54873(2) and see comment and explanation in CSD 82-152). Inventory methods involving record identification and attribution, such as FIFO or FOFI, are not substitution as understood in TD 54873(2) and CSD 82-152.

Products derived in part from domestic status merchandise and in part from foreign status merchandise may retain their respective zone statuses when the quantities derived from the merchandise from which they were manufactured can be established through inventory control and accounting procedures approved by Customs. (CSD 81-67). For example, a known volume of one liquid in domestic status may be mixed with a known volume of another liquid in foreign status and retain its identity as domestic status merchandise when the proportion of domestic and foreign components of the mixture have been determined by independent volume measurements of each domestic and foreign component prior to their being mixed, assuming that it is possible to accurately calculate the quantity of domestic components in the mixture. (CSD 82-152).

Physical shortages identified in fungible merchandise consisting of a combination of foreign and domestic status will be treated as a shortage of foreign status merchandise unless it can be identified positively as domestic status merchandise. (19 CFR 146.42(c)). Such identification would include any evidence that status has been properly maintained under an inventory method authorized by Customs Headquarters.

Importations for which a formal entry would not be required may be admitted to a zone only in domestic or zone-restricted status after having been entered into the Customs territory with or without payment of duty, as appropriate.

(5) Petroleum Refinery Inventory Accounting - Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary of the Treasury that protects the revenue. (19 USC 81c(d), 19 CFR Part 146, Subpart H; See Section 11.6(j) FTZM).

(d) Transfer of Merchandise from Zone - All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping systems. The inventory control and recordkeeping systems for merchandise transfers must have the capability to trace all transfers back to a zone admission under a Customs authorized inventory method or the zone lot system. (19 CFR 146.24(a)(1), (2)). This recordkeeping responsibility applies to the transfer of merchandise which has already been constructively transferred to Customs territory and entered for consumption, although it is no longer in zone status. (See Section 9.16(d)(2) FTZM).

The inventory control and recordkeeping systems must be capable of providing all information necessary to make entry for transfer of merchandise from the zone. (19 CFR 146.21(a)(4) and 146.24(b)).

(e) Physical Inventory - The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an on-going inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the Port Director of any discrepancies in accordance with 19 CFR 146.53, 19 CFR 146.23(c). The physical inventory may, but need not be, conducted in conjunction with the annual reconciliation report under 19 CFR 146.25. Identification of overages and shortages in the inventory system are required whether or not they are recorded as an adjustment to inventory. Port Directors shall query each zone to determine their physical inventory schedule and to assure that prior notification is given of each inventory.

(f) Annual Reconciliation - The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the Port Director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for compliance reviews (formerly spot checks) or audit by Customs and need not furnish it to Customs unless requested. There is no form

specified for the preparation of the report. The report must contain a description of merchandise, for each zone lot number or unique identifier number, showing zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year. (19 CFR 146.25(a), (b)).

(1) Certification to Customs - The operator shall submit to the Port Director within 10 working days after the annual reconciliation report is complete, a letter signed by the operator certifying that the annual reconciliation report has been prepared, is available for Customs review, and is accurate. The certification letter must contain the name and street address of the operator, where the required records are available for Customs review, and the name, title and telephone number of the person having custody of the records. Port Directors shall maintain a suspense file to assure that the certification of the annual reconciliation is timely received from each zone operator. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with 19 CFR 146.53; see Section 10.5 FTZM). These reports must accompany the certification letter. (19 CFR 146.25(c)).

(g) Annual System Review - The operator shall perform an annual internal review of the inventory control and recordkeeping system(s) and shall report to the Port Director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of 19 CFR Part 146, Subpart B, (19 CFR 146.26).

(h) Sanctions for Recordkeeping Violations - The operator is subject to assessment of liquidated damages by the Port Director for violations of the CR involving the inventory control and recordkeeping system(s) under 19 CFR 113.73(a)(2). In addition, the activated status of the zone may be suspended by the Port Director for cause on the grounds that the inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations. (19 CFR 146.82(a)(8)).

7.9 Zone Admission File Maintenance -

(a) Lot System - If the merchandise is accounted for under specific identification, and not under another authorized inventory method, the operator shall maintain a zone admission file containing a copy of Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. There may be multiple zone lot numbers received under one Customs Form 214 sequential admission number. As previously noted in Section 7.8(b)(3) FTZM, if lot records are maintained in a computer system, there is no requirement that a zone operator maintain a hard copy file of each individual zone lot number. Instead, files maintained by a

sequential CF 214 number are permitted. The zone admission file will be maintained in sequential order by using the sequential number assigned by the operator to each Customs Form 214 as the reference number. (19 CFR 146.37(a)(1)). In those instances where computerized lot records are not maintained, then a zone admission file will be maintained in sequential CF 214 admission number order. The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise covered by the invoice from the zone upon demand of that person or the Port Director. (19 CFR 146.37(b) and see Section 9.7(a)(5) FTZM). In the zone admission file will be copies of all permits by Customs to admit, exhibit, manipulate, manufacture, process, destroy, or transfer zone merchandise, and any other documents necessary to account for any change in the condition or quantity of merchandise while it is in the zone. If a yearly blanket Customs Form 216 has been approved by Customs, it is not necessary to keep a copy in each file, but maintain it separately for reference. Each permit or other document should be recorded in the inventory and recordkeeping system within two working days after the event occurs so the file will be current when reviewed by Customs officers.

Zone Admission File Contents - Customs forms and other documents that may be expected to be maintained in the zone admission file include, but are not limited to:

FORM NUMBER AND NAME	USE
1. Deposit in Zone	
Customs Form 214, Application for Foreign-Trade Zone Admission and/or Designation	Admission to zone and selection of zone status
Customs Form 6043, Delivery Ticket	Transfer to zone pursuant to permit on CF 214
Customs Form 7512, Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit	Transfer to zone pursuant to permit on CF 214, or direct delivery to zone with concurrence of carrier
Manifest Discrepancy Report (MDR)	Quantity discrepancy found before or upon admission to zone. Free form letter with supporting documentation prepared by the carrier or operator

Customs Form 6423, Notice of Damage, Shortage, or Sample	Report of within case damage or shortage found by Customs officer, or report of sample taken by Customs officer
Customs Forms 7514, 7512, or 7551	Claim of drawback on merchandise admitted to zone
BATF Forms 5100.11, 1689, 5110.30, 1582-A, and 1582-B	Transfer of alcoholic beverages to zone without payment of Internal Revenue tax
BATF Form 5200.14	Transfer of tobacco products to zone without payment of Internal Revenue tax
2. Operational Activities	
Customs Form 216, Foreign-Trade Zone Activity Permit	Exhibition, manipulation, manufacture, processing, or destruction of zone merchandise; temporary removal and return of zone merchandise
Customs Form 214 or Customs Form 7501	Report overage found in zone
Customs Form 7501, or Manifest Discrepancy Report (MDR)	Report shortages found in zone
Operator's form or written statement	Used for reporting shortages of less than 1% and/or \$100.00 in duty
Customs Form 214	Request for zone status change for goods in zone
Customs Forms 4315, Application for Allowance in Duties	Report of merchandise lost through casualty or other qualifying causes
Customs Form 5955A, Notice of Penalty or Liquidated Damages Incurred and Demand for Payment	Default involving merchandise
3. Transfers from Zone	

Customs Form 3461/Estimated Customs Form 3461(Immediate Delivery)	Entry for consumption
Customs Form 7501, Entry Summary	Entry for consumption
Customs Form 7501, Entry Summary consumption	"Live" entry for consumption
Customs Form 368, or 368A	Informal Entry
Customs Form 7512, Estimated Customs Form 7512 Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit	Entry for transportation, exportation, transportation and exportation, or vessel or aircraft supply and certain other goods
Customs Form 5125, Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use	Entry for supplies for fishing vessels
Customs Form 6043, Delivery Ticket, Customs 7512	Removal for transfer to another zone, or transfer to a bonded warehouse, or dock or airport for vessel or aircraft supply or for exportation
Customs Form 216, Foreign-trade zone Activity Permit	Temporary removal and return of zone merchandise; removal of zone status merchandise for which no entry is required

(b) UIN or Other Customs Authorized Systems – In a UIN or other Customs Authorized inventory system, the zone admission file consists of the CF214 Application for Foreign-Trade Zone Admission and/or Designation and supporting documentation. The zone admission file will be maintained in a sequential order based on the zone admission number. Documentation related to other zone activities and/or removal of the merchandise is kept as part of the inventory control system(s) and need not be kept in the zone admission file. (19 CFR 146.37 (a)(2)).

7.10 Transfer of Merchandise History to Another Zone - When merchandise is transferred from one zone to another, including a zone at the same Customs port, the operator of the

transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred. The documentation to be forwarded is set forth in 19 CFR 146.66(c) and described in Section 9.11(b) FTZM and may be transmitted by electronic means.

7.11 Record of Foreign-Trade Zone Activity Under Customs Permit - The operator shall record on Customs Form 216 the results of an approved manipulation, processing, manufacture, exhibition, temporary removal or certification of destruction, other than by a blanket application, unless the Port Director chooses to physically supervise the operation. (19 CFR 146.52(d), (e); see Section 8.3(d) and 8.4(e) FTZM).

(a) Blanket Application - The operator shall maintain a record of an approved manipulation, manufacture, process, exhibition or certification of destruction in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation. A temporary removal from a zone must be reported on an individual Customs Form 216 unless otherwise approved by Customs. (19 CFR 146.52(d)(2)).

7.12 Reporting of Merchandise Discrepancies - Discrepancies in the quantity or condition of merchandise admitted to, within, or transferred from the zone shall be reported by the operator to the Port Director as provided in 19 CFR 146.37(c), 146.53(a), and 146.71(b). See Sections 10.4 through 10.6 FTZM.

7.13 Grantee Responsibilities - The grantee has certain recordkeeping and reporting responsibilities under the FTZA, FTZR, and instructions of the Executive Secretary.

(a) Accounts and Records - The form and manner of keeping accounts on each zone shall be prescribed by the Board. (19 USC 81p). Zone grantees shall maintain their accounts in accordance with generally accepted principles of accounting, and in compliance with any requirements of Federal, State, or local governmental agencies having appropriate jurisdiction over the grantee. (15 CFR 400.46).

(b) Annual Reports - Each grantee shall make available to the Board annually, and at such other times as the Board may prescribe, reports containing a full statement of the operations, receipts, expenditures, and such other information as the Board may prescribe. (19 USC 81p(b); 15 CFR 400.46 (d)).

(c) Operator Responsibilities to Grantee - The operator is responsible for maintaining records and making reports to the extent provided for in the operating agreement between the operator and the grantee.

Chapter 8

OPERATIONS IN ZONES

8.1 General - Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the Customs laws of the United States, except as otherwise provided in the FTZA, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into Customs territory of the United States therefrom in the original package or otherwise. (19 USC 81a). Operations prohibited in a zone are described in Chapter 11 FTZM.

(a) Operations Involving Nonexempt Merchandise - Importations brought into a zone for a purpose other than those listed in Section 81c, Title 19, US Code, are not exempt from duty under the FTZA. (Section 2.6 FTZM). Such merchandise is not subject to any restriction under the FTZA, and any operation may be performed on them that would be permitted for merchandise not in a zone and not in Customs custody.

(b) Supervision by Operators - The operator shall supervise all manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise. (19 CFR 146.4(a)).

(c) Safekeeping of Merchandise and Records - The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods. (19 CFR 146.4(c)).

(d) Transfer of Title - The operator shall maintain records of all transfers of title between or among foreign-trade zone users or operators. Under normal circumstances where people and situations are subject to Customs laws, Section 19 USC 1484 (entry of merchandise) would apply. However, while in an FTZ they do not apply, and the operator is viewed as a quasi-importer, with those responsibilities. 19 U.S.C. 81c states that Customs laws and regulations are suspended while in an FTZ. Transfers of title do not constitute a retail sale as prohibited by the 19 USC 81o(d). While the transfer of title within a foreign-trade zone is permissible and there is no Customs Form that is required to authorize

such a transfer, records must be maintained in order for Customs to evaluate the information to ensure compliance with all necessary laws. All Customs entries must be made by the party that has the right to make entry. (19 USC 1484).

(e) Third Party/Toll Processing - The operator of a foreign-trade zone or subzone or the user firm in a foreign-trade zone may cause to be admitted to the foreign-trade zone and processed and manufactured therein merchandise which the foreign-trade zone operator and/or user does not own or have title to. As long as the processing/manufacturing activities are authorized by the Foreign-Trade Zones Board, the title to merchandise is not relevant for this purpose. However, at the time of Customs entry, Customs entries may only be made by the party who has the right to make Customs entry. (19 USC 1484).

(f) Storage - Merchandise that is not owned by the operator may be stored in a foreign-trade zone or subzone. At the time of Customs entry, Customs entries may only be made by the party who has the right to make entry. Any transfer to another zone or export may be made by the operator.

8.2 Storage Conditions - Generally, merchandise should be stored in a foreign-trade zone in such a manner that (1) the zone will be safe for personnel working therein; (2) the merchandise will be protected from theft or other loss, damage, and deterioration; (3) checks, inventories, and audits can be efficiently conducted by Customs and zone personnel; and (4) the zone will not endanger the public health or safety.

(a) Safety and Sanitary Conditions - Zone grantees and operators shall operate zones and buildings in a safe, sanitary manner in compliance with all applicable local, state and federal regulations. (15 CFR 400.28 (a)(4)). The Port Director may suspend the activated status of the zone or the receipt or delivery of merchandise until such a deficiency is corrected. (19 CFR 146.82 (a)(2)). The operator should consult with the state and local officials to ascertain or clarify local safety and sanitary requirements, such as fire codes, zoning laws and similar provisions.

(1) For merchandise maintained under a zone lot number system only, packages shall be marked with the zone lot number so that the merchandise can be traced to a particular Customs Form 214. (19 CFR 146.37(d)). Generally, these marks shall be on all packages, but the Port Director may waive this requirement if the packages, or unitized or palletized units of packages, are marked at sufficient intervals of space to allow a proper Compliance Review (formerly spot check), quantity count, or audit. (See Section 6.9(a)(7) and 7.8(c)(2) FTZM).

(2) Packages that are accounted for under a Customs-authorized inventory method other than specific identification must be

adequately identified by product markings, bin markings, the unique character of the merchandise, or other means so Customs and the zone operator can conduct an inventory count. (19 CFR 146.37(d)).

(b) Separate Storage - The Port Director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations. (19 CFR 146.51). Port Directors may require separate storage of zone-restricted status merchandise if there is the possibility that the zone-restricted merchandise could become combined with or confused with other status merchandise of the same type. The Port Director should determine the type of storage required upon presentation of the CF 214 requesting zone-restricted status. The key consideration here is to ensure that the revenue is protected and restricted merchandise programs are protected and the feasibility of compliance reviews (formerly spot checks). A compliance review (formerly spot check) must be feasible, as opposed to a full audit. Customs must be able to perform a compliance review (formerly spot check) and an audit to prevent the merchandise from entering the U.S. Examples are fungible merchandise such as oil or grain. There is a clear obligation that the merchandise must be identifiable.

Merchandise which has been constructively transferred to Customs territory, and is awaiting removal from the zone, will not be further manufactured or manipulated in the zone, but will be segregated or otherwise identified by the operator as constructively-transferred merchandise. (19 CFR 146.71(c)). The operator shall segregate, mark, or otherwise secure damaged merchandise to preserve its identity as damaged merchandise. (19 CFR 146.53(e)). Merchandise which is not in zone status for any of the reasons stated in Section 5.2 FTZM shall be segregated from zone status merchandise.

(c) Storage Outside Activated Area - Except merchandise covered by a temporary removal permit under Section 9.2 FTZM, no foreign zone status merchandise shall be stored, even temporarily, outside the activated area. Except in the case of domestic status merchandise for which no permit is required, such storage will be treated by Customs as a transfer from the zone without a permit. Similarly, except in the case of domestic status merchandise for which no permit is required, no merchandise shall be stored inside the activated area without a Customs permit of admission, temporary deposit, direct delivery or similar permit provided for in the Customs Regulations. Whenever domestic status merchandise is placed inside the activated area, the inventory records shall be adjusted as provided in 19 CFR 146.22. Upon the removal of domestic status merchandise for storage outside the activated area, the inventory records shall be adjusted as provided for in 19 CFR 146.24. Since Customs is not responsible for the administration of state ad valorem tax laws, the operator should obtain the requirements for storage of merchandise for such benefit from the state tax authority where such legislation exists.

8.3 Manipulation, Processing, or Manufacture - No merchandise, other than domestic status merchandise for which no permit is required under 19 CFR 146.43(a), will be manipulated, manufactured, exhibited or destroyed in a zone in any manner or for any purpose except under Customs permit as provided for in 19 CFR Part 146, Subpart E. A permit will be required for the exhibition, manufacture, or manipulation of domestic status merchandise, when (1) it is required by the Commissioner of Customs, or (2) when it is to be mixed or combined with merchandise of another zone status. (19 CFR 146.43(b)). For the purposes of filling out Customs Form 216, "manufacturing" means any manufacture or processing as defined in 15 CFR 400.2 (g), (k) which include activities that result in a substantial transformation of a foreign article to a new and different article having a different name, character, and use, or which causes a change in its Customs classification of the merchandise or in its eligibility for entry for consumption. (15 CFR 400.2 (g), (k)).

"Exhibition" means the display of merchandise in the zone to prospective buyers or other interested parties. Board approval must be received prior to changing previously approved processing or manufacturing operations to make new products, significantly expand production, change sourcing of materials to be used, source materials subject to quotas or source materials that will be subject to inverted tariffs. (15 CFR 400.28(a)(2)(3)). The request will be submitted according to procedures shown in 15 CFR 400.32(b) and evaluated on the criteria shown in 15 CFR 400.31.

(a) Application - Prior to any action, the zone operator shall file with the Port Director an application (or blanket application) on Customs Form 216 for permission to manipulate, manufacture, destroy or exhibit merchandise in a zone. (19 CFR 146.52(a), 146.9). For instructions in preparing Customs Form 216, see Appendix FTZM. The description of the intended manipulation or manufacture should be detailed enough to enable the Port Director to determine whether a permit should be given. The Port Director may return the application to the applicant for a more precise description, if needed to administer any law, regulation, or policy for which Customs is responsible.

A blanket application may be made for a period of up to 1 year for a continuous or repetitive operation. If the operation is changed during the period so that the application as approved no longer describes the operation, a new application shall be filed. (19 CFR 146.52(b)(2)).

(1) Exhibition and Examination - The zone user may, with the concurrence of the zone operator and upon application approved by the Port Director on Customs Form 216, exhibit and examine merchandise in the zone, or allow prospective purchasers to examine merchandise in the zone.

(2) Samples – The zone user may, with the concurrence of the zone operator and upon application approved by the Port Director on Customs

Form 216 sample merchandise in the zone or allow perspective purchasers to sample merchandise and remove samples from the zone. Samples taken under the authority of this permit may be removed from the zone without payment of duty if (1) the merchandise is temporarily removed from the zone under the; (2) sampling can be done without the need to repack the merchandise; and (3) the merchandise is not restricted merchandise.

Additionally samples may be removed from the zone under HS 9811.00.60. An entry must be filed for samples taken from the zone under this provision; all requirements of 9811.00.60 must be adhered to and each sample taken from the zone under this provision must be presented to an import specialist for approval of the mutilation.

Otherwise, the user must file a duty-paid consumption entry to obtain a permit to remove the sample.

(3) Temporary Removal - See Section 9.2 FTZM.

(4) Concurrence of Executive Secretary for Manufacturing or Processing - An application for a new manufacturing or processing operation must have the concurrence of the Executive Secretary of the Board. The purpose of the concurrence is to assure that there are no public interest concerns in the new operations (15 CFR 400.28(a)(2), (3)).

(b) Decision on Application - The Port Director will approve the application unless (1) the proposed operation would be in violation of law or regulation, (2) the place designated for its performance is not suitable for preventing loss of identity or status of the merchandise, or (3) the Executive Secretary of the Board has not granted approval of a new manufacturing operation. The Port Director may disapprove any application, or may deny a blanket application and require instead an individual application. (19 CFR 146.52(b)(1), (2)).

(c) Revocation of Approval - The Port Director may revoke approval of any application for cause as defined in approval criteria at 19 CFR 146.52 (b), or may require the operator to file an individual application in lieu of an existing blanket application. In such a case, the applicant may appeal the adverse ruling pursuant to the hearing provisions of 19 CFR 146.82(b)(2). The revocation shall remain in effect pending the decision on the appeal. (19 CFR 146.52(c)).

(d) Recordkeeping - In the case of a blanket application, the operator shall maintain a record of an approved manipulation, manufacture, or exhibition in a separate yearly blanket Customs Form 216 file or in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation. (19 CFR 146.52(d)(2)). If it is an individual Customs Form 216 that relates to a zone lot number, the CF 216 will be

filed in that specific zone admission CF 216 file. If the zone is operating under any other Customs authorized inventory system, the CF 216 is filed with the FTZ inventory records. (19 CFR 146.52(a)). In its supervision of the operation, the operator shall record on Customs Form 216 the results of an approved manipulation, manufacture or exhibition (other than by a blanket application) unless the Port Director chooses physically to supervise the operation.

(1) Sending of Record to Port Director - Where necessary the Port Director may request from the operator a copy of Customs Form 216 showing the results of the manipulation recorded by the operator, before accepting or liquidating any entry.

8.4 Destruction Under Permit - The operator is not responsible under its Foreign-Trade Zone Operator's bond for any loss of merchandise or any merchandise which cannot be located in the zone, if the Port Director is satisfied that the merchandise was never received in the zone, was not removed without proper permit from the zone, or that it was lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S. (19 CFR 146.53(c)(1)). The Port Director may issue a permit for the destruction of merchandise in any zone status. Any residue of destruction which has no commercial value may be transferred to Customs territory for disposal. (19 CFR 146.52(e)). It will be so transferred without entry and free of duty and treated as a nonimportation under 19 CFR 158.11.

(a) Alcoholic Beverages - Distilled spirits, wines, and fermented malt liquors may not be admitted in zone-restricted status for the sole purpose of destruction. (19 CFR 146.44 (a)). Such merchandise admitted to the zone in zone-restricted status for other purposes or in any other zone status may be destroyed in the zone only with the approval of the Regional Director, Compliance, of the Bureau of Alcohol, Tobacco and Firearms. (Fourth Proviso, 19 USC 81c and see Section 11.5(d)(4) FTZM). The procedure for obtaining approval by the BATF for destruction is set forth in 27 CFR 252.35 through 252.38, 19 CFR 146.44(c)(2) and see Section 11.5(d)(4) FTZM.

(b) Application for Destruction - Prior to any action to destroy merchandise in a zone, the zone operator shall file with the Port Director an application on Customs Form 216 for permission to destroy the merchandise. A yearly blanket Customs Form 216 may be authorized. The proposed method of destruction shall be stated in the application, and should be sufficient to assure that the merchandise will be completely destroyed. A sample of a properly filled out Customs Form 216 for destruction is shown in the Appendix to the FTZM.

(1) Method of Destruction - The method of destruction shall be appropriate to the nature of the merchandise so as to assure its complete destruction and to assure that there is no recoverable residue of any commercial value.

If destruction is not complete or there is recoverable residue having commercial value, the transaction will be treated as a manipulation and so recorded in the inventory and recordkeeping system of the operator.

Incomplete destruction does not meet the "destruction" condition of zone-restricted status. However, partial destruction, coupled with exportation or storage of the valuable waste, may meet the condition of "exportation, destruction, or storage" in the Fourth Proviso, 19 USC 81c.

Residue or scrap from destruction of zone-restricted merchandise may not be entered for consumption, unless the Foreign-Trade Zones Board finds it to be in the public interest. (See Section 11.3 FTZM).

Destruction shall be carried out in a safe and sanitary manner, and any residue disposed of in accordance with the applicable State and Federal laws.

(b) Decision on Application - The Port Director shall approve the application unless

- (1) the proposed destruction would be in violation of law or regulation,
- (2) the place designated for its performance is not suitable for preventing the loss of the identity or status of the merchandise, or for safeguarding the revenue, or
- (3) the Port Director is not satisfied that destruction will be effective, complete, and carried out in a safe and sanitary manner.

The Port Director may disapprove or revoke approval of any application. (19 CFR 146.52(b)). However, if an approved application is subsequently rescinded by the Port Director for any reason, the applicant may appeal the adverse ruling pursuant to the hearing provisions of 19 CFR 146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal. (19 CFR 146.52(c))

(d) Supervision - Since destruction, by its nature, leaves little or no physical evidence of the activity, the Port Director may choose to physically supervise the destruction operations, particularly destructions of restricted merchandise. At the discretion of the Port Director, the operator may be allowed to supervise the destruction. If the operator supervises destruction, it shall be done as provided in 19 CFR 146.4(a).

(e) Removal from Zone for Destruction - The Port Director may permit destruction to be done outside the zone, in whole or in part, at the risk and expense of the applicant and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. (19 CFR 146.52(e)). In such cases, destruction may be supervised by Customs as provided in 19 CFR 158.43 (d) and 101.2 (c), in which case the certified copy of Customs Form 216 shall be returned to the operator for retention in the recordkeeping system. Transfer of the merchandise to the destruction site shall be done under the procedures of a local control system.

(f) Recordkeeping of Destruction - If Customs supervises the destruction, the supervising Customs officer shall certify the destruction on Customs Form 216, and provide a copy of the form to the operator for filing in its recordkeeping system. (19 CFR 146.52(a)). If the operator supervises the destruction, the operator shall certify the destruction on that form. (19 CFR 146.52(d)(1)). For each occurrence under an individual or yearly blanket CF 216 procedure, records must be maintained.

8.5 Merchandise Marking Requirements - Every article of foreign origin or its container imported into the customs territory of the United States shall be marked in a conspicuous place in such manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. (19 USC 1304 and 19 CFR 134.11). Goods not so marked may be brought into a foreign-trade zone to be properly marked under a permit to manipulate issued by the Port Director. Similarly, goods which are improperly or falsely marked may be brought into a zone under a permit to manipulate to correct or remove such marking so as to comply with the laws and regulations. (19 CFR 134.13(b)).

(a) U.S. Origin Marking for Goods Manufactured in a Zone - If further work or material has been added to an imported article in a zone which has effected a substantial transformation of the article into a new and different article of commerce, it may be considered to be no longer an article of foreign origin, for marking purposes, when it is transferred to the Customs territory. (See 19 CFR 134.1(b)). The United States becomes the country of origin of such articles for marking purposes. Such articles need not be marked, under 19 USC 1304, to show the United States as the country of origin, and Customs has no authority to approve or deny the marking "Made in U.S.A." However, goods of U.S. origin in a zone shall not be marked to show a country of origin other than the United States. Also, goods of U.S. origin manufactured in a zone may be subject to marking requirements administered by the Federal Trade Commission. Note that the Federal Trade Commission has jurisdiction in this area.

(b) False Country of Origin Marking - Customs officers shall not approve an application on Customs Form 216 to mark merchandise with a false and/or

deceptive country of origin marking, even if the merchandise is destined for export from the U.S. (OCOD 89-4, Customs Bulletin, Vol. 23, No. 43, October 25, 1989 and see Section 11.6(u) FTZM).

(c) Copyrighted Articles - Copyrighted articles made without the authorization of the copyright owner are deemed to be infringements and their importation into the U.S. is prohibited by Customs. (19 CFR 133.42). Articles made abroad displaying a trademark identical to one owned by a U.S. citizen, corporation or association, is subject to seizure as a prohibited importation.

8.6 Abandonment, Bankruptcy, and Absconding - 19 CFR 146.9 requires the written concurrence of the operator on applications for permission to admit, manufacture, manipulate, exhibit, or destroy zone merchandise. 19 CFR 146.71(a) requires the Port Director to authorize delivery of merchandise only to the operator, who may release the merchandise from the zone. These provisions place on the operator the primary responsibility for disposition of merchandise which has been abandoned in a zone or whose owner is insolvent, has absconded, or is in arrears in payments owed to the operator. No entry or permit to transfer or constructively transfer such merchandise from the zone for the purpose of immediate abandonment to the Government shall be accepted or approved by Customs.

(a) Abandonment - If merchandise is abandoned, in writing, by its owner to the operator, the operator has the right to authorize the exportation, destruction, or sale of the merchandise. The operator may dispose of the merchandise in its own name on the proper form in accordance with pertinent laws and regulations. If the merchandise is to be entered for consumption the owner or purchaser will be held liable for any duties, taxes, and deficiencies due. Auction sales will be conducted by the zone operator, or representative thereof, and not by Customs or a Customs contractor.

(b) Insolvency Absconding, or Arrearage - If merchandise has not been abandoned in writing to the operator, but the owner or the person in whose account the merchandise is held in the zone apparently has absconded, is insolvent, or is in serious arrears in payments owed to the operator, the operator must take legal action under the laws of the state in which the zone is located to dispose of the merchandise. If the operator is authorized to sell the merchandise to recover a debt, the buyer will have title to the goods to dispose of them at his or her option.

(c) Bankruptcy - If the owner or person in whose account the merchandise is held in the zone declares bankruptcy, the merchandise will be disposed of according to the applicable bankruptcy law.

8.7 Security of Zone - Each grantee, operator, or their designee shall provide and maintain in connection with the zone adequate enclosures to segregate the zone from

Customs territory for the protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise. (19 USC 811(f). In 15 CFR 400.41, the Board delegates to Port Directors the enforcement responsibility for physical security and access requirements for zone projects activated in their ports. To achieve the necessary physical security of the zone, recommendations set forth in TD 72-56, Standards for Cargo Security will serve as guidelines.

(a) Customs Security Requirements - The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications. (19 CFR 146.4(e)). The operator is responsible for safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone user or the owner of the goods to store, safeguard and otherwise maintain or handle the goods and the inventory records pertaining to them. (19 CFR 146.4(c)).

(b) Guard Service - Section 81d, Title 19, US Code) directs the Secretary of the Treasury to assign to the zone the Custom's guards necessary to protect the revenue. However, in view of the grantee's responsibility in 19 USC 81f, the operator through its contract with the grantee, is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the Port Director to assign Customs officers to protect the revenue under 19 USC 81d. (19 CFR 146.4(g)).

(c) Cargo Security Standards and Specifications - The standards of security to be maintained by the zone operator are the same as those used by Customs in the security survey required for approval of the application to activate the zone. These standards are set forth in TD 72-56, "Standards for Cargo Security" serve as a guide and each of the standards includes specifications which suggest means by which standards may be met. Copies of TD 72-56 should be obtained from the Port Director.

Customs Security Standards for Buildings permit the walls of the building itself to be considered the perimeter of the activated area, and that fencing need not be required for the facility to meet the Security Standards.

(d) High-Security Storage for Title II Firearms - This does not apply to pistols or revolvers having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder. Imported machine guns, destructive devices, certain other firearms, or any other weapon capable of being concealed on a person as covered by 26 USC 5845 may be imported for storage in a zone under a conditional import permit of the Bureau of Alcohol, Tobacco and Firearms (BATF Form 6) for subsequent sale to military and law enforcement agencies or other use specified in 26 USC 5844 and 5845 (See Sections 11.5(e) and 11.6(m) FTZM). These firearms may also be imported for re-exportation from a zone under the provisions of the International Traffic in Arms Regulations, 22 CFR Part 120. The BATF will not issue an import permit for these firearms for storage in a foreign-trade zone until a special survey has been conducted by Customs to determine whether the facility meets certain standards of security that are higher than those for other zones. (TD 81-69). Customs officers shall conduct such surveys only upon request of the BATF. The standards for such high-security warehouses are shown in the Appendix to the FTZM. The surveying Customs officer shall advise the operator of the purpose of the survey and provide consultations concerning its progress and findings. If the operator is able to make changes necessary to bring the facility into compliance with the standards within 1 month after the survey, the final report to the BATF will be delayed until the changes are made and verified by the surveying officer.

(e) Compliance Reviews (Formerly Sport Checks) of Cargo Security - After the initial cargo security survey and follow-up conducted upon activation of the foreign-trade zone, Customs officers shall monitor the operator's maintenance of security standards, specifications, and requirements through compliance reviews (formerly spot checks) and audits.

(f) Full Security Surveys - Full cargo security surveys may be carried out periodically by Customs in selected zones. Such a survey can be expected when:

1. a serious breach of security has been identified or a major theft has occurred at a zone; or
2. the Port Director contemplates suspension of activation or revocation of a zone permit, or recommendation for revocation of a zone grant because the operator does not provide secured facilities or properly safeguard merchandise in the zone (19 CFR 146.82(a)(5)); or
3. at periodic intervals in the case of zone facilities for the high-security storage of Title II firearms. (See Section 8.7(d) FTZM).

(g) Action on Cargo Security Deficiencies - The cargo security standards and specifications in TD 72-56 are guidelines, rather than regulations, for acceptable physical and procedural security in international commerce. Therefore, factors

outside the standards and specifications may be considered in making a judgement as to whether there is a deficiency which constitutes a default in the Foreign-Trade Zone Operator's bond. For instance, a deficiency in one specification which is counterbalanced by another security measure so as to preserve overall security of the facility may not be a default. Similarly, a deficiency which is in keeping with the nature of the merchandise (e.g., a 6-foot fence surrounding an activated area containing low-value, high bulk merchandise with low theft potential) may not be a default.

(1) Deficiencies in foreign-trade zone security are defaults not involving merchandise subject to liquidated damages of \$1,000 for each default. (See Section 12.7 FTZM).

(2) If merchandise is removed from a zone without permit, or cannot be accounted for, through a deficiency in security, the loss of the merchandise breach is a default involving merchandise, and the security deficiency will be considered an aggravating factor in the consideration of any petition for relief from liquidated damages. (See Section 12.14(a) FTZM).

(3) Action will ordinarily be taken by Customs to suspend a zone permit or activated status on the grounds set forth in 19 CFR 146.82(a) only for a major deficiency or deficiencies, pending the correction of the deficiencies. Action to revoke the activated status will ordinarily be taken only in the case of chronic or uncorrected deficiencies which have resulted in a major loss or losses of merchandise. (See Sections 13.8-13.11 FTZM).

(h) Theft Reporting - The operator is required to immediately report to the Port Director any theft or suspected theft from the zone, including thefts or suspected thefts of domestic status merchandise. (19 CFR 146.53(a), (b)). Theft of merchandise from a zone is usually considered a theft in interstate or foreign commerce, a felony under 18 USC 549 punishable by a fine of up to \$250,000 or imprisonment for not more than 2 years, or both. (18 USC 549, 3571).

(i) List of Persons - The Port Director may at any time make a written demand upon the zone operator to submit, within 30 days, a written list of the names, addresses, social security numbers, and dates and places of birth of officers or key persons having a direct or indirect financial interest in the zone operation, and of persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the operator or the zone user. (19 CFR 146.7(g)). The Port Director may request a background investigation to be made of any of the persons on the list, if necessary, to protect the revenue. Operators are encouraged to obtain Privacy Act waivers from all employees.

Chapter 9

TRANSFER OF MERCHANDISE FROM ZONE

9.1 General - Foreign and domestic merchandise which has been brought into a zone for certain purposes may thereafter be exported, destroyed, or sent into Customs territory in the original package or otherwise. When foreign merchandise is sent from a zone into the Customs territory of the United States, or is exported to Canada or Mexico subject to the NAFTA Duty Deferral found in 19 CFR 181.53, it shall be subject to the laws and regulations of the United States affecting imported merchandise. (19 USC 81c(a)). Domestic status merchandise, whether or not it has been combined with or made part of merchandise in any other status, may be brought back into Customs territory free of quotas, duty, or tax. (Second Proviso, 19 USC 81c(a)). "Transfer", as used in the CR and this manual, means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes. (19 CFR 146.1(b)).

9.2 Temporary Removal - Upon permit by the Port Director, zone status merchandise may be temporarily removed to the Customs territory from the zone for up to 120 days for repair, restoration, or incidental operation. "Incidental operation" means inspection, analysis, testing, calibration, measurement, sampling, photography, cleaning, repacking, or similar process which would not constitute "manufacturing or production" under drawback law. (19 USC 1313(a) and HQ Ltr 214189 dated August 31, 1982).

(a) Application - Application for temporary removal shall be made by the owner or purchaser on Customs Form 216, appropriately modified. Each application must be made on an individual basis and shall not be authorized under a yearly blanket CF 216. The operation the merchandise is to undergo outside the zone must be described in sufficient detail to enable the Port Director to determine whether the application should be approved. If the application meets the conditions set forth below and is administratively acceptable, it will be approved by the Port Director. A sample of a properly filled out Customs Form 216 is shown in the Appendix to the FTZM. Transfer of merchandise may be under a local control system. (19 CFR 146.66).

(b) Conditions - The temporary removal transaction covered by the application must meet all of the following conditions:

(1) the merchandise may not be removed from the zone before the application is approved;

(2) except for repairs, no other merchandise may be added to, combined with, or incorporated in the removed merchandise, and no value may be added to it;

(3) the procedure may not be used to circumvent the FTZA through subjecting the merchandise to any operation or transaction which would not be authorized while in the zone, such as an excluded process of treatment or retail trade under 19 USC 810;

(4) the merchandise must be returned to the same zone within 120 days and so reported to the Port Director. No extensions beyond the 120 days will be granted. The merchandise may be sent to any location in the Customs territory so long as it is returned to the same zone and reported within the 120 day period. The merchandise remains the responsibility of the operator under the Foreign-Trade Zone Operator's bond while outside the zone. The merchandise may not be entered for consumption while it is temporarily removed from the zone. (See Section 11.7(h)(1) FTZM).

(5) Quantities removed and returned must be balanced on a transaction-by-transaction basis. However, fungible merchandise removed to a particular destination under different transactions and thereafter returned may be tracked using the FIFO inventory method.

(c) Return to Zone - When all of the merchandise covered by an application has been returned to the zone, the applicant shall certify the return on Customs Form 216 and forward it to the Port Director to close out the temporary removal record. Upon return to the zone, the merchandise shall be received in the same zone status it had upon temporary removal.

(d) Violation of Conditions - If the merchandise is not timely returned to the zone or otherwise fails to meet the conditions of temporary removal, the merchandise shall be considered to have been transferred from the zone without a permit, as required by 19 CFR 146.51 and 146.71(a). The violation will be treated as a default involving merchandise under the Foreign-Trade Zone Operator's bond. (See Section 12.6 FTZM).

9.3 Domestic Status Merchandise - Domestic status merchandise which has not been combined with or made part of merchandise in another zone status may be transferred from the zone without a Customs permit, unless a permit is ordered by the Commissioner of Customs. (19 CFR 146.43(b)). The merchandise will be considered as having been transferred from the zone and as having lost zone status when it is:

1. physically transferred from the zone, as evidenced by a receipt for removal by a carrier, owner, purchaser, or other appropriate party; and

2. recorded in the inventory control and recordkeeping system(s) as transferred from the zone. (19 CFR 146.24(a) and see Section 9.5 and 9.16(e) FTZM) for comparison with treatment of foreign status merchandise.

9.4 Articles Exempt from Entry Requirements - Merchandise in a foreign status may be manufactured in a zone into an article which is exempt from entry requirements. An example of such an article is electricity produced in the zone. (CSD 83-49 and see General Headnotes of the HTS). In such cases the merchandise may be transferred from the zone only upon issuance of a permit by the Port Director on Customs Form 216, appropriately modified. The Description of Activity in the form shall contain a citation of the authority to exempt the article(s) from entry. A sample of a properly filled-out Customs Form 216 for this purpose is shown in the Appendix to the FTZM.

9.5 Constructive Transfer - "Constructive transfer" is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory. (19 CFR 146.1(b)). The legal fiction is necessary because of the entry requirement and procedures imposed under 19 USC 1484. Zone status merchandise is exempt, for certain purposes, from the Customs laws, under 19 USC 81c. The law would require that the merchandise be removed from the zone and held pending examination and release under 19 USC 1484, 1499. Under constructive transfer, this delay and double handling is eliminated. The merchandise loses its zone status, and is deemed to be no longer subject to, or covered by, the FTZA upon constructive transfer. (CSD 79-249). However, the zone operator is still responsible for the merchandise until its physical transfer from the zone. (19 CFR 146.4(a), and see Section 9.16(e) FTZM).

(a) Procedure - The Port Director shall accept receipt of any entry in proper form as provided in 19 CFR Part 146 Subpart F, and the merchandise described therein will be considered to have been constructively transferred to the Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or canceled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status. (19 CFR 146.61). This procedure replaces a procedure in effect prior to 1986 where the operator was required to apply for constructive transfer. Since there was rarely any reason to deny constructive transfer that could not also be satisfied by rejecting or canceling the entry, constructive transfer was made automatic under 19 CFR 146.61 upon receipt of the entry.

9.6 Entry Procedures - An entry is that documentation required by 19 CFR 142.3 to be filed with the appropriate Customs officers to secure the physical transfer of foreign or zone-restricted status merchandise from the zone. (19 CFR Part 146, Subpart F). This section covers entry procedures peculiar to foreign-trade zones, but does not attempt to cover all entry procedures under 19 CFR Parts 141 through 144 that may be applicable to entries for zone status merchandise.

(a) Place of Filing - Entry documentation shall be presented to the appropriate Customs office at the location designated by the Port Director, as provided in 19 CFR 141.62(a). An entry for zone status merchandise must be presented to Customs officers within a port of entry, even if the zone is distant from the port, except as provided in Section 2.9 FTZM.

(b) Administrative Requirements - All entry forms shall be filled out completely, accurately, and legibly. All signatures required on the form and supporting documents shall be valid signatures. All supporting documentation shall be filed with the entry or otherwise timely filed. An entry will not be accepted nor a permit for transfer from the zone issued unless and until all administrative requirements are met.

(c) Penalties for False or Inaccurate Information - If the information in any entry document is not true or accurate, the importer or agent may be subject to civil penalties under 19 USC 1592 for fraudulent, negligent, or grossly negligent acts or omissions in connection with the entry. In addition the importer or agent may be subject to a fine or imprisonment, or both, under 18 USC 541, 542, 543, 545, or other provisions of Title 18, USC. (See Section 13.15 and 13.16 FTZM).

9.7 Entry for Consumption - In order to transfer zone merchandise into the Customs territory for consumption, the importer of record shall file a consumption entry under the procedures of 19 CFR Parts 141 and 142. In addition, an appraisal, informal, or electronic entry for consumption may be filed as provided in 19 CFR Part 143. An informal consumption entry may be filed for samples that do not qualify for zone removal. (19 CFR 10.151 and see Section 8.3 FTZM). Also, an informal entry may be filed for payment of internal revenue tax on any sample of beer in excess of 8 ounces, wine in excess of 4 ounces, or distilled spirits in excess of 2 ounces, taken for the purpose of soliciting orders of products of foreign countries. (27 CFR 251.49)).

(a) Entry Filing Procedure - In the case of formal entries, there are 3 basic procedures to initiate the entry filing process: entry, entry summary which acts as an entry/entry summary, and immediate delivery.

(1) Entry - An entry is filed on Customs Form 3461, Entry/Immediate Delivery. (19 CFR 142.3(a)(1)). Instructions for preparing this form are found in CD 099 3550-029, and a properly filled-out sample is shown in the Appendix to the FTZM. The following special instructions should be noted in filling out CF 3461.

1. Block 1 - The arrival date is the date of presentation of the entry.
2. Block 3 - Insert Entry Type Code 06.

3. Block 14 – Insert Facilities Information Resource Management Systems (FIRMS) code. This identifies in which zone the merchandise is located. The FIRMS code is assigned by the Port Director.
4. Block 15 - Insert "FTZ" with the three digit zone number and alpha character if applicable with no spaces (ex. FTZ123, FTZ123A, FTZ001, FTZ001A.).
5. Block 22 - Show the zone status for each line.
6. Block 23 - Since there is no manifest, insert the number of packages. If loose freight, insert the number of pieces. If in bulk, insert the quantity in the units in which the merchandise was sold or shipped.
7. Blocks 12, 13, 16, 17, 18, and 21 should not be filled out.
8. Block 26 - If the product is of foreign origin, or in privileged foreign status, use the MID of the foreign manufacturer. If the product is manufactured in the foreign-trade zone, use the following MID construction: CD 099 3550-055, November 24, 1986, "Instructions for Deriving Manufacturer/Shipper Identification Code".

Country of Origin: US

Manufacturer Name: FTZ

Street Address: Zone number (if subzone,
Place subzone designation in City field in front of zone
user's name)

City: Zone user's name

Example: Smith Manufacturing, Inc., located in subzone
215G. USFTZ215GSM

Example: Jones & Co., located in general-purpose zone 220.
USFTZ220JON

The entry shall be accompanied by an invoice, packing list, or other documentation required to obtain a permit by the Port Director to transfer the merchandise from the zone. An entry summary shall be filed within 10

working days after time of entry, as provided in 19 CFR 142.12(a) and 146.62(a).

(2) Entry/Entry Summary - At the option of the importer, an importer may file the entry summary documentation at the time of entry. (19 CFR 142.12(a)). An entry/entry summary, in proper form, must be presented for quota class merchandise. (19 CFR 142.13(b)). The Port Director may also require an importer to file the entry summary documentation at the time of entry under certain circumstances. (19 CFR 142.13). Otherwise, the entry summary will be filed 10 days after Customs Form 3461, as provided for in 19 CFR 142.12 and 146.62(a). Instructions for preparing Customs Form 7501 are found in CD 099 3550-061. A properly filled-out sample is shown in the Appendix to the FTZM. The following special instructions for zone status merchandise are noted in filling out CF 7501:

1. Block 3 - Insert entry type code 06. This entry type code must be used for all merchandise transferred from a zone for consumption; including quota, visa, and AD/CVD merchandise.
2. Block 15 - Regardless of marking or other country of origin considerations, the country to be reported in block 15 is the country of origin of the foreign status merchandise for which entry is required. If components of articles are from more than one country, report the foreign country of the components with the greatest value. When a single entry summary covers separately classifiable merchandise from more than one country record the word "MULTI" in this block. To identify the country of origin in Block 28, directly below the line number, and prefixed with the letter "O", indicate a separate ISO (International Standard Country Code) for the country of origin corresponding for each line item. CD 099 3550-061, September 18, 1992, "Instructions for Preparation of CF 7501."
3. Block 21 - If the product is of foreign origin, or in privileged foreign status, use the MID of the foreign manufacturer. If the product is manufactured in the zone use the following MID construction: CD 099 3550-055, November 24, 1986, "Instructions for Deriving Manufacturer/Shipper Identification Code"

Country of Origin: US

Manufacturer Name: FTZ

Street Address: Zone number (if subzone,
place subzone designation in City field in front of
zone user's name)

Example: Smith Manufacturing, Inc., located in subzone
215G. USFTZ215GSM

Example: Jones & Co., located in general-purpose zone 220.
USFTZ220JON

4. Block 23 - Insert "FTZ" followed by zone or subzone number. (Also, for certain textiles and textile products, insert the zone admission number). (See Section 9.7(e) FTZM.)
5. Block 25 - Insert Facilities Information Resource Management Systems (FIRMS) code. This identifies the zone where the merchandise is located. The FIRMS code is assigned by the Port Director.
6. Do not fill out Blocks 13, 14, 17, 18, 19, 20, 24, 26, and 27.

(3) Immediate Delivery - Port Directors shall not issue any Special Permit for Immediate Delivery from a zone unless authorized under 19 CFR 142.21. If such a Special Permit is issued, the procedures of 19 CFR 142.21 through 142.28 shall be followed.

(4) Electronic Entry Filing - Entry documentation may be transmitted electronically from a zone to a Customs facility for approval and signature by Customs and returned to the zone through use of a facsimile machine, provided one is available. CSD 87-2. Procedures for qualifying for the Automated Broker Interface (ABI) are specified in 19 CFR Part 143, Subpart A. Procedures for filing electronic entries and electronic entry summaries are found in 19 CFR Part 143, Subpart D. Such entries must be filed through ABI. (TD 90-92). Specific procedures for filing electronic entries and entry summaries for foreign-trade zone merchandise were issued via administrative message #0696 dated 10/2/90, and became effective 6/30/91.

(5) Supporting Documentation with Entry Summary - Customs Form 3461 or the entry/entry summary on Customs Form 7501 will be accompanied by the entry documentation, including invoices, as provided in 19 CFR Parts 141, 142. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the

transferred merchandise and provide the information necessary to support the admissibility, declared values, quantity, and classification of the merchandise.

(i) Examination Invoice - The operator shall give a copy of the examination invoice filed upon admission of the merchandise to the zone to the person making entry to transfer the merchandise from the zone upon request of that person or the Port Director. (19 CFR 146.37(b)).

The examination invoice presented by the importer and notated by the examining Customs officer upon admission of the goods to the zone may be used for making entry at the option of either the person making entry or the Port Director. (19 CFR 146.32(b)). That is, the Port Director may demand that the examination invoice be used upon entry of the same merchandise. The examination invoice should be used when the merchandise has not been transformed in the zone into a new and different product. A copy of the invoice, modified to show the quantity and value of the merchandise being entered, may be accepted when merchandise covered by one examination invoice appears in two or more subsequent entries.

(ii) Waiver of Documentation - The Port Director may waive presentation of an invoice and supporting documentation required in 19 CFR 146.62(b)(1) with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the Port Director or maintains and makes those records available for examination by Customs. 19 CFR 146.62(c). The Port Director and the operator or importer should develop a format of such documentation which is within the practical capability of the operator or importer and which provides all the information required by Customs.

(iii) Estimated Values - If the declared values are predicated on estimates or estimated costs, that information must be clearly identified to Customs as required at the time an entry or entry summary is filed. (19 CFR 146.62(b)(1)). Estimated values must be reconciled upon determination of the actual value using Customs reconciliation procedures.

(6) Right to Make Entry - Under 19 USC 1484, only the "importer of record" has the right to make entry. The importer of record is the owner or purchaser of the goods, or when designated by the owner, purchaser, or consignee, a licensed customhouse broker. The owner or purchaser is any party with a financial interest in a transaction, including, but not limited to, the actual owner or purchaser of the goods, a buying or selling agent; or a person or firm which imports on consignment, or under loan or lease, or for exhibition at a trade fair, or for repair, alteration, or further fabrication of the goods. (See CD 099 3530-002, June 29, 2001). Zone operators may not make entry for zone merchandise unless they are the owner or purchaser or otherwise qualify as a party with a financial interest as noted above. Zone operators who do not otherwise qualify also may not designate a customhouse broker to make entry, since only an owner, purchaser, or consignee may make such a designation.

(b) Entry Bond - Merchandise will not be released for transfer to Customs territory unless the importer of record has a single transaction or continuous bond on Customs Form 301, containing the bond conditions set forth in 19 CFR 113.62, on file with Customs. (19 CFR 142.4(a)). A continuous bond may cover entries made at more than one port by the same principal. These types of bonds should not be confused with the FTZ operator's bond. (See Section 4.7(c)(2) FTZM).

(1) Bond Amount - The amount of a consumption entry bond will be determined by the Port Director according to the guidelines in 19 CFR 113.13(b) and CD 099 3510-004. The minimum amount of a continuous bond is \$50,000. In the case of a continuous bond, the amount will be fixed in multiples of \$10,000 nearest to 10 percent of the duties paid by the importer during the previous calendar year, up to \$1,000,000 of the previous year's duties. If the amount paid during the previous calendar year was more than \$1,000,000, the amount will be fixed in multiples of \$100,000 nearest to 10 percent of the duties paid during the previous calendar year. If no imports were made during the previous year, the amount will be based on the importer's estimate of duties that will accrue on merchandise during the current calendar year. In no event shall the limit of liability amount of any continuous activity code 1 bond be less than \$50,000. In the case of a single transaction bond, generally, the bond amount will be the total value of the merchandise, plus the estimated amount of any duties, taxes, fees, and other charges collectable by the Port Director. If restricted merchandise is being entered, the bond amount will be the entered value of the merchandise or value plus duty and tax, as appropriate. When merchandise is subject to other agency requirements, where failure to redeliver could pose a threat to public health and safety or, is subject to quota and/or visa requirements, the bond amount will be set at not less than 3 times the total entered value of the merchandise. These bond amounts will be periodically reviewed by the Port Director as provided

in 19 CFR 113.13(c), and increased security may be demanded as provided in 19 CFR 113.13(c) or (d).

(c) Deposit of Duties - Estimated duties and taxes will be deposited by the importer of record with the Customs officer designated to receive them, as provided in 19 CFR Part 141, Subpart G, or as provided for in 19 CFR Part 132 regarding quota class merchandise.

(d) Entry Processing and Release - Consumption entries are processed by Customs on a selective basis according to the risk to the revenue and proper law enforcement represented by the merchandise or the transaction. At most ports, selective processing is done through the automated procedures of the Automated Commercial System (ACS). Key data elements are fed into the computer, which advises Customs officers whether examination or further review by Customs Import Specialists is needed before the goods are released for transfer from the zone. Because of the selective processing, the majority of entries are approved for release without examination within a day after the entry is filed. If the required duties and taxes have been paid, the merchandise is admissible into U.S. commerce, and Customs determines that no examination is necessary, a permit to transfer the merchandise into Customs territory will be issued through an authorized signature on Customs Forms 3461, 7501, or other document authorized by the Port Director. In the case of electronic entry filing, a permit to transfer shall be transmitted electronically to the filer by Customs. (19 CFR 143.34).

(e) Admissibility and Restricted Merchandise - "Restricted merchandise" as defined in CD 099 3250-005, is merchandise which may not be authorized for delivery from Customs custody without a special permit, or waiver thereof, by an agency of the U.S. Government. In the absence of the special permit, such merchandise is not admissible into the commerce of the U.S. Merchandise subject to an absolute quota is an example of restricted merchandise. Entries of quota merchandise will be processed under the procedures of 19 CFR Part 132 and CD 099 3230-041. Special procedures for entry and visa control of textiles and textile products are described in Sections 11.6(h) and 11.7(d) FTZM. Entry procedures for zone-restricted status merchandise are described in Section 9.15 FTZM.

(f) Merchandise Examination - Merchandise entered for consumption from a zone is examined by Customs much less frequently than other merchandise entered for consumption. This is because much of the merchandise (1) is in the same condition as it was when it was subject to examination upon admission (19 CFR 146.36), or (2) is the product of repetitive manufacturing or processing in the zone. Nevertheless, the Port Director is authorized to examine the merchandise upon entry for consumption as well as upon admission. If merchandise is ordered for examination, it may be required to be transferred to a Centralized Examination

Station or other location as designated by the Port Director. (See Sections 6.7(d) and 2.9 FTZM). Upon completion of the examination, a permit to release shall be issued on Customs Form 3461, 7501, or other authorized form, or electronically in the case of an entry filed electronically under the procedures of 19 CFR Part, 143 Subpart D, if the merchandise is admissible and all requirements of law and regulation have been met.

(g) **Tariff Classification - Zone merchandise** which is entered for consumption is classified according to the Harmonized Tariff Schedule of the United States, with the General Rules of Interpretation taken in order.

(1) **Privileged Foreign Status Merchandise** - Merchandise in privileged foreign status will be subject to tariff classification according to its character, condition, and quantity at the rate of duty and tax in force on the date of filing of the application, in complete and proper form, for privileged status. (19 CFR 146.65(a)(1)). Merchandise will not be deemed to have any zone status, including privileged foreign status, unless and until it is admitted to a zone on a Customs Form 214. (See Section 6.4 FTZM). Once privileged foreign status is selected, it can not be abandoned. Entries containing PF status merchandise must list the PF status merchandise on a separate line item(s) from NPF status merchandise. (See Section 9.9(d) FTZM concerning the effect of privileged foreign status on U.S. Government importations of goods manufactured in a zone into other articles.).

(i) **Tariff-Rate Quota Merchandise** - Classification of merchandise in privileged foreign status which is subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted. (19 CFR 146.65(a)).

(ii) **Waste** - Recoverable waste of privileged foreign status merchandise remaining after a casualty retains its privileged foreign status, and the merchandise is dutiable in its condition at the time privileged foreign status was requested. (LD 86-0007, CSD 86-7 and HQ 216240). It is distinct from recoverable waste of a manufacturing or manipulation operation under 19 CFR 146.42(b), which is changed to nonprivileged foreign status. (See Section 9.7(g)(2) and 9.7(h)(1)(i) FTZM).

(iii) **Duties Based on Relative Value** - Where two or more products result from the manipulation or manufacture of privileged foreign status merchandise in a zone, the duties and taxes applicable upon entry for consumption shall be distributed to the several products in accordance with their relative values at the time of separation, with due allowance for recoverable waste. (First Proviso, 19 USC 81c (a)). In the calculation of relative values in the operations of a

petroleum refinery in a zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. (19 USC 81c and see Section 11.6(j) FTZM).

(2) Nonprivileged Foreign Status Merchandise - Nonprivileged foreign status merchandise provided for in 19 CFR 146.42 will be subject to tariff classification in accordance with the character, condition and quantity of the actual product that is constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs. (19 CFR 146.65(a)(2)).

Waste resulting from the manufacture or manipulation of merchandise in privileged foreign status, and domestic status merchandise which has lost its identity as such, lose their former statuses and become nonprivileged foreign status merchandise. (19 CFR 146.42(b) and (c); see sections 5.7(d), 9.7(g)(1)(ii), and 9.7(h)(1)(i) FTZM).

(3) Generalized System of Preferences - To be eligible for duty-free treatment under the Generalized System of Preferences (19 CFR 10.171 through 10.178), several conditions must be met. 1) The merchandise must be imported directly from the Beneficiary Developing Country; (19 CFR 10.175) 2) nonprivileged foreign status merchandise entered for consumption must be in the same condition that it was in at the time of admission to the zone. (CSD 80-188).

(4) Entireties - Any reference in a HTS heading to an article shall include a reference to that article entered unassembled or disassembled. General Rule of Interpretation 2(a), HTS. This allows unassembled articles imported into the United States on the same conveyance on the same day to be treated as an entirety for tariff classification purposes. The FTZA creates an exception to this general rule governing entireties, with a choice of changing entireties being afforded a zone user. When nonprivileged foreign and privileged domestic status merchandise are attached or packaged together or withdrawn in an entirety in a zone, the nonprivileged foreign merchandise is classifiable at the rate of the entirety, even though the domestic portion is separately classifiable. (CSD 82-29). Election of privileged foreign status allows a zone user to have individual parts or components classified at the time privileged status is requested without reference to the classification of the entirety. (CSD 83-97).

(h) Valuation - Both privileged and nonprivileged foreign status merchandise are appraised in the same manner, as provided in 19 CFR 146.65(b).

(1) Dutiable Value - The dutiable value of merchandise transferred from a zone is the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone, plus the statutory additions contained in Section 402(b)(1) of the T.A. 1930, as amended by the Trade Agreements Act of 1979 (19 USC 1401a(b)(1)), less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost or of the statutory additions, the dutiable value may be determined by excluding from the total zone value any included zone costs of processing or fabrication, general expenses and profit, and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value shall reflect the total value of the foreign merchandise used in the manipulation or manufacture of the entered merchandise. In order to arrive at the dutiable value, a deduction from the transaction value of the foreign merchandise or total zone value, as appropriate, for recoverable and irrecoverable waste or scrap, generated as a result of the processing performed in that zone, will be permitted. (19 CFR 146.65(b)(2)).

When items are combined in the zone, the dutiable value of the merchandise transferred from the zone shall be the sum of the value of the foreign status materials used in the manipulation or manufacture of the entered merchandise. (HQ Ltrs 543048 dated June 17, 1983 and 543197 dated May 23, 1984).

(i) Valuation of Waste or Scrap - The dutiable value of recoverable waste or scrap from the manufacture or manipulation of foreign status merchandise will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone. (19 CFR 146.42(b) and 146.65(b)(2)).

(ii) Allowance for waste or scrap for privileged foreign merchandise - The deduction for waste or scrap to be made from the transaction value of the foreign merchandise used in the manipulation or manufacture of the entered merchandise shall represent the difference between: 1) the market value of the foreign merchandise admitted to the zone (i.e., the quantity of scrap or waste multiplied by the value, as appropriately measured, of the foreign merchandise); and 2) the market value of the scrap or waste (i.e., the transaction value of the scrap or waste).

(iii) Allowance for Damage - An allowance in the dutiable value of zone merchandise may be made by the Port Director in accordance with the provisions of 19 Part 158, Subparts B and C, for damage, deterioration, or casualty while the merchandise is in the zone. (19 CFR 146.65(b)(3)).

(2) Total Zone Value - The total zone value of merchandise transferred from a foreign-trade zone will be determined in accordance with the principles of valuation contained in 19 USC 1401a and 1500. The total zone value is that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price actually paid or payable, the total zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone. (19 CFR 146.65(b)(1)).

(i) Liquidation - When the declared value or values of the merchandise are based on an estimate or estimates or standard cost, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the Port Director. (19 CFR 146.65(c)). If the declared values are predicated on estimates, estimated costs, or standard costs, that information must be clearly identified to Customs as required at the time an entry or entry summary is filed. (19 CFR 146.62(b)(1)). Estimated values must be reconciled upon determination of the actual value using Customs reconciliation procedures.

(j) Antidumping and Countervailing Duties - The Board requires that merchandise which is subject to antidumping or countervailing duties in its condition as imported be placed in privileged foreign status. (15 CFR 400.33(b)). Upon entry for consumption such items shall be subject to bonding or cash deposit requirements under the AD/CVD order or the suspension of liquidation, as appropriate, under 19 CFR Part 351. HTSUS duty rates are established for privileged foreign status merchandise based on the date of admission to the zone. However, AD/CVD rates are assessed based on the rates applicable at the time of entry from the zone.

An AD/CVD investigation or order may be initiated on merchandise that has been previously admitted to a zone in nonprivileged foreign status. When this merchandise is entered for consumption, a determination is made as to whether the merchandise is within the scope of an AD/CDV investigation or order.

9.8 Weekly Entries for other than Quota Class Merchandise - The Trade and Development Act of 2000, Pub. L. 106-200, amended Customs entry statute, 19 USC 1484, to extend the usage of weekly consumption entries to include all Foreign-Trade Zones instead of limiting the usage to only manufacturing operations. The Week is

defined as any consecutive 7-day period. The usage of the weekly consumption entry is at the option of the operator or user of the zone.

The CF 3461 (estimate), filed on or before the first day of the 7-day period in which the merchandise is to be withdrawn from the zone, must be accompanied by a proforma invoice or schedule showing the number of units of each type of merchandise anticipated to be transferred during the week and their total zone and dutiable values. Notwithstanding that a weekly estimated entry may be allowed, all merchandise will be dutiable as provided in 19 CFR 146.65; see sections 9.7(g) and (h) FTZM. If estimated removals exceed actual removals, that excess quantity will not be considered to have been entered or constructively transferred to the Customs territory. (19 CFR 146.63(c)). If the entry summary presented to Customs per Section 9.8(c) FTZM shows merchandise transferred from the zone in excess of the quantity entered on the weekly entry (plus any supplemental entry), the excess will be considered to have been transferred to the Customs territory without a permit, a breach of the FTZ operator's bond. (19 CFR 146.71(a); see section 12.6 FTZM).

The estimated entry or release shall be treated as a single entry and a single release of merchandise. All fee exclusions and limitations of Section 13031(a)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 USC 58c(a)(9)(a)) shall apply, including the maximum and minimum fee amounts provided for under subsection (b)(8)(a)(i) of such Section.

The Secretary of the Treasury may require the operator or user of the zone to use an electronic data interchange approved by the Customs Service (such as its Automated Broker Interface) to file the weekly consumption entry and to pay the applicable duties, fees, and taxes with respect to the entries. The operator or user may also be required to satisfy the Customs Service that accounting, transportation, and other controls over the merchandise are adequate to protect the revenue and meet the requirements of other Federal agencies.

- (a) Purpose of Weekly Entries - Weekly entries are authorized under The Trade and Development Act of 2000, Title IV, Section 410, (amending 19 USC 1484; see also 19 CFR 146.63(c)), for rapid removal of merchandise from foreign-trade zones. If weekly entries were not allowed, it would be very difficult for the importer to make entry for the zone merchandise without unacceptable delays in the manufacturing process or in the distribution of goods. It would also be difficult for Customs to review and accept the entry and examine the merchandise in its form as entered.
- (b) Specific Estimate of Quantities and Values - Estimated weekly entries shall contain a specific estimate of the quantity of each HTS unit and total value to be entered during the covered 7-day period. This is required whether the merchandise is in privileged or nonprivileged foreign status. Weekly entries of parts shall contain a specific estimate of the quantity of each HTS unit to be shipped, and the total value. (19 CFR 146.63(c)).

(c) Filing of Entry Summary - The follow-up entry summary for a weekly entry shall be filed within the time limit specified in 19 CFR 142.12(b). The entry summary on Customs Form 7501 must show in item 29 the quantity and value of the merchandise by HTS number, actually entered during the covered 7-day period. An entry summary shall not be accepted if:

(1) the quantity of HTS numbers on the entry summary exceeds the corresponding quantity on the weekly entry; or

(2) it does not include the quantity, value, as specified in this paragraph.

If a supplementary entry is filed to cover extra estimated entered merchandise during the 7-day period, a separate entry summary must be filed to cover that entry. The above quantity, value, requirements apply also to supplementary entries and their follow-up entry summaries.

(d) Limitations and Prohibitions -

(1) Quota class merchandise is prohibited from weekly entry procedures.

(2) Sugar-Processing Operations - A weekly entry for estimated production shall not be accepted for any sugar or sugar-containing product which is subject to an absolute quota. (See Section 11.6(i) FTZM).

(3) "Blue Sky" Estimates - Port Directors shall not accept weekly entries for estimated quantities that are grossly in excess of past amounts covered by entry summaries unless the estimate is accompanied by a reasonable explanation for the disparity.

(4) Textiles and textile products are not eligible for weekly entry procedures due to restrictions found in 19 CFR 146.63(d).

(e) Exceptions to Other Provisions - The following exceptions to other provisions of the CR are noted:

(1) The restriction in 19 CFR 146.71(c) against further manufacture or manipulation will not be applied by Customs to weekly entries of estimated production.

(2) Weekly entries may be accepted for merchandise which has not yet been imported or admitted to the zone, as long as that merchandise is subsequently admitted, and is included in the follow-up entry summary.

(f) Inventory Relief Point - Where the operator of a zone relieves its inventory at or before the inventory relief point (usually the end of the final assembly line), the Port Director may accept the weekly entry on the basis of the quantity and value of merchandise passing through the inventory relief point. In this case, the follow-up entry summary shall be made on the quantity and value of the merchandise passing the same inventory relief point. Extension of the time limit under 19 CFR 146.71(c) for a period of up to 60 days shall not be deemed excessive for such operations.

9.9 Entries for Bonded Warehouse, TIB, Trade Fair, or U.S. Government Importations - The first proviso of Section 81c, Title 19, US Code, provides that when foreign merchandise in a zone has been given privileged status, the merchandise may be sent into the Customs territory on payment of duties and taxes. Customs interprets this proviso to forbid any delay in the payment of duties upon transfer to Customs territory. (19 CFR 146.62). A similar kind of restriction is applicable to entries of merchandise imported by the U.S. Government which have been manufactured in a zone. It must also be noted that entries for quota-class merchandise under TIB must also be charged to the appropriate quota. If the quota is closed, the TIB is not admissible.

(a) Bonded Warehouse Entries - Most of the procedures and requirements of Section 9.7 FTZM, apply also to entries for warehouse. However, the following provisions apply to entries for warehouse, but not to entries for consumption:

(1) Privileged Foreign Status Merchandise - Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. (CSD 81-8 and Section 19 CFR 146.64(a)).

(2) Nonprivileged Foreign Status Merchandise - Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port, unless it was imported more than 5 years before the warehouse entry was filed (19 CFR 146.64(a), (d)). If such merchandise was entered for warehouse within the 5-year period, it may not remain in a bonded warehouse longer than 5 years from the date of importation of the merchandise. For example, if merchandise has been in a zone for a period of three (3) years from the date of original unloading at the first port of arrival in the U.S., the merchandise could only remain in the bonded warehouse for the remaining two (2) years. (See 19 CFR 146.64(d)).

(3) Zone-Restricted Status Merchandise - Foreign or domestic merchandise in zone-restricted status may be entered for warehouse in the same or a different port only for storage pending exportation, unless the Board has approved another disposition. (19 CFR 146.64(b), 146.70(c) and HQ 224147).

(4) Domestic or Previously-Entered Merchandise – Per bonded warehouse regulations, domestic status, or previously entered merchandise, may not be entered into a bonded warehouse. (See 19 USC 1555, 1557; 19 CFR Part 19 and section 555 and 557TA).

(5) Textile Articles - Textiles and textile products, including quota class merchandise, which have been changed as provided for in 19 CFR 146.63(d) may be entered for warehouse only if the entry is endorsed by the Port Director to show that the merchandise may not be withdrawn for consumption. (19 CFR 146.64(c) and See Section 11.6(h) FTZM).

(b)Entry Under Temporary Importation Bond -

- a. Privileged Foreign Status – Privileged Foreign status merchandise or composed in part of Privileged Foreign merchandise may not be entered on a TIB. (19 CFR 10.31 and CSD 81-213).
- b. Zone-Restricted Status - Zone-restricted status merchandise may be entered for TIB only if the Board has ruled that it is in the public interest and has not specified that an entry other than a consumption entry shall be made. (CSD 81-119).
- c. Non-Privileged Foreign Status - Nonprivileged foreign status merchandise may be entered on a TIB unless:
 - i. it contains Privileged Foreign merchandise; or
 - ii. it has been in the zone for longer than one year (CSD 79-454); or
 - iii. If quota merchandise, the quota is closed

(c). Trade Fair Entries -

1. Privileged Foreign Status Merchandise – Cannot be subject to a Trade Fair Entry.
2. Zone-Restricted Status Merchandise –May be transferred to a trade fair for exhibition and subsequently entered for consumption if the Board has approved it as being in the public interest. (19 CFR147.45).
3. Non-Privileged Foreign Status Merchandise -Merchandise in nonprivileged foreign status not composed in part of merchandise in privileged foreign status may be transferred to a trade fair, from which it may be granted any disposition provided for in 19 CFR 147.42.

(d) Entries of U.S. Government Importations - Importations by or for the account of the U.S. Government are subject to the usual Customs entry and examination requirements. In the absence of express exemptions from duty, such as those contained in Chapter 98, Sub-chapter VIII, HTS, they are subject to duty. (19 CFR 10.100). Procedures for entering such merchandise are set forth in 19 CFR 10.100-10.104. Merchandise in privileged foreign status which is transformed in a zone into merchandise which is covered by an HTS subheading in Chapter 98, Sub-chapter VII, HTS, as a U.S. Government importation is not eligible for the duty-free exemption because the duties were fixed on the merchandise at the time privileged foreign status was requested. (HQ 222452 dated August 15, 1990 and See Section 5.5 FTZM).

9.10 Entries for Diplomatic and Foreign Military Use - Entries for diplomatic use are, for Customs purposes, entries for consumption, filed as provided in Section 9.7(a) FTZM but with special control requirements of the zone operator. Upon the request of the Department of State, merchandise may be transferred from a zone without the payment of duty and tax for the personal use of diplomatic, consular, and other privileged personnel. It cannot be used as an accommodation for others or for sale or other commercial use. (19 CFR 148.85). There is no authority for a blanket transfer permit from a zone for such merchandise similar to the blanket withdrawal permit authorized under 19 CFR 19.6(d) for bonded warehouse operations.

(a) Regulatory Provisions for Exemption from Duties and Taxes - The definitions of diplomatic, consular, and other privileged personnel are set forth in 19 CFR 148.85(a)-(c). In addition, 19 CFR 148.87 identifies public international organizations whose officers and employees, and representatives are entitled to such free entry privileges. 19 CFR 148.88 specifies certain representatives to, and officers of, the United Nations and the Organization of American States entitled to the same privileges. Property of designated international organizations listed in 19 CFR 148.87 or of foreign governments will be admitted free of duty and internal revenue taxes imposed upon or by reason of importation under Title 22 USC 288, but such exemption will be granted only upon the receipt, in each instance, of instructions from the Customs Service issued at the request of the Department of State. (19 CFR 148.87(a)). Foreign military personnel are entitled to exemption from duty and internal revenue taxes in accordance with 19 CFR 148.90.

(1) Procedure for Diplomatic Exemptions - Permission for transfer to Customs territory of zone status merchandise for diplomatic, consular, or public international organization use is requested by a representative of such an entity from the Department of State on DS Form 1504. If the Department of State finds that U.S. personnel in those countries are offered reciprocal privileges and approval of the request is otherwise warranted, it

will so advise the appropriate Customs Port Director. However, requests from the United Nations or foreign country missions to the United Nations in New York for exemptions shall be made directly to the New York Area Port Director. Requests from consulates in New York other than those associated with the United Nations shall be made to the Department of State.

(2) Procedures for Military Exemptions - A request for exemption from duties and taxes on merchandise withdrawn for the official or personal use of members of the armed forces of a foreign country in the United States, but not as an accommodation to others or for sale or other commercial use, shall be made directly to the port director having jurisdiction over the zone and not, through the State Department. (19 CFR 148.90(a)). The Port Director will accord duty and tax-free treatment only to the extent to which the foreign government accords similar treatment to members of U.S. armed forces in that country, as advised by Customs Headquarters Diplomatic Privileges Office. (19 CFR 148.90(b)). The withdrawal of alcoholic beverages for the personal or family use of foreign military personnel is limited to one case per month, except in exceptional circumstances. (19 CFR 148.90(d)).

(b) Zone Admission File Records - Entries under this section shall be made on Customs Form 7501, accompanied by a copy of DS Form 1504. The operator shall place a copy of the entry and the foregoing support documents in the zone admission file folder.

(c) Transfer to Other Ports after Entry - An entry made under this section may be made at a port other than the one where the embassy, consulate, public international organization, or foreign military unit is located. Merchandise which has been entered for such diplomatic use may be transported to the location where it will be used for diplomatic purposes, but shall not be transported under Customs bond.

(d) Refused Merchandise - If merchandise entered for diplomatic use is rejected by the diplomatic agency due to a language misunderstanding as to the quantity or kind of merchandise ordered, the refused delivery may be treated as a mistake of fact under 19 USC 1520(c)(1). The refused merchandise may be returned to the zone in its last zone status and the entry amended to reflect the quantity of merchandise accepted upon delivery. (LD 80-197 and HQ.713144 dated 9/12/80).

9.11 Transfer to Another Zone or Port - Merchandise may be transferred from one zone to another in the same or a different port, or may be entered for transportation in bond to another port for entry for consumption or warehouse as permitted by law. (See Section 6.7 FTZM). Zone to zone transfers may be made on an individual basis or on a weekly

basis using the procedures in 19 CFR 146.66 and 146.68 and 26 USC 5061(d) and 5703(b)(2).

Customs Form 7512 for merchandise to be transferred to another port or zone shall state the following:

- (1) that the merchandise is foreign-trade zone merchandise;
- (2) give the number of the zone from which it was transferred; and
- (3) state the zone status of the merchandise.
- (4) when applicable, it shall bear, the notation or endorsement provided for in 19 CFR 146.64(c) (textile articles), 146.66(b) (transfer to a zone at a different port), 146.70(c) (zone-restricted status merchandise for entry for warehouse), and 146.70(d) (zone-restricted status merchandise for other purposes). (19 CFR 146.62(b)(2)). It shall also bear, when applicable, the notation specified in 26 USC 5061(d), 5703 (b)(2), 5702(k), and 5703(b)(ii) (Internal Revenue Service non-diversion statement).

(a) Transfer to Another Zone in Same Port - A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman or lighterman, a bonded carrier, or the FTZ Operator when the merchandise is destined for his zone (19 CFR 112.2(b)) under an entry for immediate transportation on Customs Form 7512 or other appropriate form under the procedures of 19 CFR Part 18 , with a Customs Form 214 filed at the destination zone. (19 CFR 146.66(a)). The Customs Form 7512 must include the statements required by 19 CFR 146.62(b)(1), 146.66(b), and 146.70(d) when applicable. The purpose of using Customs Form 7512, rather than Customs Form 6043, within-port transfers, is to assure that the operator of the destination receiving zone has the necessary information to exercise proper control over the merchandise and to file proper admission documentation.

The operator of the sending zone shall also transmit the merchandise history to the operator of the destination zone, as provided in 19 CFR 146.66(c) (see also section 9.11(b) FTZM. If the Port Director so requires, a copy of Customs Form 7512 shall be transmitted to Customs by the destination zone operator upon receipt of the shipment. Upon arrival at the destination zone, the merchandise shall be admitted. (See Section 6.7(g)(5) FTZM).

(1) Transfer to Zone Site with Same Operator - A transfer of merchandise between zone sites at the same port having the same operator may be made under permit on Customs Form 6043 or by the zone operator under a local control system approved by the Port Director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone. The statements specified in 19 CFR 146.62(b)(1), 146.66(b), and 146.70(d) shall not be required for such transfers.

(b) Transfer to Zone at Another Port - A transfer of merchandise from a zone at one port of entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number, as well as the statements required by 19 CFR 146.62(b)(1) and 146.70(d), when applicable. (19 CFR 146.66(b)). A sample of a properly filled-out Customs Form 7512 for transfer to a zone at another port is shown in the Appendix to the FTZM.

(1) Forwarding of Merchandise History - When merchandise is transferred under the provisions of 19 CFR 146.66(b), the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

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

(a). a copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(b). a copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(c). a copy of any Customs Form 216 to manipulate or manufacture the merchandise.

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

(a). a copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(b). a copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(c). a copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(iii) If the documents specified in Section 9.11(b)(1) (i) and (ii) FTZM are not presented, the operator of the transferring zone shall submit the following:

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

(b). a certification that the above statement is true and that the information therein is contained in the inventory control and recordkeeping system of the transferring zone.

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

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

(b). a certification by the operator of the transferring zone that the above statement is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(v) In circumstances where a lot inventory control system is utilized, but the forwarding of the documentation called for in Section (i) would cause a significant paperwork burden, the provision of paragraph (iii) and paragraph (iv) allowing a statement and

certification by the operator, shall be permissible. (Procedural accommodation for USCS)

(vi) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after the merchandise has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise. (19 CFR 146.66(c)).

(2) Arrival at Destination Zone - Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in 19 CFR 146.32, except that invoicing or Customs examination requirements may be waived by the Port Director. Merchandise must retain the zone status from the transferring zone upon admission to the new zone. Any subsequent application to change the zone status must consider all activity since the first zone admission. (See Section 6.7(g)(5) FTZM). When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system. (19 CFR 146.66(d)).

(3) Records of Transferred Merchandise - The operator of the sending zone remains responsible for maintaining a complete record of all goods that have been transferred to another zone for a period of 5 years from the date of transfer. (19 CFR 146.4(d)). The Customs Forms 214 and 216 to be sent to the receiving zone should be copies of the original forms required to be maintained by the operator of the sending zone.

(4) Valuation Option - For confidentiality purposes, with the agreement of the Customs Port Director, a firm in a zone may use total zone value for zone-to-zone transfer purposes. In those instances where the merchandise in question has a specific rate of duty, agreement may be reached by the parties on a standard valuation method using public sources, as value would not be a requirement for Customs admissions.

(c) Transfer to Another Port for Entry for Consumption or Warehouse - Merchandise may be entered for transportation to another port under the procedures in 19 CFR Part 18, and there entered for consumption or warehouse, if such entry is not prohibited by law or regulation. The statements on Customs Form 7512 required under 19 CFR 146.62(b)(2), 146.64(c), and 146.70(d) alert the consignee and the Port Director at the destination as to the proper treatment of the merchandise. The responsibility will be on the owner, purchaser, or other eligible person to file a proper entry for the zone merchandise, as specified in 19 Part 141, Subparts B and C. An owner or purchaser who has a bond on file containing the

conditions in Section 19 CFR 113.62 and desires to export the merchandise (rather than enter it for consumption or warehouse) shall advise the Port Director in writing. The Port Director shall permit the exportation under Customs supervision under an entry for direct or indirect exportation as provided in 19 CFR 18.25 or 18.26, as applicable, if such a permit may be lawfully issued.

(d) Liability and Payment of Internal Revenue Tax - In the case of any alcohol or tobacco product imported, entered for warehouse, or brought into the United States or a foreign-trade zone after December 15, 1986, the internal revenue tax, but not the duty, becomes due and payable the 14th day after the last day of the semimonthly period during which the article is removed from the first foreign-trade zone into which it is admitted. 26 USC 5061(d) and 5703(b)(2).

(1) Exception for Export Merchandise - Internal revenue tax is not due or payable on any alcohol or tobacco product which the Port Director is satisfied is destined for export. The burden of proof for furnishing evidence of export destiny lies with the person filing the application for transfer from the zone. Acceptable evidence includes entry for transfer of zone-restricted status merchandise to another zone or a bonded warehouse at the same or a different port, or entry of foreign or zone-restricted status merchandise for exportation or transportation and exportation with a notation on Customs Form 7512 which reads: "THIS MERCHANDISE IS DESTINED ONLY FOR EXPORTATION, AND MAY NOT BE WITHDRAWN OR DIVERTED FOR CONSUMPTION".

(2) Payment Procedure - When alcohol or tobacco products are to be removed for transfer to another zone, for transportation to another port, or entry for warehouse, and are not destined for export, the application for transfer or the entry on Customs Form 7512 shall be accompanied by Customs Form 7501, in the number of copies required by the Port Director, and the taxes due on the merchandise. The following statement shall be contained in the body of the form: "FOR COLLECTION OF INTERNAL REVENUE TAXES ONLY". A receipted copy of Customs Form 7501 should accompany the merchandise to the destination, port, warehouse, or zone as evidence of proof of Internal Revenue tax paid status. The burden will be on the subsequent person filing an entry or withdrawal to provide satisfactory evidence to Customs of tax paid status.

9.12 Transfer from Zone for Exportation - Foreign and domestic merchandise may be brought into a zone and be exported therefrom. (19 USC 81c(a)). "Exportation" is defined in 19 CFR 101.1as a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to another country. For statistical reporting purposes, zone exporters must follow the procedures set forth in the U.S. Census Bureau's Foreign Trade Statistics Regulations (FTSR), in

Title 15, Code of Federal Regulations (CFR), Part 30, for all merchandise removed from a zone for direct export out of the United States.

The North American Free Trade Agreement (NAFTA) Duty Deferral provision, found in 19 CFR 181.53, applies to foreign merchandise imported under a duty deferral program that is manufactured or changed in condition and subsequently exported to Canada or Mexico. Under these provisions, withdrawals for exportation to Canada or Mexico are treated as if the merchandise was entered for consumption. The NAFTA Duty Deferral entry must be filed for these withdrawals. The collection of regular duties and fees must be deposited within 60 days of the date of export. Duty deferral became effective for withdrawals for exportation to Canada on January 1, 1996 and for exportations to Mexico on January 1, 2001. Foreign goods manufactured in a zone and exported to Canada and Mexico are subject to NAFTA Duty Deferral and require the filing of entry summary documentation within 10 working days from the date of exportation.

General provisions for the statistical reporting of exports from a zone are also contained in (a) and (b) below.

(a) Export Statistical Reporting – All goods subject to statistical reporting requirements, foreign or domestic, removed from the zone for export to a foreign country must be reported at the Customs port of export on the Shipper's Export Declaration (SED). The Commerce Form 7515-V, Form 7525-V Alt. (Intermodal), or the electronic use of the Automated Export System (AES) is required for all goods foreign or domestic subject to statistical reporting requirements which are removed from the zone for export to a foreign country. When reporting shipper's export data electronically using the AES, the proper exemption statements must be included on the bill of lading, airway bill, or other manifest document.

(1) SED/AES Filing Requirements – A SED/AES record (line item) is required for all export shipments valued over \$2,500 from the United States, Puerto Rico, or the U.S. Virgin Islands to a foreign country, or for all licensed shipments regardless of value (See 15 CFR 30.01 through 30.16 for SED exporter's general filing requirements). AES filing requirements are contained in, Subpart E-Electronic Filing Requirements-Shipper's Export Information, 15 CFR 30.60-30.66. A SED/AES filing is not required for exports to Canada, except when a license or other report is required, because of the data exchange program the United States has with Canada. (See 15 CFR 30.58). For other items exempt from SED/AES filing requirements, refer to the FTSR, subpart D-Exemptions from the Requirements for the Filing of Shipper's Export Declarations, Sections 15 CFR 30.50-30.58. For specific AES exemption provisions, see 15 CFR 30.65.

(2) (a) Customs Collection of Forms – Except for shipper's export declarations information filed electronically using the AES, Custom officers will collect paper SED's from exporting carriers for all goods subject to statistical reporting requirements exported

out of the United States. The SED's will be collected at the Customs port of exportation, not at a zone. (19 CFR 4.63 and 122.76).

(b) Exportation for Purposes of Other Agency Laws – Exports from foreign-trade zones are subject to the requirements of various agencies charged with the administration and enforcement of export control laws and regulations, such as the Department of Commerce, Export Administration Regulations, 15 CFR Parts 730 through 774; Department of State, 22 CFR Parts 121 through 130; and The Drug Enforcement Administration, 21 CFR Part 1312. The requirements of these agencies shall be met only upon actual exportation, not upon admission to the zone in zone-restricted status.

(c) Shipments to Insular Possessions - Shipments to insular possessions of the United States are not exported for the purposes of the Customs laws, and thus do not meet any condition or requirement of Customs laws for exportation, including that for zone-restricted status merchandise. Shipments transferred from an FTZ to an insular possession must be duty paid. (HQ Ruling 223828 dated 7/1/92). Such a shipment may be deemed an exportation for the purposes of other Federal laws if the Federal agencies administering those laws so deem it. The principal Insular possessions include the U.S. Virgin Islands, American Samoa, Guam, Wake Island, Midway Islands, and Johnston Atoll. (19 CFR 7.2(a)). Puerto Rico is part of the Customs territory of the United States. (19 CFR 101.1). Therefore, an entry for merchandise destined to Puerto Rico shall be made for transportation only (I.T.) under the procedures of 19 CFR Part 18 and see Section 9.11 FTZM. Please see chart below for filing requirements for SED's. (For export statistical reporting follow procedures specified in 15 CFR Part 30).

SED's are required

From the United States or Puerto Rico to the Virgin Islands
From Puerto Rico to the United States
From the United States to Puerto Rico

SEDs are not required

From United States or Puerto Rico to Insular possessions (except Virgin Islands)
From Insular possessions to other possessions

(d) Direct Exportation - Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) in the same manner as an immediate exportation under Section 9.12(c) FTZM, except that the merchandise need not be transported to the exporting carrier by licensed cartman under the procedures of 19 CFR Part 125 (19 CFR 146.67(a)). Direct exportation occurs when the merchandise is laden directly on an exporting carrier (e.g. vessel or aircraft) within a zone, and no cartage or transportation in bond through Customs territory is required to deliver it to the carrier. (For export statistical reporting, follow procedures specified in 15 CFR Part 30).

(e) Immediate Exportation - Each transfer of merchandise to the Customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation on Customs Form 7512. The person making entry shall furnish an importation and entry bond guaranteeing export on Customs Form 301 containing the bond conditions provided for in 19 CFR 113.62 and 146.67(b). The merchandise will be transported by licensed cartman to the place of lading under the procedures in 19 CFR Part 125, and exported under the procedures in 19 CFR 18.25. Care should be taken by Customs officers and bonded cartmen to execute both the front and the back (Record of Cartage or Lighterage) of Customs Form 7512. (For export statistical reporting follow procedures specified in 15 CFR Part 30).

(f) Indirect Exportation - Each transfer of merchandise to the Customs territory for transportation to and exportation from a different port will be made under an entry for transportation and exportation on Customs Form 7512. The bonded carrier will be responsible for exportation of the merchandise in accordance with 19 CFR 18.26 and 146.67(c). (For export statistical reporting, follow procedures specified in 15 CFR Part 30).

(1) Splitting of Shipments and Changes of Destination - If any part of a shipment is not exported or if a shipment is divided at the port of exportation, extracts in duplicate from the manifest on file in the Customhouse shall be made on Customs Form 7512 for each portion. The splitting up for exportation of shipments arriving under entries from zones for indirect exportation shall be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. The provisions of 19 CFR 18.23 and 18.24 concerning change of destination or retention of merchandise on the dock shall also be followed in applicable cases.

(2) Special Conditions - Special Conditions set forth in Customs ruling 223268 dated 10/15/91, allow PF status aircraft turbine fuel to be transferred from an FTZ, using in bond procedures to destination and temporarily stored in segregated non-bonded storage prior to exportation as fuel under 19 USC 1309.

(3) Diversions at Destination - An entry from a zone for indirect exportation may be converted to an entry for consumption upon a request to the Port Director at the port where the entry for indirect exportation was made, unless such diversion is prohibited by law or regulation, e.g., zone-restricted status merchandise. The potential for diversions for consumption at the port of exportation is one of the reasons for the statement requirements in 19 CFR 146.62(b)(2) and 146.70(d); see section 9.11(d)(1) FTZM.

(4) Indirect Exportation - Pursuant to 19 CFR 18.24, merchandise may be retained in a non-bonded area (Customs approved storerooms-CASR) for a period not to exceed 90 days. Extensions may be granted, but such extension(s) shall not exceed 1 year. Merchandise retained at an airport for export through in-flight sales aboard aircraft is subject to special procedures under CD 099-3280-008.

(g) Filing of Entry- An entry for direct, immediate, or indirect exportation shall be filed on Customs Form 7512 in five copies. The Port Director may require an extra copy or copies of Customs Form 7512 for use in connection with the delivery of the merchandise to the carrier. One copy of the form shall be used as the permit copy to be retained by the operator. One copy shall be used to initiate the in bond movement under the Automated Commercial System. The other copies shall be returned to the operator or zone user for transmittal to the bonded carrier or licensed cartman. The same form and procedure will be used for shipments to insular possessions, but not to Puerto Rico, although such shipments are not deemed exportations under the Customs laws. For export statistical reporting follow procedures specified in 15 CFR Part 30.

(1) Statements on Customs Form 7512 - Whether the entry is for direct, immediate, or indirect exportation, the person making entry shall include on Customs Form 7512 the statements required under 19 CFR 146.62(b)(2); and, when applicable, the endorsement in 19 CFR 146.70(c)(d) for zone-restricted status merchandise and the statement in Section 9.11(d)(1) FTZM for alcohol and tobacco products. A sample of a filled-out Customs Form 7512 for immediate exportation from a zone is shown in the Appendix to the FTZM .

(2) Bond Liability - For direct or immediate exportation, a bond on Customs Form 301 shall be on file with the Port Director, containing the bond conditions set forth in 19 CFR 113.62. The principal named in the bond is the person responsible for exportation of the merchandise. When merchandise is accepted by a bonded carrier for transportation and exportation, the bonded carrier becomes responsible for causing the merchandise to be exported and providing proof of exportation. (19 CFR 18.26(d)). If a bonded carrier is not reasonably available, a bond containing the conditions set forth in 19 CFR 113.62 may be used for indirect importations upon approval of the local Port Director as provided in 19 USC 1553. A licensed cartman is not responsible for exportation, but rather only for cartage to the place of lading for exportation.

(h) Exportation by Mail - Merchandise may be transferred from a zone for exportation by mail in accordance with the provisions of 19 CFR Part 145 Subpart, F. The zone exporter shall endorse on each mail article a waiver of the right to

withdraw the merchandise from the mails. (19 CFR 145.71(b)). Mail export shipments will be transported by licensed cartman to the postal facility under the procedures of 19 CFR Part 125. For export statistical reporting follow procedures specified in the 15 CFR Part 30.

(i) Supervision and Control of Exports - Exportation will be generally supervised under Customs procedures for export supervision. A Customs officer or authorized representative of the exporting carrier will certify lading for exportation on Customs Form 7512. Responsibility for furnishing proof of exportation, if demanded by Customs, is on the bonded carrier named on the Customs Form 7512. (19 CFR 113.62(h)(3) or 18.26(d)). Conditions for cancellation of a bond to assure exportation by Customs are set forth in 19 CFR 113.55. Merchandise exported by mail may be deemed exported when an authorized representative of the Post Office signs for receipt of the mail package. If satisfactory proof of exportation is not furnished, the Port Director may issue a claim for liquidated damages against the principal named in the importation and entry bond or the custodial bond of the bonded carrier, as applicable. For export statistical reporting follow procedures specified in the 15 CFR Part 30.

(j) Merchandise Not Laden - Merchandise entered for exportation from a zone, but not laden, shall be sent to general order unless other disposition is prescribed by the Port Director. (19 CFR 144.37(f)). However, if the merchandise is not accepted by the exporting carrier, the merchandise may be returned to the zone in its previous zone status. If the zone is in the same port, the merchandise not laden may be returned to the zone and the entry on Customs Form 7512 canceled. If the zone is located in a different port, a CF 7512 (IT) is submitted to return the merchandise not laden to the zone. Upon written application by the person making entry for exportation, and with the consent of the owner of the dock or airline, the Port Director may allow merchandise so entered for exportation to remain at the dock or airport for up to 90 days, with extensions for up to 1 year. (19 CFR 18.24(a)). Merchandise retained at an airport for export through in-flight sales aboard aircraft is subject to special procedures under CD 099 3280-008.

(k) Relanding of Goods - If any merchandise entered or withdrawn for exportation without payment of duties is re-landed at any place in the United States without an entry having been made, the merchandise will be considered to have been imported contrary to law, and each person concerned will be subject to fine or imprisonment or both, and the merchandise will be forfeited. (18 USC 544). Civil penalties may also be applicable if false or negligent drawback claims have been filed in connection with such merchandise pursuant to 19 USC 1593a.

(l) Reimportation of Textile Articles Changed in Zone - Textiles and textile products which have been changed as provided for in 19 CFR 146.63(d), may be exported and returned to Customs territory for warehousing, provided the entry for

warehouse is endorsed by the Port Director to show that the merchandise may not be withdrawn for consumption. (19 CFR 146.67(d)).

(m) Reimportation of Merchandise Manufactured in Zone - Articles produced or manufactured in a zone, and exported therefrom, shall on subsequent importation into the Customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country. The domestic content of zone-manufactured articles, as well as the foreign content, becomes subject to duty and tax, to the same extent as like articles manufactured or produced in a foreign country, upon reimportation of the merchandise. 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 Proviso, 19 US 81c (a) may, on such reimportation, be entered under the provisions of Chapter 98, Sub-Chapter I, HTS. Sixth Proviso, 19 USC 81c(a), 19 CFR 146.67(e).

9.13 Weekly Entry for Transportation or Exportation - The zone operator or user may elect to file an application for a weekly permit to enter and release merchandise during any seven-day period for exportation, transportation, or transportation and exportation. (19 USC 1448, as amended by The Trade and Development Act of 2000, Title IV, Section 410; see 19 CFR 146.68(a)). The application shall be on Customs Form 7512 stating at the top the words "Application for Weekly Zone Permit" in capital letters, and shall be filed with the Port Director. The application shall be accompanied by a pro forma invoice or schedule like that required in 19 CFR 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry shall file a supplemental Customs Form 7512 to cover the additional merchandise to be transferred from the zone or subzone site. No merchandise covered by the weekly permit shall be transferred from the zone before approval of the application by the Port Director. (19 CFR 146.68(a)).

(a) Purpose of Weekly Permit - The principal purpose of the weekly permit is to enable Customs to issue one permit for all merchandise estimated to be removed from the zone for transportation and/or exportation during a seven day period, so the applicant does not have to apply for a permit for each and every shipment from the zone. However, unlike the weekly procedure for entry for consumption, entry for transportation and/or exportation does not occur until the carrier signs for receipt of the merchandise covered by an individual entry filed under the weekly permit. (19 CFR 146.68(b)).

(b) Preparation of Application - The Application for Weekly Permit, appropriately marked as required under 19 CFR 146.68(a), need only be filled out so as to show the description of the merchandise for which the permit is sought and the seven day period during which it is to be removed from the zone. The application shall not be accepted without the required invoice or schedule of the number of units of each model or type of merchandise to be removed, and their dutiable values.

(See Section 9.7(h)(1) FTZM). Merchandise covered by the application may be removed from the zone only when the Port Director has approved the weekly permit. The permit shall be signed by Customs, if appropriate, and returned to the applicant before the beginning of the covered seven-day period. If actual removals will exceed the estimate for the week, the person filing the weekly application shall file a supplemental application on Customs Form 7512 to cover the additional removals before Customs will permit their removal from the zone.

(c) Individual Entries on Customs Form 7512 - After approval of the application for a weekly permit by the Port Director, the person making entry will be authorized to execute individual Customs Forms 7512 for exportation, transportation, or transportation and exportation of the merchandise covered by the permit. Upon transfer of the merchandise, the operator shall obtain a receipt from the carrier on Customs Form 7512 to ensure transfer of liability to the custodial bond of the carrier or cartman. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512, as provided for in 19 CFR 18.2(c). The operator also shall ensure that the Port Director receives a copy of the Customs Form 7512 by the end of the next working day after the carrier has receipted for the merchandise. (19 CFR 146.68(b)).

- (1) Statements on Form and Customs Assistance - Individual entries shall contain the statements required in 19 CFR 146.62(b)(1) and, when applicable, 19 CFR 146.66(b). The Port Director will see that the operator and/or the applicant is properly trained to assure that origin in bond documentation is properly prepared and transmitted to the carrier for transportation in bond, as provided in 19 CFR 18.2(c).
- (2) Customs Processing of the CF 7512 – Upon receipt, Customs will process the CF 7512 through the automated system according to current procedures. Timely entry of the information into the automated system is critical for the accurate tracking of the movement of the cargo between ports.

(d) Weekly Statement of Merchandise Entered - The person making entry for merchandise under an approved weekly permit shall file with the Port Director, by the close of business on the second working day following the end of the seven day period, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique in bond number, and will provide a reconciliation of the quantities on the individual Customs Form 7512 submitted to Customs to the quantity estimated for the week, as well as an explanation of any discrepancy. (19 CFR 146.68(c)).

- (1) Processing of Weekly Statement - When the statement of merchandise entered under a weekly permit is received, it shall be checked in a timely

manner by Customs against the weekly permit and copies of Customs Form 7512 received from the operator. If the total quantity of merchandise entered on Customs Forms 7512 for exportation, transportation, or transportation and exportation is in excess of the amount covered by the weekly permit, the excess will be considered a default involving merchandise under the Foreign-Trade Zone Operator's bond. (19 CFR 113.73(a)(2)). If the weekly permit covers merchandise which was not entered on Customs Forms 7512 during the seven-day period, the permit for removal will be deemed to have lapsed at the end of the seven-day period. (See Section 9.8 FTZM).

9.14 Transfers for Vessel or Aircraft Supply - Articles in zone status may be transferred from a foreign-trade zone for supplies and equipment of various aircraft and vessels actually engaged in foreign trade or engaged in certain trades among various portions of the United States or between the United States and its insular possessions. (Sections 309 and 317 TA). Complete guidelines and instructions for the application of those laws is beyond the scope of this Manual, since they touch also on bonded warehouses, other places in continuous Customs custody, and facilities under bond of the Internal Revenue laws. The principal regulations dealing with such articles are 19 CFR 10.59 through 10.65 and 19 CFR 146.69(a).

(a) Entry Procedures - Each application for transfer of merchandise from a zone for delivery to a qualified vessel or aircraft at the same or a different port shall be made on Customs Form 7512 as provided in 19 CFR 10.59(e), 10.60, and 146.69(a). Each application shall contain the statements required in 19 CFR 146.62(b)(2) and, when applicable, 19 CFR 146.70(d) and see Section 9.11(d)(1) FTZM. The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in 19 CFR 113.62, whether the merchandise is to be laden as supplies at the same or a different port. (19 CFR 146.69(a)).

(b) Eligibility for Duty-Free Entry - Eligibility for duty-free entry of vessel and aircraft supplies and equipment is limited by 19 USC 1309, 1317 and/or the Customs Regulations.

(1) Actually Engaged in Foreign Trade - Generally, supplies for vessels and aircraft which are actually engaged in foreign trade are entitled to the duty-free withdrawal privilege. However, duty-free treatment does not extend to supplies for vessels or aircraft on trial or test trips, or being ferried or delivered to a new owner or home port, preparatory to being actually engaged in foreign trade. (19 CFR 10.59(b)). However, vessels or aircraft departing without passengers or cargo for the purpose of taking on cargo or passengers at another port may be considered to be engaged in foreign trade. (19 CFR 10.59(a)(3)). Vessels or aircraft on the domestic leg of a voyage or flight proceeding to, or arriving from, a foreign port or place are

considered engaged in foreign trade. However, on inward voyages or flights, duty-free entry privileges do not extend to quantities of supplies in excess of actual needs for the remainder of the voyage or flight, unless the vessel or aircraft is proceeding to a foreign port or place immediately after the discharge of cargo or passengers at the termination point of the voyage or flight. (CD 099 3240-028 dated May 27, 1999).

(2) Other Eligible Trades - Generally, supplies for vessels or aircraft in coastwise trade are not entitled to duty-free entry privileges. However, duty-free entries are permitted for supplies for (1) voyages or flights between the U.S. and any of its possessions, (2) voyages or flights between Hawaii or Alaska and the rest of the United States, or (3) vessel voyages (but not aircraft flights) between the Atlantic and Pacific coasts of the United States. Duty-free entry privileges do not extend, however, to petroleum products for vessel voyages or aircraft flights exclusively between Hawaii or Alaska and any airport or Pacific Coast seaport of the United States. (19 USC 1309(a)).

(3) U.S. Flag vs. Foreign Flag - Duty-free entry privileges for U.S. flag vessels (including fishing vessels) and aircraft is limited to supplies, i.e. consumables such as food, beverages, films, paint, rope, fuel, etc. Foreign-flag vessels (including fishing vessels) may enter free of duty not only supplies, but also vessel equipment and articles and materials needed to repair the vessel. Foreign-flag aircraft may withdraw free of duty supplies, equipment (including ground equipment), and articles and material for aircraft maintenance and repair, but only if substantially reciprocal privileges are accorded by that country to aircraft registered in the U.S. (19 USC 1309(d)). A list of countries which currently accord such reciprocal treatment, with certain exceptions, is provided in 19 CFR 10.59(f). Entries of duty-free supplies and equipment for U.S. flag vessels may not qualify as exportations for the purposes of some laws. (See Section 9.14(c) FTZM).

(4) Fisheries Vessels - Supplies, equipment, and repair articles may be entered free of duty and tax for U.S. or foreign fishing vessels to the extent noted in Section 9.14(b)(3) FTZM above. However, duty and tax-free entry of distilled spirits, wines, and beer is limited to (1) U.S. flag fishing vessels which are documented and have a fisheries license endorsement, or (2) foreign-flag vessels of 5 net tons or more. Furthermore, the Port Director may deny duty and tax-free entry of alcoholic beverages if he or she is satisfied that (1) the vessel is not engaged in substantially continuous fishing activities and (2) the vessel's complement and expected time at sea are not appropriate for the quantities to be withdrawn. (19 CFR 10.59(e)). Special reporting requirements apply for fishing vessels. (See Section 9.14(g) FTZM).

As a condition to the lading of domestic tobacco products, Customs may, in order to protect the revenue, require assurances from the vessel master of the receiving vessel that quantities to be laden are reasonable considering the number of persons to be carried, the vessel's itinerary, the duration of its intended voyage, etc., and that such articles are to be used exclusively as supplies on the voyage. Tobacco products are not authorized to be laden free of duty and taxes for foreign fishing vessels less than 5 net tons. (See 10.65(a) and 27 CFR 290.62).

(5) Government and Military Vessels and Aircraft - Duty-free entry privileges extend to supplies for vessels or aircraft operated by the United States and vessels of war of any foreign flag. In addition, many foreign governments own vessels and aircraft which actually engage in foreign trade and for that reason their supplies are entitled to duty-free entry privileges. There is no provision in 19 USC 1309 or 1317 for duty-free entry of supplies for foreign military aircraft. However, supplies for such aircraft may be entitled to duty-free entry privileges under the provisions of 19 CFR 148.90 and HTS Subheading 9808.00.30. And see Section 9.10(c) FTZM.

(6) Cigars, Cigarettes, and Tobacco Products - Cigars, cigarettes, and other tobacco products may be shipped or delivered for consumption free of duty and Internal Revenue tax only for consumption beyond the jurisdiction of the United States, i.e., beyond the 3-mile limit or the international boundary. (19 USC 1317). Foreign tobacco products are not authorized to be entered free of duty and tax for fishing vessels. The privilege is also not granted to vessels stationed in American waters for an indefinite period without a sailing schedule. (19 CFR 10.65(b)).

(c) Supply Use vs. Exportation Requirements - The shipment or delivery of any merchandise for use as supplies, or in the maintenance or repair of any vessel or aircraft, or as ground equipment for any aircraft under 19 USC 1309(a)(2) or (3), i.e., for foreign flag vessels or aircraft, will be deemed an exportation within the meaning of Customs and Internal Revenue laws applicable to the exportation of such merchandise without the payment of duty or Internal Revenue tax. Thus, section 1317(b) does not provide authority for the entry of such articles for use on U.S. flag vessels or aircraft to be deemed an exportation within the meaning of Customs and Internal Revenue laws. Therefore, there is no authority for the transfer to U.S. flag vessels of zone-restricted status merchandise, alcoholic beverages or tobacco products specified in Section 9.11(d) FTZM, or any other merchandise where exportation is a condition or requirement under the Customs or Internal Revenue laws.

(d) Filing of Withdrawal - Entries for aircraft or vessel supplies shall be filed on Customs Form 7512 in 5 copies. The Port Director may require an extra copy or copies of Customs Form 7512 for use in connection with the delivery of the

merchandise to the carrier. One copy of the form will be used as the permit copy to be retained by the operator. One copy of the form will be used to initiate the in bond movement under the Automated Commercial System. The other copies will be returned to the operator or zone user for transmittal to the bonded carrier or licensed cartman.

(e) Bond Requirements - A bond on Customs Form 301 containing the conditions set forth in 19 CFR 113.62 shall be required for any entry for vessel or aircraft use, including entries for fishing vessels. (19 CFR 10.60(c) and 146.69(a)). However, no bond shall be required of vessels of war (19 CFR 10.60(e)) or for lading and use of tobacco products on vessels operated by the U.S. Government. (19 CFR 10.65(c)(1)). The conditions in 19 CFR 113.62(h) hold the withdrawer responsible for lading and proper use as vessel or aircraft supplies. There is no authority to hold a bonded carrier responsible for vessel or aircraft supply use under an entry for transportation and lading at another port. When merchandise has been laden for vessel or aircraft supply use, the carrier becomes responsible for the safekeeping and disposition of the merchandise under its international carriers bond. (19 CFR 113.64(b)).

(f) Delivery to and Retention on Dock - Upon acceptance of the entry and bond, the merchandise will be released to the operator for delivery directly to the vessel or aircraft, if for lading on a vessel or aircraft within the zone. If the merchandise is not to be laden on a vessel or aircraft within the zone, it will be released to the operator for delivery to a licensed cartman, or bonded carrier for transportation to the place of lading. (19 CFR 146.69(b), (c)).

However, upon application of the person filing the entry, and with the consent of the owner of the dock or of the airline, merchandise entered for lading as vessel or aircraft supplies may be retained at the dock or airport for up to 90 days, with extensions of up to 1 year. (19 CFR 18.24(a)).

(g) Special Permit and Procedure for Fishing Vessels - Before a permit is given for entry for delivery of merchandise to fishing vessels for their use under 19 USC 1309, the Port Director shall have approved a special permit on Customs Form 5125, supported by a bond on Customs Form 301, containing the conditions set forth in 19 CFR 113.62. The vessel master shall present the original and triplicate copy of Customs Form 5125 to Customs within 24 hours after each successive arrival at a Customs port or station for an accounting for the entry until the Port Director is satisfied that the merchandise was consumed on board or properly re-landed under Customs supervision. (19 CFR 10.59(e) and 113.62(h)(2)). Failure to comply with the conditions of the entry will subject the total quantity of merchandise entered to the assessment and collection of duties and taxes equal to the amount that would have been collected if they had been regularly entered or withdrawn for consumption. (19 CFR 10.59(e)).

(h) Special Procedures for Cigars and Cigarettes - The duty-free entry of cigars and cigarettes under Section 1317 requires that they be consumed only beyond the 3-mile limit or international boundary. The provisions of this subsection apply to such articles.

(1) Packing in Shipping Cases - When a shipping case of cigars and cigarettes is made up of a number of units, each in a separate package, such units may be entered separately, provided each is numbered and marked for identification and contains not less than 250 cigars or 1,000 cigarettes. (19 CFR 10.65(c)).

(2) Declarations of Use - The Port Director may require a declaration of use from a person having knowledge of the facts that consumption of the cigars and cigarettes did not begin until the aircraft or vessel had proceeded beyond the 3-mile limit or international boundary. (19 CFR 10.65(c)(5)).

(i) Supervision and Cancellation of Bonds - Customs officers do not routinely conduct physical supervision of lading of vessel or aircraft supplies. General supervision is maintained through certificates of lading as aircraft or vessel supplies signed by an authorized representative of the using carrier. A copy of the certification on Customs Form 7512 may be associated by Customs with the outward manifest of the vessel or aircraft. The entry bond is usually credited or canceled upon filing the appropriate declaration with the director of the port of withdrawal. (19 CFR 10.64(a)).

9.15 Transfer of Zone-Restricted Status Merchandise - Zone-restricted status merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified aircraft under sections 1309 or 1317, unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval, the merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisal, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made. (19 CFR 146.70(a)).

(a) Entry for Consumption - If the Board has ruled that the return of zone-restricted status merchandise to Customs territory for consumption is in the public interest, the entry will be endorsed by the Port Director to show the authority under which it was made, and that the merchandise is subject to the provisions of Chapter 98, Sub-Chapter I, HTS. (19 CFR 146.70(b)). Thus, if zone-restricted status merchandise is of domestic origin or was previously entered for consumption, it shall nevertheless be entered for consumption and is subject to duty unless exempt therefrom under the HTS or other law.

(b) Entry for Warehouse Pending Exportation - Zone-restricted status merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The Customs Form 7501 shall be endorsed by the Port Director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted status merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the Port Director to show that the merchandise is foreign-trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted status merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation. (19 CFR 146.70(c)).

(c) Transfer to Customs Territory - Zone-restricted merchandise may be returned to the Customs territory only when the Board determines it is in the public interest. A request for authority to return merchandise must be made in letter form to the Executive Secretary of the FTZ Board. The Executive Secretary may act for the Board in cases involving merchandise valued at \$500,000.00 or less. (15 CFR 400.44) In all cases the Port Director must endorse the entry. (19 CFR 146.70).

(d) Transfer for Other Purposes - Upon acceptance of an entry or withdrawal for zone-restricted status merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the Fourth Proviso, Section 19 USC 81c(a), or the entry endorsed to require delivery to a qualified vessel or aircraft, under Sections 1309 or 1317. (19 CFR 146.70(d)). For the treatment of zone-restricted status merchandise transferred to Customs territory for Temporary Importation Under Bond (TIB) or exhibition at a trade fair. (See Sections 9.9(b) and 9.9(c) FTZM). Zone-restricted status merchandise may not be transferred from a zone for shipment to insular possessions of the U.S. (See Section 9.12(c) FTZM). For use on a U.S. flag vessel see Section 9.14(c) FTZM.

9.16 Release and Transfer from Zone - Except in the case of domestic status merchandise for which no permit is required under 19 CFR 146.43, no merchandise shall be transferred from a zone without a Customs permit on the appropriate entry form or other document as required in 19 CFR Part 146 and this Manual. The Port Director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the Port Director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier. (19 CFR 146.71(a)). No permit of the operator under Section 19 CFR 146.9 is required for release from a zone. If the operator refuses release of the merchandise, the entry shall be canceled and the merchandise will be deemed constructively transferred back to the zone in its previous zone status. (19 CFR 146.61). The operator shall

supervise all transfers from the zone as required by law and regulation. (19 CFR 146.4(a)).

(a) Liability for Discrepancies - When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility for the merchandise in a zone only in the condition and quantity as shown on the entry or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made as described in Section 10.6 FTZM.

(b) Sealing of Conveyances - The operator is authorized to affix a seal to a conveyance or intermodal container at the order of the Port Director. (19 CFR 146.8). Operators are authorized under 19 CFR 24.13(c) to purchase such seals, which must meet the standards and specifications of 19 CFR 24.13(a) to be accepted by Customs. Seals obtained by the operator must be handled as provided in the standard and specifications for Containerized Shipments and Seals in Customs Standards for Cargo Security, TD 72-56.

(c) Recordkeeping and Accounting for Transfers - The operator must have an inventory control and recordkeeping system(s) capable of accounting for all merchandise transferred or removed from the zone. (19 CFR 146.21(a)(1)). The operator shall record in that system(s) all zone status merchandise transferred from the zone, and the system(s) must have the capability to trace or attribute all transfers back to a zone admission under a Customs authorized inventory method. (19 CFR 146.24(a)).

(d) Time Limit for Removal from Zone - Except in the case of articles for use in a zone (see Section 2.6 FTZM), merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The Port Director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory. (19 CFR 146.71(c)).

Although merchandise which has been constructively transferred may not be manufactured or manipulated, and shall be removed from the zone within a time limit, Customs nevertheless allows some administrative exceptions to these requirements, as noted in subparagraphs (1) and (2) below:

(1) Merchandise Covered by Weekly Entry or Permit - The restriction against manufacture or manipulation of merchandise which has been constructively transferred is not applicable to merchandise covered by

weekly entries for consumption or weekly permits for transportation and/or exportation under 19 CFR 146.63(c) and 146.68 CR. A reasonable period of time may be allowed for the removal from the zone of certain merchandise covered by a weekly entry or permit. (See Section 9.8(e) FTZM).

(2) Non-Processing Stipulation - The Port Director may, for good cause at the request of the operator, allow merchandise which has been constructively transferred to remain in the zone indefinitely if the importer of record provides a written stipulation with, or in connection with, the entry that:

(i) the merchandise will not be further manufactured, manipulated, or otherwise changed in the zone so as to change its tariff classification or to avoid any restriction on its entry into U.S. commerce; and

(ii) the zone operator will provide a proper audit trail and recordkeeping for Customs to verify whether or not the merchandise was so manufactured, manipulated or changed after entry but while it was still in the zone.

If the terms of the stipulation are violated or not followed, the provisions of 19 CFR 146.71(d)(1) will be followed. In addition, the importer of record may be subject to penalty action under 19 USC 1592.

(e) Time of Transfer from Zone - Foreign and zone-restricted status merchandise, and merchandise which has been constructively transferred under 19 CFR 146.61, shall be considered to be transferred from the zone, and the operator relieved of responsibility for the merchandise when (1) a proper permit has been issued by Customs for its transfer from the zone, and (2) the carrier, importer, or other responsible party has signed to physically remove the merchandise from the activated area of the zone. Domestic status merchandise is considered to be transferred from the zone when it has been physically removed from the zone and recorded in the inventory control and recordkeeping system(s).

9.17 Retention or Return of Zone Merchandise - The Port Director shall cancel any entry for consumption where (1) the merchandise is not transferred from the zone within the period specified in 19 CFR 146.71(c), or (2) the merchandise was transferred from the zone but did not enter the commerce of the U.S. in Customs territory, and was subsequently readmitted to a zone in domestic status. If the Port Director has reason to believe any new entry would be canceled under the provisions of this section, he or she will reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise covered by an entry which has been canceled under this section shall be restored to its last foreign status. (19 CFR 146.71(d)(1)).

(a) Purposes - The purposes of this provision are to (1) provide a means for dealing with merchandise which remains in the zone beyond the specified time limit, (2) affirm the legal status of constructively-transferred merchandise as being in Customs territory and no longer in zone status, (3) prevent the filing of entries for consumption when the merchandise does not enter the commerce of U.S. in its form as entered, and (4) to avoid the circumvention of the TA and other import laws by entering partially-finished merchandise at a low rate of duty, and leaving it or returning it to the zone for further manufacturing or manipulation into a product which would have had a high rate of duty or would have been inadmissible into U.S. commerce. It was to avoid the latter situation that Customs issued LD 79-0229, CSD 79-378 and HQ 210108 concerning such a practice.

(b) Exceptions - Entries of the following categories of merchandise will not be canceled, even though the merchandise may be retained in the zone:

(1) Articles for use in a zone, such as production equipment, construction materials, and articles to be consumed in the zone;

(2) Merchandise which is readmitted in zone-restricted status; and

(3) Merchandise which is exempted from the time limit requirement under the conditions set forth in 19 CFR 146.71(d)(1).

Also, merchandise and articles which are exempt from entry requirements, such as domestic status merchandise, intangibles under General Headnote 4 HTS, and articles exempted under 19 CFR 141.4 are unaffected by entry cancellation.

(c) Entry into Commerce - A determination whether merchandise has or has not entered United States commerce shall be made by the Port Director on a case-by-case basis considering factors such as:

(1) length of time merchandise was outside the zone before its return to a zone;

(2) whether return of the merchandise was made by the importer of record or his agent, or by a person acting in collusion with the importer of record;

(3) credible evidence that there was an intent by the importer or others, at the time of entry, to return the merchandise to the zone;

(4) the merchandise would avoid a higher rate of duty or an import restriction by being returned in domestic status;

(5) the merchandise was not used or was not the subject of a bona fide sale by the importer after entry;

(6) the merchandise was not further processed or manufactured outside the zone, or such processing or manufacture was minimal or cosmetic in nature.

An administrative ruling on whether merchandise, in any particular fact situation, has or has not entered U.S. commerce, including prospective transactions, may be obtained by interested parties or Customs officers as specified in 19 CFR Part 177 (TD 86-16, 51 FR 5040).

(d) Actions in Lieu of Entry Cancellation - If the merchandise which was retained or returned constitutes only a part of the merchandise in an entry, the entry shall be liquidated or reliquidated as authorized by law and regulations, without payment of duty for the retained or returned part and an appropriate refund of estimated duties made to the importer of record. If the original consumption entry has already been liquidated and cannot be reliquidated under the law and Customs Regulations, merchandise which is returned to the zone will nevertheless be returned to its previous zone status. The merchandise will become subject to entry once again when it is later constructively transferred to Customs territory.

(e) Erroneous Entry - A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the Port Director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the laws. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to 19 USC 1520(c)(1), in accordance with the procedures described in 19 CFR Part 173. If the Port Director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered an overage and subject to the provisions of 19 CFR 146.53(d) and 146.71(d)(2) and TD 90-32.

(f) Readmission in Domestic Status - When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in 19 CFR 146.71(d)(1), it shall be admitted in domestic status. (19 CFR 146.71(d)(3)). This provision is applicable when merchandise which was entered for consumption has, to the satisfaction of the Port Director, entered U.S. commerce and is subsequently returned to the zone, without having been exported.

9.18 Drawback on Zone Merchandise - Drawback procedures in this section are distinct from drawback paid upon admission to a zone. This section deals with merchandise which is entered for consumption from a zone and subsequently exported. Drawback

may not be allowed on shipments from zones to insular possessions, which are not considered exportations. (19 CFR 191.5 and see Section 9.12(c) FTZM). Following are legal positions taken by Customs on drawback of merchandise transferred from zones for entry for consumption:

(1) Manufacturing drawback under 19 USC 1313 (a) and (b) will not be allowed unless the completed article is exported within 5 years from the date of importation of the imported merchandise. (19 USC 1313(i)). In section 1313 (a) and (b) unused merchandise drawback will not be allowed for merchandise unless it is exported or destroyed within 3 years from the date of importation of the imported merchandise. The date of importation is the date defined in 19 CFR 101.1. It is not the date of admission to the zone or of entry for consumption. (See CSD 79-19).

(2) Manufacturing in a zone is manufacturing in the United States for the purposes of drawback law. (CSD 81-44).

(3) Privileged foreign status merchandise which is used to make articles that are to be entered for consumption from a zone and then exported is eligible for manufacturing drawback under 19 USC 1313 (a). The fact that duty on privileged foreign status merchandise used in the manufacture of an article in a zone is not paid before the manufacture occurs does not preclude drawback eligibility. (CSD 83-85).

(4) An article which is manufactured in a zone with the use of nonprivileged foreign status merchandise, and which is withdrawn from the zone with the payment of duty and thereafter exported, is eligible for direct or substitution manufacturing drawback under Section 1313 (a) and (b). (CSD 85-33, modifying CSD 83-85).

(5) An article manufactured from privileged foreign or nonprivileged foreign status merchandise exported, having not been entered for consumption, can not be the subject of a claim for drawback after exportation. (CSD 85-49).

(6) Manufacturing and unused merchandise drawback are not complementary provisions. An operation that fails to qualify for less than one of the conditions does not automatically qualify under the other condition. (CSD-91-18 and HQ 225985 November 30, 1995).

Chapter 10

DISCREPANCY REPORTING AND LIABILITY

10.1 General - The responsibility of zone operators for merchandise and discrepancies is covered partially in Chapters 6, 8, 9, and 12 FTZM. The purpose of this Chapter is to describe the overall responsibility of operators for merchandise discrepancies, overages, shortages, and damage and to relate their responsibilities to those of the cartmen, carriers, and other parties who deliver merchandise to and from the zone. Customs general responsibility is to see that the proper duties and taxes are assessed, or exempted from assessment, according to law, on all merchandise imported into the U.S., as well as to ensure compliance with all laws and regulations concerning the importation of merchandise.

10.2 Foreign-Trade Zone Operator Responsibility - The operator is responsible for supervising all receipts, admissions, transfers, recordkeeping, manipulation, manufacture, processing, destruction, exhibition, physical and procedural security, and conditions of storage in a zone as required by law and regulations. (19 CFR 146.4(a)). This includes prompt verification of the quantity and condition of merchandise upon admission to the zone when the port director has authorized receipt without Customs supervision. (19 CFR 146.37(d)). The operator is also responsible for conducting a physical inventory at least annually, unless it conducts continuous cycle counts as part of an ongoing inventory control program, and for notifying the Port Director of any discrepancies found during the annual inventory or cycle count. (19 CFR 146.23(c)).

10.3 Sealing of Containers and Conveyances - With the approval of the Port Director, a zone operator may break or affix a Customs seal and such breaking or affixing will be considered to have been done under Customs supervision, as provided in 19 CFR 146.8. The operator shall inspect Customs seals on arriving shipments, including those received under procedures for temporary deposit (19 CFR 146.35) and direct delivery (19 CFR 146.40(a)). Any seal found to be broken, missing, improperly affixed, improperly replaced with another seal, or defeated (the same seal opened and re-affixed with little or no evidence of tampering) shall be reported immediately to the Port Director and the shipment held intact pending Customs instructions. If the operator does not receive the concurrence of the carrier as to the condition of the seal, the Port Director will deem the seal to be intact. (19 CFR 146.8).

10.4 Discrepancies Found upon Receipt - The treatment of discrepancies found upon receipt in a foreign-trade zone is described generally in 19 CFR 146.37(c); 19 CFR Part 158, Subpart A, and Customs Directive 099 3240-067 A.

(a) When Operator Becomes Responsible - The operator becomes responsible for merchandise under the Foreign-Trade Zone Operator's bond when he signs for

receipt in the zone of merchandise for which the Port Director has given a prior permit for admission under (19 CFR 146.32(c)), with the following exceptions:

(1) The operator becomes responsible for the merchandise when he signs for receipt of merchandise for temporary deposit (19 CFR 146.35(c)(2)) or for direct delivery (19 CFR 146.40(a)(4)).

(2) When merchandise is otherwise delivered to the zone under proper permit to transfer, it remains under the carrier's bond, (e.g., for Customs examination prior to admission). The operator although having signed for receipt of the merchandise does not become responsible for the merchandise under their bond until a Customs permit for admission is received.

(3) When an overage is discovered of merchandise already in the zone, the operator becomes responsible when he receives a Customs permit for admission.

(b) Manifest Discrepancy Reporting – Section 1431, Title 19 requires every vessel making entry or obtaining clearance to have a manifest in compliance with the statute. Any manifest discrepancy discovered upon the arrival of the merchandise at foreign-trade zones shall be reported by a Manifest Discrepancy Report. A Manifest Discrepancy Report must be filed to assure the appropriate correction of the manifest and to determine the proper responsibility for the discrepancy. Customs general procedures for filing Manifest Discrepancy Reports are found in Customs Directive 099 3240-067 A. The procedures in this section incorporate the procedures of that directive.

(c) Breakbulk, Conveyance Not Sealed - Customs policy is that a discrepancy (overage or shortage, including an unconcealed within-case shortage) in loose freight or in merchandise in an unsealed conveyance or a conveyance whose seal(s) is not intact, found upon receipt in a foreign-trade zone shall be reported by the operator on Customs Form 6043, 7512, 214, or other approved form signed jointly within 2 business days by the operator and the delivering carrier on the discrepancy. (19 CFR 146.37(c)(1)). Since Customs Form 5931 has been abolished (19 CFR 146.37(c)(2) awaiting a regulation change), it will no longer be accepted as a discrepancy report. The report shall be jointly signed by the parties on the approved form within 15 days after receipt in the zone. The Manifest Discrepancy Report shall include a clear and concise statement for the discrepancy and include the following statement signed by both the operator and carrier:

"We hereby declare that the information contained in this document is true and correct to the best of our knowledge and believe that the discrepancy described herein occurred for the reasons stated."

A zone operator need not file a Manifest Discrepancy Report when the marks and numbers on merchandise packages are different from the marks and numbers listed on the manifest or cartage ticket if the quantity and description of the merchandise is accurate.

(d) Concealed Within-Case Shortage or Discrepancy in Sealed Conveyance - When an operator discovers, within 20 days after admission of the merchandise in the zone a concealed within-case discrepancy (shortage or overage) in quantities in a container or conveyance which was received with seals intact, the discrepancy shall be reported to Customs as a Manifest Discrepancy Report on the operator's letterhead, with the explanation and declaration specified in Section 10.4(d) (1) FTZM and 19 CFR 146.37(c)(2). The report should be accompanied by a dock receipt or other evidence of nonreceipt or nonimportation of the merchandise, and in the case of containerized merchandise, evidence that the seal(s) was intact and that the seal(s) was affixed before importation into the U.S. If a discrepancy is found after 20 days the procedures found in 19 CFR 146.53(1) should be followed.

(1) "Seals Intact" - "Seals intact" means a conveyance or intermodal container containing imported merchandise and the seals which were reported to have been affixed to it meet all of the following conditions:

(i) All of the seals are of a type which will not permit removal without breaking or leaving evidence of tampering, cannot be used more than once, and cannot be easily counterfeited;

(ii) none of the seals which were affixed have been broken, removed, replaced, or tampered with in any manner which indicates it was removed and replaced;

(iii) the unique numbers of all the seals are the same as the seal numbers reported on the manifest or cartage ticket under which the conveyance was accepted for transportation to the zone;

(iv) the condition of the conveyance or intermodal container is such that merchandise can be removed therefrom only through sealed doors or other authorized openings; and

(v) the operator and delivering carrier have executed a written concurrence that the seals are intact, or a U.S. Customs officer has certified that the seals are intact.

(e) Conveyance With Seals Not Intact - When an operator receives a conveyance or intermodal container whose seals are not intact according to the definition in

Section 10.4(d)(1) FTZM, and the Port Director allows unloading without Customs physical supervision, any discrepancies between the received and manifested quantities shall be reported by the operator as provided in Section 10.4(c) FTZM. If a Customs officer conducts physical supervision, any discrepancies will be reported by the officer on the permit copy of Customs Form 214 and the operator's responsibility for the merchandise will be adjusted accordingly.

(f) Bulk Merchandise - A discrepancy (overage or shortage) between the manifested amount of bulk cargo and the quantity received in a zone need not be reported as a Manifest Discrepancy Report (MDR) under Section 10.4(c) or (d) FTZM if the Port Director is satisfied that the discrepancy is an ordinary and usual difference attributable to absorption of moisture, temperature difference, faulty weighing or gauging at the port of lading, or similar cause. However, any discrepancy in quantities of petroleum or petroleum products imported in bulk must be reported as a Manifest Discrepancy Report if the discrepancy exceeds 1 percent of the manifested quantity. (19 CFR 4.12(c)). When a Manifest Discrepancy Report is required for a shortage or overage of bulk merchandise, it shall be made as provided in Section 10.4(c) or (d) FTZM, as appropriate.

(1) Weigher, Gauger, or Measurer's Report - In the case of bulk merchandise, any discrepancy reported by an independent weigher, gauger, or measurer and signed by an authorized representative of the company employing such weigher, gauger, or measurer may be accepted by the Port Director to amend the quantities for which the operator is liable.

(g) Overages upon Admission - The operator is responsible for reporting any merchandise in excess of that reported on Customs Form 214 under the procedures of Section 10.4(c) or (d) FTZM. If Customs Form 214 or a Customs entry is not filed within 15 days after discovery of the overage, the merchandise shall be sent to general order.

(h) Damage upon Admission - When merchandise is found to be damaged upon admission, the operator may file Customs Form 4315 under the procedures set forth in 19 CFR Part 158, Subpart B. Any allowance granted by the Port Director will be deemed to reduce accordingly the responsibility of the operator for the merchandise received into the zone.

(i) Temporary Deposit and Direct Delivery Procedures - The zone operator is responsible under its bond for the quantity of merchandise received under temporary deposit (19 CFR 146.35(c)(2)) and direct delivery procedures (19 CFR 146.40(a)(4)). Any discrepancies in the quantity or condition of the merchandise actually received shall be reported to the Port Director as provided in Sections 10.4(c) through (h) FTZM, as applicable. However, the operator will be responsible for the quantity admitted after temporary deposit as provided in 19

CFR 146.37(c), and for the quantity admitted after direct delivery as provided in 19 CFR 146.40(c)(4).

In the case of merchandise delivered under direct delivery procedures, within-case shortages or overages found during the input quality control program of the operator need not be reported on an MDR, if the operator is able to report the information in another manner so that the Port Director can determine whether there is liability for the discrepancy under the bond of any party to the importation. (19 CFR 146.40(c)(4)).

10.5 Discrepancies Found After Admission - After merchandise has been admitted to a zone and adjustments have been made for any discrepancies reported under 19 CFR 146.37, any discrepancy found by a zone operator before transfer from the zone will be reported and treated according to the provisions of 19 CFR 146.53 and this Section of the FTZM.

(a) Operator Responsibility After Admission - The operator is responsible under its Foreign-Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the Port Director is satisfied that the merchandise was (1) never received in the zone; (2) removed from the zone under proper permit; (3) not removed from the zone; or (4) lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause and did not enter the commerce of the U.S. (19 CFR 146.53(c)(1)).

(1) Liability for Duty and Taxes - Upon demand of the Port Director, the operator shall pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for. (19 CFR 113.73(b)).

(b) Discrepancy Reporting and Recording Requirements - The operator shall report in writing to the Port Director upon identification as such, of any (1) theft or suspected theft of merchandise; (2) merchandise not properly admitted to the zone; or (3) shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique identifier, if the missing merchandise would have been subject to duties and taxes of \$100 or more upon entry into Customs territory.

The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the Port Director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under 19 CFR 146.25 and 146.53(a).

Except in the case of theft or suspected theft, the operator need not file a report with the Port Director or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required. (19 CFR 146.53(b)).

(c) Identification of Discrepancy - "Upon identification" of a discrepancy under 19 CFR 146.53(a) or Section 10.5(b) FTZM means upon discovery and determination of the nature and extent of the discrepancy. A discrepancy will be considered "identified" if the operator or zone user demonstrates that it believes the discrepancy sufficiently authoritative to take a management action to correct it. A written report within 5 working days after identification will be considered to meet the requirement of reporting "upon identification"; however, any theft or suspected theft of merchandise, including domestic status merchandise must be reported to the Port Director immediately by telephone or fax, so a prompt investigation may be initiated, if warranted, by the Special Agent in Charge.

(d) Netting Policy - It is Customs policy not to accept "net" reports of discrepancies except as noted below. "Netting" means to balance off shortages against overages, within the same or different inventory categories, e.g. to balance off a shortage found during one cycle count against an overage found during the next cycle count. Each identified discrepancy must be recorded and treated separately.

(e) Offsetting Error - If the operator can show to the satisfaction of the Port Director that an overage in one or more lots or inventory categories, counterbalanced by a shortage in one or more other lots or inventory categories, occurred through a clerical error or other inadvertence in order picking, records posting, or similar cause, the Port Director may concur with no further necessary action. In such cases, the inventory records may be so adjusted by a report to the Port Director of the error, without requiring a report of the shortage or entry or admission of the overage under 19 CFR 146.53. In any case involving an entry for consumption, the provisions of 19 USC 1520 and 19 CFR 173.4 or 173.4a, as appropriate, shall be followed.

(f) Shortages Over 1% and \$100 Duty - The operator shall report to the Port Director, in writing, any shortage, including any found during the annual physical inventory (19 CFR 146.23(c)), of 1% or more of the quantity of merchandise in a lot or covered by a unique identifier, and if the missing merchandise would have been subject to duties and taxes of \$100 or more. (19 CFR 146.53(a)(3)). That is, the shortage must meet both the 1% and \$100 criteria in order for the operator to be required to report it to the Port Director in writing upon identification of the shortage. This limitation is intended to avoid the paperwork burden on both Customs and zone operators of the repetitive reporting of minor losses which must, in any event, be reported at the end of the operator's business year.

(1) Negligent or Deliberate Shortages - The 1%/\$100 requirement is a reporting requirement for unaccountable losses, and is not to be construed as a pretext for any deliberate, fraudulent, or negligent removal of merchandise from the zone without a proper permit. (19 CFR 146.51 or 146.71(a)). Any shortage, regardless of its quantity, value, or duty liability, will be subject to liquidated damages if it occurred through a deliberate or fraudulent act or omission or through negligence.

(2) Cumulative Effect of Shortages - Both the 1% and the \$100 criteria are cumulative during the operator's business year. That is, whenever a series of minor shortages accumulate to exceed the 1% and \$100 requirements, the entire shortage must be reported to the Port Director. Minor losses that occur after such a report during the same business year will continue to be treated as cumulative until they reach a subsequent 1%/\$100 level. Since all shortages must be reported at the end of the operator's business year, minor losses will be considered newly cumulative at the beginning of the next business year.

(3) Statutorily Duty-Free Merchandise - Zone operators should report to the Port Director any shortage in excess of the 1% level of statutorily duty-free merchandise in foreign or zone-restricted status valued at \$1,000 or more. Port Directors will treat any shortage above the 1%/\$1,000 value level as a transfer from the zone without proper permit for which liquidated damages may be assessed.

(4) Method of Making Required Reports - A shortage, including a theft, which is required to be reported in writing under 19 CFR 146.53(a) may be reported either on a Manifest Discrepancy Report (see Section 10.4(b) FTZM) or by filing a consumption entry under the procedures of 19 CFR Parts 141 and 142. Ordinarily, the operator will file a Manifest Discrepancy Report if it believes that it is not responsible for the loss under 19 CFR 146.53(c)(1), e.g., a concealed within-case shortage. However, if the Port Director finds the operator responsible, duties and taxes will be demanded under 19 CFR 146.53(c)(2) and 113.73(b).

(g) Shortages Not Over 1% and \$100 Duty - Any and all shortages and other discrepancies, regardless of quantity value, or duty liability, must be recorded in the operator's inventory records (19 CFR 146.23(b)) and/or lot file folder (19 CFR 146.37(a)(1)), where applicable, and reported in its annual reconciliation report. (19 CFR 146.25). The operator shall instruct the importer with the right to make entry to file, with the certification letter for the annual reconciliation report, a consumption entry or entries covering any and all shortages which were not previously reported to the Port Director upon identification. It is the operator's responsibility to ensure that the discrepancy is reported to Customs.

(h) Overages Found in Zone - The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed the merchandise shall be sent to general order. (19 CFR 146.53(d)). A Manifest Discrepancy Report will not be accepted for overages found after admission to a zone.

(i) Casualty and Similar Losses - The operator is not responsible for merchandise destroyed in the zone through an act of God, explosion, or fire. (CSD 86-7). Evaporation, spillage, leakage, absorption, or similar cause are not subject to the assessment of Customs duties. (See 19 CFR 146.53(c)(1)(iv)). Volumetric contraction or gauging differences which cause apparent losses, are also not subject to the assessment of Customs duties because there is no actual change in the volume. (19 CFR 146.53(c)(1)(iv)). Such losses must, however, be reported upon identification as specified in 19 CFR 146.53 (a)(3) or with the annual reconciliation, as appropriate. However, if the loss exceeds the 1%/\$100 duty criteria of 19 CFR 146.53(a)(3) , it shall be reported to the Port Director on Customs Form 4315 by using the procedures of 19 CFR Part 158, Subpart C. Additional evidence of injury or destruction by fire or other casualty as specified in 19 CFR 158.27 should be fully documented and justify such loss in order for the operator to be relieved of liability for the merchandise. In the case of petroleum refineries operating under subpart H of Part 146 of the Customs Regulations, the refiner is required to correct the volume for temperature. (See 19 CFR 146.94 (d), (e)). The operator and the Port Director are encouraged to discuss potential losses and gains specific to each commodity prior to admittance to the zone. Commodity variances may be detailed in the procedures manual. Customs Headquarters may authorize an allowance for variances in volume caused by nitrogen entrained in bulk concentrated orange juice stored in stainless steel tanks. (See Section 11.10(b) FTZM).

(j) Damage to Merchandise in Zone - The liability of the operator under its Foreign-Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity as damaged merchandise. (19 CFR 146.53(e)). There is no requirement that such a loss of value be reported upon identification. However, zone operators who wish to document such damage may do so by filing Customs Form 4315 using the procedures of 19 CFR Part 158, Subpart C. Damaged merchandise which is entered for consumption will be granted an allowance in value as provided in 19 CFR 146.65(b)(3).

10.6 Discrepancies Found Upon Transfer to Customs Territory - When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise transferred from the zone in the condition and quantity as

shown on the entry, transfer, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any joint report or discrepancy must be submitted to the Port Director within 10 working days of signing by the parties. (19 CFR 146.71(b)).

(a) Seal Concurrence - If the cartman, carrier, or importer does not obtain the written concurrence of the operator in the condition of any Customs seal affixed by the operator, the seal will be deemed intact.

(b) Customs Physical Supervision - If the Port Director requires lading and/or transfer from the zone under Customs physical supervision, any discrepancies will be reported by the appropriate Customs officer on the permit copy of the entry document. The operator's responsibility will be adjusted to the extent of any quantity discrepancy reported by the Customs officer.

(c) When Operator Is Relieved of Responsibility - Merchandise is considered transferred from a zone, and the operator thereby relieved from liability, when:

1. the Port Director has properly issued a permit for transfer from the zone under 19 CFR 146.71(a); and
2. the operator receives the signed receipt on the document of the importer or carrier named in the document for removal of the merchandise from the zone under 19 CFR 146.71(b). (See Section 9.16(e) FTZM).

10.7 Discrepancy Recordkeeping - Any discrepancy identified under the Customs Regulations must be accurately recorded in the inventory records of the operator and fully reported in the annual reconciliation report. Copies of any documents establishing or providing evidence of a discrepancy must be retained by the operator for 5 years after the merchandise is removed from the zone. (19 CFR 146.4(d)). When any claim for a discrepancy allowance must be approved or substantiated by Customs, the Port Director shall provide a report to the operator on the resolution of the claim so the operator is fully aware of its responsibility and obligations under the Foreign-Trade Zone Operator's bond.

Chapter 11

PROHIBITIONS, RESTRICTIONS, AND SPECIAL MERCHANDISE PROVISIONS

11.1 General - Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the Customs laws of the United States, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise prohibited by the FTZA. (19 USC 81c(a)). Thus, although many kinds of merchandise may be admitted to a zone and many kinds of activities undertaken in a zone, there are prohibitions and/or restrictions on a few kinds of merchandise and activities. On the other hand, there are provisions of law that provide a benefit to some merchandise, but not others, in a zone. Prohibitions and restrictions may be specifically set forth in the law, or authorized by the law but implemented through regulations or specific Federal agency directives. The prohibition or restriction may bar or limit the admission of the merchandise to a zone or, if allowed to be admitted, restrict what may be done with it in the zone or how it may be disposed of from the zone.

11.2 Prohibited Merchandise - No merchandise or article whose importation is prohibited may be admitted to a zone. If found in a zone, it may be seized by a Federal agency under any pertinent statute, including Customs laws since it is not eligible for admission or exemption from the Customs laws. (CSD 82-16). If, on the other hand, it is the entry into commerce which is prohibited, the merchandise may be admitted to a zone with the approval of the agency responsible for administering the pertinent law. While in the zone it may be permitted to be changed or otherwise brought into compliance for subsequent entry into commerce. (See Sections 6.2 and 6.3 FTZM).

11.3 Public Interest Exclusion - The Board may at any time order the exclusion from the zone of any goods or process of treatment that in its judgment, after due investigation, is detrimental to the public interest, health, or safety. (19 USC 81o(c); 15 CFR 400.43). The Board's action could result in a total prohibition of certain merchandise or activities from a zone. However, the exclusion is usually a restriction or condition placed in a grant or other approval by the Board. Grant restrictions may limit the zone status allowed, the kind of operation on the merchandise in a zone, the entry of the merchandise into the commerce, the life of the grant, or similar transactions or activities. (15 CFR 400.31, 400.32, and 400.33).

11.4 Limitations to Scope of Authority – Components, products and activities related to zone authorized manufacturing are limited to the scope of authority described in the application and approved by the Board. This information can be found in the application notice and the official Board order as published in the Federal Register. This shall not be

interpreted to mean that the manufacturing is limited only to those products listed within the scope. In general, the grantee or operator must notify the Executive Secretary of changes in sourcing for authorized manufacturing or processing activity. Other products may be manufactured using wholly domestic status components. (15 CFR 400.28 a (2), (3)).

11.5 Prohibitions and Restrictions on Admission - In addition to prohibited importations or public interest exclusions, any merchandise may be denied admission for failure to meet the administrative requirements of admission, such as failure to properly prepare and present the admission documentation or to obtain a Customs permit.

(a) Bonded Warehouse Shipments - Merchandise that has been entered for bonded warehouse may be admitted to a zone only in zone-restricted status. (19 CFR 146.11(d), 146.44(c, d), and 144.37(g). And see Sections 5.8(c) and 6.7(g)(3) FTZM).

(b) Grant Restricted Steel Products - Grant restrictions of some zones specify that steel products imported for use in the manufacturing of vessels and certain other products are subject to Customs duties in accordance with applicable law if the same item is also being produced by a domestic steel mill. (19 ISC 1626 and FTZO's 234 and 321). Customs assumes, when such steel products are considered for admission, that a domestic mill is producing the same item and will demand an entry for consumption prior to delivery to the zone, unless written notification has been furnished to the Port Director by the Executive Secretary of the Board that the same item is not manufactured by a domestic mill. If there are questions concerning grant restrictions, contact the Foreign-trade Zone Board.

(c) Motor Vehicles for EPA/DOT Conversion in Zone - Application for admission may not be made by motor vehicle dealers or brokers, or by EPA Independent Commercial Importers (ICI's) or DOT Registered Importers (RI's) on behalf of individual actual owners of motor vehicles who wish to have the vehicles repaired or processed for the purpose of bringing them into compliance with the regulatory requirements of the Environmental Protection Agency under 40 CFR Parts 85 and 86 EPAR, 19 CFR 12.73, The National Highway Traffic Safety Administration, Department of Transportation under 49 CFR Parts 555, 567, 568, and 571, 19 CFR 12.80, and see Sections 11.6(c) and 11.7(h) FTZM. Such applications must be made by a person with the right to make entry, such as the owner or purchaser. (19 CFR 146.32(b)(2)). However, such applications may be made by Customhouse brokers or zone operators on behalf of the person with the right to make entry, if a proper power of attorney is on file. (See Section 6.7(a)(1) FTZM).

(d) Non tax-paid Alcohol and Tobacco Products - (1) Domestic non- tax-paid alcohol and tobacco products may be admitted to foreign-trade zones only in zone-restricted status. (CSD 82-112). These products are deemed exported upon admission to the zone per the applicable provisions in 27 CFR Parts 252 and 290.

As of January 1, 2000, only manufacturers and export warehouse proprietors with a valid permit from the Bureau of Alcohol, Tobacco and Firearms may import tobacco products in bond, including into foreign-trade zones. (27 CFR Part 275).

As of January 1, 2000, only manufacturers and importers of tobacco products must qualify for a permit. (27 CFR Part 275). Export warehouse proprietors with a permit from the BATF may import tobacco products in bond including into a foreign-trade zone. (27 CFR 275).

Tobacco products previously exported from the United States may be imported or brought into the United States only under a license provided by the BATF. Because this legislation refers to merchandise brought into the United States, as opposed to noting a "Customs territory" designation, FTZ's would be included, as they are clearly a part of the United States. Merchandise brought into FTZ's would be subject to the provisions of P.L. 105-33 regarding the reimportation of tobacco products.

(e) Firearms and Other Weapons – Firearms generally require BATF permits and high security storage. Any admission and other manipulation activity involving firearms must be conducted in accordance with BATF regulations and with the written concurrence of the Foreign-Trade Zones Board. Firearms and other articles on the U.S. Munitions Import List may be admitted to a zone only if a properly executed import permit on BATF Form 6 is presented to the Port Director with, or in conjunction with, Customs Form 214. (See 27 CFR 47.41, 47.42). Articles on the U.S. Munitions List shown in 22 CFR, Part 121 (distinct from the more limited U.S. Munitions Import List shown in 27 CFR Part 47) which have been imported for reexport may be admitted to a zone only if a State Department In-Transit license on DSP Form 61 is presented to the Port Director with or in conjunction with Customs Form 214. (22 CFR 123.3). The Bureau of Alcohol, Tobacco, and Firearms will not grant a conditional import permit for certain weapons covered by the Gun Control Act of 1968 unless the zone facility in which they are to be stored meets Customs high-security storage conditions. (See Section 8.7(d) FTZM).

(f) Merchandise Subject to Antidumping or Countervailing Duties - The Board's policy is that zone procedures shall not be used to circumvent ADD/CVD orders under 19 CFR Parts 353 & 355 (15 CFR 400.33(b)(1)). Items subject to ADD/CVD orders will only be admitted to the zone in privileged foreign status. When these items are entered into Customs territory for consumption, the items shall be subject to ADD/CVD procedures as appropriate. (15 CFR 400.33(b)(2)). *Timken Co. v. United States*, 865 F. Supp. 413 (CIT. 1994).

(g) Other Foreign-Trade Zone Grant Restrictions - Public interest concerns as defined in the Foreign-Trade Zone regulations as detrimental to public interest, health or safety have been associated with several industries. In these instances,

the Foreign-Trade Zones Board has issued grant restrictions such as time limits, required privileged foreign status, or export only grants of authority. Interested parties should review grants of authority and/or contact the Foreign-Trade Zone Board for additional information.

11.6 Prohibitions and Restrictions on Zone Activities - Certain activities prohibited or restricted in zones are found in both the FTZA and in Orders by the FTZB. Any application for an activity in a zone for which a permit is required may be denied for failure to meet the administrative requirements for the permit. All new manufacturing or processing activities in a zone require approval by the Foreign-Trade Zones Board. (15 CFR 400.28(a)(2)). Approval may be given by the FTZB for a new manufacturing or processing activity through an administrative procedure, a production authorization notice in the Federal Register, or a formal application and review. Such authorization may be denied, and have been denied in some circumstances on the grounds that the proposed operation would be detrimental to the public interest under Section 810(b).

(a) Residence in Zone - No person shall be allowed to reside within an activated area of a zone except Federal, state, or municipal officers whose residence is deemed necessary by the Board. (19 USC 810(a)). The Board has rarely, if ever, found it necessary to approve such residence in a zone.

(b) Retail Trade – Retail trade without special permit is prohibited within activated portions of foreign-trade zones. (15 CFR 400.45).

Definition of "Retail Trade" - "Retail trade" means, generally, sales or offers to sell goods or services in small quantities directly to consumers or to individuals for personal use. If there is any doubt as to whether a particular transaction, act, or situation constitutes retail trade, Port Directors and interested parties should request an administrative ruling from Customs Headquarters, Office of Regulations and Rulings, under the provisions of 19 CFR Part 177. Consistent with the foregoing definition, the following activities are considered retail trade:

- (i) Sales or offers to sell goods at retail in a zone;
- (ii) Sales or offers to sell services at retail in a zone (e.g. airline ticket offices, travel agencies, automobile repair shops, household or personal effects storage); or
- (iii) Sales or offers to sell services at retail made outside a zone of goods held in or services rendered in a zone.

This restriction applies only to activated areas of the zone and retail trade can be conducted without restriction from anyplace outside an activated zone area. A violation would occur if retail trade was conducted in an activated area of the zone without Board

approval. Retail trade can be conducted from an area within the zone grant that has been excluded or removed from activation

(1) Penalties for Violations - Violations of the retail trade prohibition may be subject to a fine by the Port Director under 19 USC 81s and 19 CFR 146.81. Liquidated damages, where applicable, may be imposed in addition to any fines in appropriate cases. (Section 13.4 FTZM). The fine may be assessed against the grantee, or any agent, operator, officer, or employee thereof, whether or not they are located in the zone, who is responsible for or has permitted the violation. All such fines under 19 CFR 146.81 are subject to review by Customs Headquarters. (19 CFR 146.81(b)). Petitions for relief from the fine may be filed with the Port Director under the provisions of 19 CFR Part 171.

(c) Motor Vehicles Owned by Individuals - Motor vehicles owned by individuals may not be stored, repaired, or sold in a zone in violation of the prohibition against retail trade. Neither may the vehicles owned by individuals be stored, worked on, or processed pending bringing them into compliance with the regulatory requirements of the Environmental Protection Agency under 40 CFR Parts 85 and 86, 19 CFR 12.73, The National Traffic Safety Administration under 49 CFR Parts 555, 567, 568, and 571, if such activities constitute a violation of the prohibition against retail trade. Such activities may be conducted by registered importers (RI's) and independent commercial importers (ICI's), motor vehicle manufacturers, motor vehicle wholesalers, and similar parties, so long as the activities do not constitute prohibited retail trade. (Telex 10481 dated October 17, 1984, and 2533 dated March 15, 1985, and see Sections 11.5(c) and 11.7(h) FTZM).

(d) Articles Subject to Internal Revenue Code – The FTZ Act prohibits the manufacture of alcohol, tobacco and firearms in zones. No operation involving any foreign or domestic merchandise brought into a zone, which operation would be subject to any of a number of provisions of the Internal Revenue Code if performed in the Customs territory, shall be performed in a zone except those operations (other than rectification of distilled spirits and wines or the manufacture or production of alcohol products unfit for beverage purposes) which were permissible under the FTZA before July 1, 1949. (Fifth Proviso, 19 USC 81c(a)). The Foreign-Trade Zones Act has been amended to allow the use of distilled spirits and denatured distilled spirits in certain specified processes. (19 USC 81c(a)).

(1) Internal Revenue Code Provisions Now in Effect - The provisions cited in the Fifth Proviso which are now in effect are those involving:

Original Provision	Current Provision
-Tobacco Products Chapter 15	Title 26 USC 5701 et seq.
-Firearms Chapter 25	Title 26 USC 4181, 4182, and 5801 et seq.
-Alcohol Products Chapter 26	Title 26 USC 5001 et seq.

All other provisions cited in the Fifth Proviso are repealed or suspended.

(2) Nature of Restriction - Generally, the purpose of the Fifth Proviso is to prohibit the circumvention of any taxes or controls on merchandise imposed by the Internal Revenue Code through activities in a foreign-trade zone, unless the activity was permitted before July 1, 1949. However, the rectification of distilled spirits and wines, and the manufacture of alcohol products unfit for beverage use are prohibited even if they were permitted before July 1, 1949. Since no manufacturing was permitted in zones before July 1, 1949, manufacturing of alcohol products, tobacco products, or firearms is prohibited in zones.

(i) Permitted Activities – The Bureau of Alcohol, Tobacco and Firearms (BATF) generally has jurisdiction in FTZs and should be notified regarding all operations in zones involving these products, especially those involving any type of manipulation. Though manufacturing is prohibited by statute, certain manipulations may be permitted subject to BATF written approval and Foreign-Trade Zones Board concurrence that the activity is a manipulation and not a manufacture.

(ii) Some examples of the activities concerning alcohol products, tobacco products, and firearms that have been determined not to be prohibited by the Fifth Proviso include:

(1) storage, bottling, and reduction in proof of distilled spirits and wines; mixing and blending of wines not amounting to rectification;

(2) mixing of 2 alcohol products unfit for beverage purposes;

(3) storage, repacking, sorting, and similar manipulation of firearms. CSD 84-4

(iii) Prohibited Activities - Some examples of the activities that have been determined to be prohibited include:

- (1) reconstitution of imported beer concentrate;
- (2) production of industrial ethyl alcohol from propane and other substances;
- (3) production of anhydrous ethanol; (HQ 213747 dated November 30, 1981);
- (4) assembly or manufacture of firearms; (CSD 84-4);
- (5) blending of ethanol and gasoline to produce gasohol. (HQ 218119 dated July 23, 1985).

(3) Denatured Distilled Spirits - The provisions of the Fifth Proviso notwithstanding, any articles within the meaning of 26 USC 5002(a)(14) (denatured distilled spirits) which have been withdrawn free of tax from a BATF-bonded distilled spirits plant may be used in the manufacture or production in a zone of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes. Similarly, denatured distilled spirits which have been withdrawn from a distilled spirits plant upon payment or determination of tax may be used for manufacturing or production in zones, and such products will be eligible for drawback under Internal Revenue laws under the same conditions applicable to similar manufacturing or production operations occurring in the Customs territory. (19 USC 81c(c) as amended by Section 484F, PL 101-382). In essence, this provision allows either domestic or foreign denatured distilled spirits to be used in zone manufacturing processes, so long as they have previously been sent to and withdrawn from a BATF-bonded distilled spirits plant. Procedures for their withdrawal from a BATF-bonded distilled spirits plant and transfer to a foreign-trade zone for manufacturing purposes are found in 27 CFR 19.536 through 19.541 and 27 CFR Part 20.

(4) Destruction of Alcohol Products - Distilled spirits, wines, and fermented malt liquors may be brought into a zone for the purpose of destruction only with the approval of Regional Director, (compliance) of the Bureau of Alcohol, Tobacco and Firearms, (See Fourth Proviso, 19 USC 81c). However, such products which have been admitted to a zone for other purposes may, with the approval of the Regional Director (compliance) of the Bureau of Alcohol, Tobacco and Firearms, be destroyed if they become unmerchantable. The procedure for doing this is found in 27 CFR 252.35 through 252.38. (And see Section 8.4(a) FTZM).

(5) Floor Stocks Taxes - Customs has ruled that privileged foreign status may be granted to non tax-paid distilled spirits in a foreign-trade zone so as to "lock in" the existing tax rate in the face of an impending increase in the tax. (CSD 86-4).

(e) Watches and Timekeeping Devices - No operation involving the manufacture of any article provided for in sections 367 or 368 of the Tariff Act of 1930 shall be permitted in a zone. (19 USC 81c(a)). Sections 1367 and 1368 (19 USC 1367, 1368) cover watches and other timekeeping devices now covered by Chapter 91 HTS.

(f) Bicycle Parts – In two instances Congress restricted the use of bicycle parts in production operations in foreign-trade zones: the Trade and Tariff Act of 1984, Section 231 - Amendment to FTZ Act, and the Omnibus Trade Act of 1988. Currently, there is no statutory prohibition on the use of bicycle parts in foreign-trade zone production operations, however, the Foreign-Trade Zones Board must be contacted and approval obtained prior to any processing activity.

(g) Steel Products – Grants of a few zones and subzones prohibit any manufacturing in the zone using foreign steel products except for export. Individual grants of authority should be reviewed.

Imported steel may be warehoused in a FTZ. Any processing of steel products must be approved by the FTZB. Generally the FTZB has not approved inverted tariff and scrap-related savings for steel products in recent years. In the 1980's the FTZB approved such savings for certain steel products on public interest grounds. Other operations have been approved primarily for export only; any other non-export activity has been subject to significant restrictions by the FTZB.

(h) Textiles and Textile Products – The warehousing of textile and apparel products is permissible in a FTZ. However, quota/visa merchandise requires lot number physical segregation in order to preserve the integrity of the quota/visa system. (See Section 11.10(c) FTZM for a description of the details of management of the quota/visa process). Any process activity (manipulation or manufacture) which would change the HTS classification, the quota category or the country of origin has not been approved except for export. (U.S Department of Commerce, Office of Textile and Apparel Policy Statement. Hickey-Freeman, 53 Fed. Reg. 30260 (July 25, 1990). Joseph & Feiss, 56 Fed. Reg. 13798 (April 4, 1991).

Textiles and Textile Products may not be transferred into the Customs territory for consumption if, during the time the merchandise is in the zone there has been a change by manipulation, manufacture or other means:

(1) in the country of origin of the merchandise as defined by 19 CFR 12.130;

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

(3) from one textile category to another textile category. (19 CFR 146.63(d)).

The purpose of the regulation is to prevent a circumvention of the quota, visa, and/or export license agreements negotiated multilaterally with foreign countries. 19 CFR 146.63(d) is not an outright prohibition on manufacturing textile products in a zone, since it does not prohibit manufacturing of textile products for exportation.

However, the Board has restricted, on public interest grounds, textile manufacturing operations in some zones whether or not they are barred by 19 CFR 146.63(d), by limiting such operations to export only (e.g., FTZ Order 680 for FTZ 129) or by prohibiting any operation that changes the tariff classification or country of origin of the merchandise, whether or not the goods are subject to quota, visa, or export license requirements (e.g. FTZ Order 257 for FTZ 99A).

(i) Sugar and Sugar Products - The Board has limited a number of ongoing zone operations using sugar imported into zones outside the sugar quota by limiting the operation to a specified annual volume of production. Customs enforces this production limit by restricting the volume of sugar-containing products that may be entered for consumption or otherwise transferred to Customs territory to the specified amount. When this limit is reached, Customs will not accept any more entries for consumption of sugar-containing products until the beginning of the next calendar year, except upon Board order, as long as the quota is open. These limits were established under the public interest authority of section 810(c), Title 19, to restrict the circumvention of the sugar quota. These were already established operations that were "grand-fathered" in 1986. Since that time, the Board has also denied clearances for most new manufacturing and blending operations in zones using sugar imported outside the quota. The FTZB has approved certain operations for export only.

A separate application on Customs Form 216 is required for each sugar-containing product to be manufactured in a zone. A copy of the approved Customs Form 216 shall be sent by the approving Customs officer to the import specialist handling the product to assure that no entry for consumption is approved for any product not approved for manufacture in the zone.

Under the Customs and Trade Act of 1990, blended syrups are exempted from the sugar import quota of zero for that product, if admitted to a foreign-trade zone, to the extent that the amount of those syrups entered into Customs territory does not contain an amount of sugar of non-domestic origin greater than that authorized by the Board for processing in that zone during Calendar Year 1985. (GN 15(d), HTSUS (2002)).

(j) Petroleum Products - Restrictions have been placed on the grants of some zones to prohibit the blending of petroleum products which would circumvent the duty rate on gasoline, except such operations on a product destined for exportation. Also, privileged foreign status shall be elected prior to any blending or processing operations in those zones. (e.g., FTZO 408). Restrictions have been placed in the grants of subzones for oil refineries requiring entry to be made on petroleum products produced and consumed in the zone in the operation of the refinery. (e.g., FTZO 379 and FTZO 406; also see Sections 11.7(j) and 11.8 FTZM).

(k) Alcohol/Gasohol – The production and blending of alcohol/gasohol in a FTZ has been restricted by the FTZB. (See Customs Ruling 217421 (Dec. 7, 1984) 216937 (July 14, 1984), 217851 (May 2, 1985), and 213747 (Nov. 30, 1981) and 19 USC 81c).

(l) Explosives - The Bureau of Alcohol, Tobacco and Firearms has determined that explosives admitted to a foreign-trade zone are subject to the storage and security regulations of 27 CFR Part 55, as authorized by 18 USC Chapter 40, even though the BATF does not consider its regulation of the flow of interstate and foreign commerce in explosives to be otherwise applicable until the explosives enter Customs territory.

(m) Firearms – Firearms generally require BATF permits and high security storage. Any admission and other manipulation activity involving firearms must be conducted in accordance with BATF regulations and the written concurrence of the FTZB.

(n) Meat Processing - Processing in a foreign-trade zone can not be used to circumvent any meat quotas. The Foreign-Trade Zones Board under its public interest standard, Section 81o(c), Title 19, has held that certain meat processing operations utilizing imported meat cannot be accommodated in FTZs except for export. (See FTZ Board investigation docket No. 6-76, 41 Fed. Reg. 31618 (July 29, 1976)/41 Fed. Reg. 41478 (Sept 22, 1976). [Board Order No 678, FTZ 35]). For further information, contact the FTZB.

(o) Pigments & Printers Ink – The FTZB has restricted the use of certain foreign made pigments used to make printer ink. (See FTZ Board Orders 322, 534, 562 and 615).

(p) Tires – The FTZB has restricted certain inverted duty savings opportunities for the manufacturer of tires. (See FTZ Board Order No. 389).

(q) Chain Saws – The FTZB has restricted certain inverted duty savings opportunities for the manufacturer of chainsaws. (See FTZ Board Order No. 418).

(r) Golf Carts – The FTZB has restricted certain inverted duty savings opportunities for the manufacturer of golf carts. (See FTZ Board Order No. 433).

(s) Television Tubes – The FTZB has in the past restrained any manufacturing operations that seek to change the HTS classification and rate of duty of foreign made television tubes used to manufacture televisions. (See FTZ Board orders 201, 223, 264 and 395).

(t) Pistachios/Nuts – Nut processing in a zone that would change the HTS classification has not been authorized on “public interest” considerations. (See Iran in-shell pistachios CIE/Telex A-507-502, August 4, 1986; Foreign-Trade Zone No. 68 request for manufacturing authority Docket No. 14-88).

(u) False Marking of Merchandise - No imported merchandise may bear a name or mark calculated to induce the public to believe that the merchandise was manufactured in the United States, or that it was manufactured in any foreign country or locality other than the one in which it was in fact manufactured. (15 USC 1124). It is unlawful to import gold or silver articles bearing a mark indicating a greater degree of fineness or quality than the actual degree of fineness or quality. (15 USC 294). Port Directors shall not approve any application to mark merchandise or containers in a zone in violation of these statutes, including the false marking of merchandise intended solely for exportation. If such marking occurred in a zone without a permit, or not in accordance with a permit, liquidated damages may be assessed as provided in Section 12.6 FTZM. (OCOD 89-4, Customs Bulletin, Vol. 23, No. 43, October 25, 1989, p. 35). However, Port Directors may approve an application for admission and manipulation of falsely marked merchandise that is expressly intended to be brought into a zone for the purpose of obliterating and/or correcting the false marking. (See Section 8.5(b) FTZM). Admission of infringing trademark goods in a zone brings them under the jurisdiction of the Lanham Act. (15 USC 1127).

(v) Zone-Restricted Status Merchandise - Merchandise admitted to the zone in zone-restricted status may only be exported, destroyed (except destruction of distilled spirits, wines, or fermented malt liquors), or for storage. (19 CFR 146.44). Such merchandise may be manipulated only to the extent necessary for its exportation, destruction, or storage. (Section 81c(a) Fourth Proviso, 19 USC 81c(a); TD 89-4 and see Section 5.8 (e) FTZM).

11.7 Restrictions on Transfer to Customs Territory - No merchandise whose entry into commerce is prohibited may be transferred to Customs territory for consumption. A permit for transfer to Customs territory for any purpose may be denied or withheld by Customs for failure to meet the administrative requirements of the application.

(a) Entry for Warehouse - Merchandise in privileged foreign (PF) status or composed in part of privileged foreign status merchandise may not be entered for warehouse from a zone. Foreign merchandise in zone-restricted status may be entered for warehouse only for storage pending exportation, unless the Board has approved another disposition. Any such entry must be endorsed as specified in 19 CFR 146.70(c). Non-privileged foreign merchandise may be entered for warehouse at any time before 5 years from the date of importation of the merchandise. (19 CFR 146.64(d)). Domestic status merchandise or domestic or imported duty-paid merchandise in zone-restricted status may not be entered for warehouse. (19 USC 1557). Textile and textile products changed as provided in 19 CFR 146.63(d) and 11.6(h) FTZM may be entered for warehouse only if the entry is endorsed by the Port Director to show that the merchandise may not be withdrawn for consumption. (19 CFR 146.64(c)).

(b) Entry under Temporary Importation Bond – Privileged Foreign status merchandise or composed in part of Privileged Foreign merchandise may not be entered on a TIB (19 CFR 10.31 and CSD 81-213). Merchandise in zone-restricted status may be entered under a temporary importation bond if the Board has deemed it in the public interest. Such merchandise must have been in the zone for less than 1 year from the date of importation and any requirements for quota class merchandise must be met. The TIB period commences with the original date of importation. The maximum time period for a TIB is 3 years from the original date of importation. (Note: TIB period does not begin with the date of entry from the zone). (19 CFR 10.31 and CSD 79-454 and see Section 9.9(b) FTZM).

(c) Zone-Restricted Status Merchandise - No entry that would allow domestic consumption will be accepted by Customs for merchandise in zone-restricted status, unless the Board has approved such an entry. No entry for warehouse of merchandise in zone-restricted status for a purpose other than storage pending exportation will be accepted by Customs, unless the Board has approved such an entry. (19 CFR 146.70 and see Section 9.15 FTZM).

(d) Textiles and Textile Products - No entry for consumption will be accepted by Customs for textiles or textile products changed in a zone as provided in 19 CFR 146.63(d) and see Section 11.6(h) FTZM.

(e) Export-Only Restrictions - When any Federal law, regulation, or directive, including a foreign-trade zone grant, requires exportation of merchandise from a zone, no entry for consumption will be accepted by Customs for the merchandise.

An entry for transportation to another zone would be accepted. Any other kind of entry (including shipment to an insular possession or use on a U.S. flag vessel, as noted in Sections 9.12(c) and 9.14(c) FTZM) may be accepted provided it satisfies the nature and wording of the law, regulation, or directive requiring exportation.

(f) Meat Subject to Quota - Processing in a foreign-trade zone can not be used to circumvent any meat quotas. The Foreign-Trade Zones Board has specifically authorized meat processing in foreign-trade zones for export only. (Board Order 678, December 28, 1993).

(g) Toxic Substances - When toxic substances are imported into a foreign-trade zone for manufacture into another substance, and both the imported substance and the product of the zone are subject to the Toxic Substances Control Act (15 USC 2601 et seq), the Environmental Protection Agency must be notified for clearance on both the importation of the imported substance and on the entry for consumption of the substance produced in the zone. (19 CFR 12.118 through 12.127 and unpublished EPA letter dated January 9, 1990).

(h) Motor Vehicles Pending EPA/NHTSA Approval - An importer who has obtained a conditional release of a vehicle which was not manufactured in compliance with National Highway Traffic Safety Administration safety standards must certify that the vehicle will not be sold or offered for sale until the Administrator, NHTSA, issues an approval letter to the Port Director. (19 CFR 12.80(e), 12.80(b)(1)(iii)). This requirement cannot be waived by the NHTSA. A vehicle pending modification to meet EPA requirements may not be sold until it is granted final admission by the Environmental Protection Agency, unless the importer is granted a waiver from emission control requirements. (40 CFR 85.1504, 85.1507 and see Section 11.6(c) FTZM and Telex 2533 dated March 15, 1985). Thus, while sale at retail of vehicles is prohibited under 19 USC 810(d), a sale at any level, i.e. wholesale or retail, while the nonconforming vehicle is in the zone or after its release from the zone is also restricted by EPA and NHTSA regulatory requirements. General procedures for the entry of vehicles subject to EPA and DOT/NHTSA regulations and requirements are set forth in Telex 310 dated January 27, 1990.

(1) Temporary Removal - Motor vehicles which have been properly admitted to a zone may be temporarily removed under the procedure in Section 9.2 FTZM for testing and adjustment to bring them into compliance with EPA and DOT requirements and returned to the zone, if the transaction otherwise complies with the conditions for temporary removal. (HQ Ltr FOR-1-CO:R:CD:D 217378 RB dated October 5, 1984). They may not be entered for consumption while outside the zone.

(i) Sugar and Sugar-Containing Products - A weekly entry for estimated production under 19 CFR 146.63(c) shall not be accepted by Customs for any sugar or sugar-containing product subject to a quota, since the merchandise must be in its

form as entered when a charge is made against the quota. (19 CFR 132.11a(a) and 9.8(d)(2) FTZM).

(j) Petroleum Products - Petroleum products refined from crude oil in privileged foreign status may not be entered free of duty under HTS 9808.00.30 for sale to U.S. military departments when the certification required under that provision is not for the crude oil but rather for the petroleum product manufactured in the zone. (HQ Ltr FOR-2-04-CO:R:C:E 222452 L dated August 15, 1990, see Section 9.9(d) FTZM, 19 CFR 146, and T.D. 95-35).

(k) Alcohol/Gasohol - Any imported alcohol fuel that is denatured prior to entry into the United States must be transferred to a BATF-bonded distilled spirits plant pursuant to 26 USC 5232 to avoid paying the excise taxes on the spirits contained in the product. The alcohol fuel may not be entered directly for consumption from a zone without payment of these taxes. If determined to be classifiable as an "article" under 26 USC 5002(a)(14), it may be removed from the distilled spirits plant, subsequent to transfer from the zone, without payment of tax pursuant to 26 USC 5214(a)(11). (Unpublished BATF Ltr C:R:D:SMM dated January 15, 1985).

11.8 Time Limits on Grant - Some zone grants are subject to conditions limiting their legal effect to a specific period of time. If this time limit is not extended, or the conditions removed by the Board, no merchandise may be admitted to or processed in the zone after the time limit, and all foreign or zone-restricted status merchandise in the zone shall be transferred to another zone or to a bonded warehouse, or entered for consumption, exported, or otherwise removed from the zone and disposed of according to the law, as provided in Section 13.13 and Section 4.3 FTZM.

11.9 Space Limits on Grants - Grants can contain Board limits on physical size of activated areas. Certain grants require Board concurrence before the activated area may exceed a specific acreage. Foreign-trade zone grants may contain a stipulation that only a designated amount of the total acreage granted in the Board Order may be activated.

11.10 Special Merchandise Provisions - The provisions covered by this section are not prohibitions or restrictions, but rather special provisions of law or regulation dealing with certain categories of merchandise not dealt with elsewhere in this manual.

(a) Semi-conductors - Semi-conductors may be transferred to the zone for temporary deposit in commingled standard, substandard, and defective units. While in the zone the standard, substandard, and defective units may be segregated. The standard units and some of the substandard units may be entered for consumption at the option of the importer. The defective and the remainder of the substandard units may be admitted to a zone in zone-restricted status and destroyed in the zone. The appraised value of the units entered for consumption does not include the cost of producing the defective and substandard units destroyed in the zone. If the destruction process does not result in complete

destruction because a valuable waste containing precious metals remains, the Board may allow the transfer of the remaining zone-restricted status waste to Customs territory for consumption where the precious metals are salvaged from the waste. The Foreign-Trade Zones Board has in the past issued the order because salvaging the precious metal in the United States, rather than requiring exportation, was found to be in the public interest. (LD 79-0265, CSD 79-444, LD 80-0206, CSD-81-100, HQ 211984, and FTZO 158).

(b) Bulk Concentrated Orange Juice - Bulk concentrated orange juice admitted to a zone that, for a variety of reasons, causes variances and apparent discrepancies in the volume of juice in the storage tanks may receive special allowances. Customs Headquarters may authorize an allowance for relief from the operator's liability for these apparent discrepancies, under the authority of 19 CFR 146.53(c), in circumstances where the juice cannot be weighed both upon receipt into and removal from the tank. (Headquarters Memoranda FOR-2-02-IC:C JH dated May 24 and December 17, 1990).

(c) Textile Visa Controls - Customs has established procedures to allow foreign-trade zone importers to present a textile visa at the time of admission of textiles and textile products to a zone for a purpose other than manufacturing or other change as noted in the circumstances of 19 CFR 146.63(d). This visa will be applied to each subsequent transfer from the zone, whether for consumption or export, until the visaed quantity has been completely transferred from the zone. (Headquarters Telex 570 dated January 14, 1987, and Telex 2101 dated February 19, 1987). This procedure replaces an earlier procedure where zone importers had to obtain a textile visa for each and every entry for consumption from the zone. This procedure may be used only when the zone inventory method for the goods subject to textile visa is specific identification (lot system - see Section 7.8(c)(2) and 7.9 FTZM); the lot numbers are indicated at the time of admission on a Customs Form 214 and merchandise from another lot number that has the same category number cannot be substituted for visaed merchandise that may have been exported. A Customs Form 214 may have several lot numbers.

(1) Admission - Each admission of textiles or textile products subject to the visa requirement, for which all or part of the merchandise is to be transferred to Customs territory for consumption and which applies to the same admission document, must be covered by a visa for the entire quantity of the shipment admitted to the zone. However, Customs may accept presentation of the correct visa for this quantity later, so long as it is presented before the first transfer from the zone. If a portion of the quantity admitted to the zone is later exported, the visa must still cover the entire quantity that was admitted to the zone. The lot number on Customs Form 214 must be shown on any form for transfer of the merchandise from the zone.

(2) Export-Only Destination - Prior to the admission of a shipment of textile goods, an importer may elect to split the shipment into lots, each covered by an individual lot number, part for exportation, and the remainder for consumption in the United States. In this case, the visa quantity need only match the total amount to be transferred from the zone for consumption. However, a textile shipment subject to visa requirements which has been presented to Customs for consumption entry purposes and rejected may be admitted into a zone only if the entire shipment is covered by an individual lot number. The entire quantity of the shipment must be covered by a visa before any portion of the shipment is transferred from the zone to Customs territory for consumption and the procedures, when applicable, governing presentation of quota class merchandise must be applied.

(3) Entry Procedure - At the time of the first zone transfer for consumption, the original visaed invoice, together with a copy of the applicable Customs Form 214 and a "live" formal entry, shall be filed with the appropriate Customs officer for a check of the visaed quantity and to ascertain if the quota is open. Since the visaed quantity that serves as a basis for this check is controlled by the lot number on Customs Form 214, the lot number must be shown in block 23 of Customs Form 7501. These documents will be retained by Customs in an open file by lot number until the final zone transfer for either consumption or export takes place. At the time of each subsequent zone transfer for consumption the importer shall submit another copy of the Customs Form 214, a copy of the visaed invoice, and the zone number must be shown in Block 23 of Customs Form 7501.

(4) Exportation from Visaed Quantity - If a portion of a textile shipment covered by a visa is later exported, the exported portion will also be related to the original quantity in the zone lot as indicated on the Customs Form 214 to properly account for the entire quantity admitted to the zone under the visa. In this case, the original Customs Form 214 and visaed invoice shall be presented with the Customs Form 7512 for export for review by the appropriate Customs officer. The Customs Form 7512 must show the lot number in the description portion of the form.

(5) Restrictions on Procedure - Textiles or textile articles admitted to a zone under these visa procedures may be transferred to another zone in the same or a different port only if the entire quantity covered by the original zone lot number as indicated on the Customs Form 214 is transferred. No informal entries shall be filed for merchandise covered by these procedures.

CHAPTER 12

BONDS AND LIQUIDATED DAMAGES

12.1 General - In any case in which a bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize Customs officers to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce. (19 USC 1623(a)). A surety bond is a contract whereby one party, the surety, guarantees the performance of a second party, the principal, for the benefit of a third party, the obligee (the Federal government, in the case of Customs bonds). Should the principal fail to perform his agreement with the obligee, the surety will be required to pay liquidated damages, and will have the right to obtain reimbursement from the defaulting principal. The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States in lieu of surety on any bond required or authorized by law, regulation, or instruction of the Secretary of the Treasury or the Customs Service. (19USC 1623(e)).

The general regulations concerning Customs bonds are found in 19 CFR 113. Through the general rulemaking authority of Section 81h, Title 19, foreign-trade zone operators are required, under 19 CFR 146.6(d), to execute a Foreign-Trade Zone Operator's bond on Customs Form 301, (Activity Code 4), containing the bond conditions set forth in 19 CFR 113.73. A general-purpose zone may be structured in such a manner that more than one operator authorized by the zone grantee may be permitted to conduct business under the same zone grant. The principal bonds covered in this Part of the Manual are the importation and entry bond, as it relates to zone users, and the Foreign-Trade Zone Operator's bond.

Liquidated damages are amounts of money which the principal agrees to pay to compensate for damages, often difficult to determine, to the obligee arising from a default by the principal in his performance under the bond. As defined in the regulations in 19 CFR 146.1 (b)(8), "default" means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foreign-Trade Zone Operator Bond. The purpose of a liquidated damages provision in a bond is to avoid the necessity for litigation to determine actual damages for each and every bond default. If the principal fails to pay liquidated damages provided for in the bond, the surety is obligated to pay the liquidated damages. Generally, the principal and surety are jointly and severally liable under a Customs bond.

12.2 Bond Administration – The face amount of the bond generally forms the obligor's limit of liability. (CSD 86-17). Determination of the face amount is at the discretion of the Port Director, considering the guidelines specified in 19 CFR 113.13(b) and CD3510-004.

Also, Port Directors are directed to periodically review each bond filed in their port to determine whether they are adequate to protect the revenue and insure compliance with the law and regulations. (19 CFR 113.13(c)). In the case of Foreign-Trade Zone Operator's bonds, this review shall be done at least once each year. (CD3210-028). The initial standard should be based upon the Customs duties and fees owed on the average value of foreign status non-duty paid merchandise held in the zone. Furthermore, Port Directors are directed to require additional security when they believe acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy. (19 CFR 113.13(d)). The authority to Customs for requiring bonds and setting their amount is strongly stated and comprehensive in Section 623 TA. The right of a party to keep doing business at the same bond premium cost is not paramount to the Government's right to protect the revenue. (Hera Shipping, Inc. v. Carnes, 10 CIT 493, 640 F. Supp. 266 (1986)).

12.3 Agreements of Zone User in Importation and Entry Bond - Zone users share with other importers for consumption the agreements of the importation and entry bond under 19 CFR 113.62. The principal agreements directly affecting zone users in particular are covered below:

(a) Agreement to Pay Duties, Taxes, and Charges - If merchandise is imported and released from Customs custody for consumption in the United States, the principal and surety agree:

(1) to deposit within the prescribed time, any duties, taxes, or charges imposed or estimated to be due at the time of entry;

(2) to pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found to be due on any entry secured by the bond. (19 CFR 113.62(a)(1)).

(b) Reimbursement and Exoneration of United States – Principal and surety agree to exonerate the U.S. from any risk, loss, or expense arising out of the principal's importation, entry, or withdrawal of the merchandise. (19 CFR 113.62(g)(2)).

(c) Agreement on Duty-Free Entries or Withdrawals - If the principal enters or withdraws any merchandise without payment of duty and tax, or at a reduced rate of duty and tax, as permitted by law, the principal agrees:

(1) to use and handle the merchandise in the manner and for the purpose entitling it to duty-free treatment;

(2) if a fishing vessel, to present the original approved application to Customs with 24 hours on each arrival in the Customs territory from a fishing voyage;

(3) to furnish timely proof to Customs that any merchandise withdrawn under any law permitting duty-free treatment was used in accordance with that law; and

(4) to keep safely all withdrawn beverages remaining on board while the vessel is in port, as may be required by Customs. (19 CFR 113.62(h)).

(d) Consequences of Default - Liquidated damages are not assessed for failure to comply with the agreements in 19 CFR 113.62(a) or 113.62(g), since the actual damages are known and easy to determine. The principal and surety are obliged only to pay the applicable duty, tax, charge, or other cost itself. Liquidated damages are assessed, however, for a default in the agreement in 19 CFR 113.62(h), (19 CFR 113.62(l)).

12.4 Agreements of Operator in Foreign-Trade Zone Operator's bond - Under this bond, the operator, as principal, and surety agree to the following conditions:

(a) Agreement Concerning Receipt Handling and Disposition of Merchandise - The principal and surety agree to comply with:

(1) the law and Customs regulations relating to the receipt, admission, status, handling, transfer, and removal of merchandise from the zone or subzone; and

(2) the Customs regulations concerning the maintenance of the inventory control and recordkeeping system covering merchandise in the zone or subzone. (19 CFR 113.73(a)).

(b) Agreement to Pay Duties, Taxes, and Charges - The principal and surety agree to pay any duties, taxes, and charges found to be due on any merchandise, properly admitted to the zone, which is found to be missing from the zone or cannot be accounted for in the zone. (19 CFR 113.73(b)).

(c) Reimbursement and Exoneration of United States - The principal and surety agree to exonerate the U.S. and its officers from any risk, loss, or expense arising from the principal's operation of the foreign-trade zone or subzone. (19 CFR 113.73(c)(1)).

(d) Consequences of Default - Liquidated damages are not assessed for failure to comply with the agreements in 19 CFR 113.73(b) or (c), since the actual damages are known and easy to determine. The principal and surety are obliged only to pay the applicable expense, charge, or cost itself. However, liquidated damages are assessed for a default in the agreement in 19 CFR 113.73(a) under the Foreign-Trade Zone Operator's bond.

12.5 Consequences of Default

(a) Consequences of Merchandise Default - The principal and surety on both the importation and entry bond (19 CFR 113.62 (h)) and the Foreign-Trade Zone Operator's bond (19 CFR 113.73(a) (c)) agree to pay, in the event of default by the principal in an agreement, liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

(b) Consequences of Non-merchandise Default - If the principal defaults in an agreement and the default does not involve merchandise, the principal and surety agree to pay liquidated damages of \$1,000 for each default or such other amount as may be authorized by law or regulation. (19 CFR 113.62(l)(3)).

(c) Customs Determination of Nature of Default - Principal and surety agree that whether or not a default involves merchandise is determined by Customs. Furthermore, the amount to be collected for defaults involving merchandise is based on the quantity and value of the merchandise as determined by Customs. (19 CFR 113.62(l)(2), 113.62(l)(3) and 113.73(a)(2)).

The presence of domestic or duty-paid articles in the zone without Customs permit, such as personal items, equipment, construction material, and other articles which are not stock in trade, is not a default involving merchandise. However, the presence of such articles could be a non-merchandise default if it constitutes a violation of the regulations (e.g., if aisles are not properly maintained as required under 19 CFR 146.4(f)).

12.6 What Constitutes Merchandise Default - Merchandise involved in the default (19 CFR 113.73(a)(2)), as it applies to the Foreign-Trade Zone Operator's bond, can be merchandise which:

(a) cannot be located or accounted for in the activated area of a foreign-trade zone;

(b) has been removed from the activated area of a zone without a proper Customs permit; or

(c) has been admitted, manipulated, manufactured, exhibited, or destroyed in the activated area of a zone:

(1) without proper Customs permit; or

(2) not in accordance with the description of the activity in the Customs permit.

The term has not been defined in respect to a default in the importation and entry bond under 19 CFR113.62 (h) (And see section 12.3(c) FTZM).

12.7 What Constitutes Non-merchandise Default - A non-merchandise default is any default which does not meet the definition of a merchandise default. Generally, it is a default in the regulations concerning recordkeeping or merchandise handling, where there is no evidence of a merchandise default in connection with the same event or transaction.

(a) Application and Examples of Non-merchandise Defaults - The same act shall not be regarded as both a default involving merchandise and a default not involving merchandise.

(1) Defaults not involving merchandise are to be treated as distinct from one another and shall not be grouped into one default.

(Example: If merchandise is covered by 2 lots or 2 unique identifiers and is stored in the same unsanitary manner, there are 2 defaults. 19 CFR 146.4(f)).

(2) A default involving one zone lot or unique identifier may not be combined with a default under another lot or unique identifier.

(Example: If merchandise covered by 2 applications for admission on two Customs Form 214s and neither are recorded in the receiving report, there are 2 defaults. (19 CFR 146.22(a))

(3) Where there is a default in the timeliness of an action, each business day of default constitutes a separate default.

(Example: If in bond documents are not forwarded by a subzone under the direct delivery procedure to the Port Director until 4 working days after the date of arrival of the conveyance, there are 2 defaults (2 days late). (19 CFR 146.40(a)(5)).

(4) When one irregularity leads to one or more other irregularities, only the original one constitutes a default.

(Examples: If 1 keying error in recording merchandise into the recordkeeping system causes an incorrect current balance and an incorrect reconciliation statement at the business year end, there is only 1 default. (19 CFR 146.23(b)(4) and 146.25(b)).

If 1 clerical error causes an in bond document to be forwarded under the direct delivery procedure to the Port Director 4 days late, there is only 1 default. (19 CFR 146.40(a)(5)).

12.8 What Constitutes Restricted Merchandise - Restricted merchandise, for the purpose of determining liquidated damages for defaults involving merchandise, means

merchandise which may not be authorized for delivery from Customs custody without a special permit, or a waiver thereof, by an agency of the U.S. Government. It includes all quota merchandise, whether the quota is administered by Customs or another agency. Such merchandise is prohibited from entry for consumption in the United States in the absence of the special permit, and actual damages to the government resulting from its diversion into the commerce without a permit are greater than the mere nonpayment of duties and taxes on the merchandise. (CD3250-005).

12.9 Value of Merchandise - The value of merchandise used in determining the amount of liquidated damages for defaults involving merchandise shall be the dutiable value as provided for in 19 CFR 146.65 (b)(2), excluding the value of merchandise or component materials in domestic status (unless a Customs permit is required) and any allowance granted under 19 CFR 146.65(b)(3).

12.10 Payment of Duties by Operator on Missing Merchandise - Under 19 CFR 113.73(b), the operator agrees to pay duties, taxes, and charges found to be due on any merchandise which is found to be missing or cannot be accounted for in a zone. Port Directors may accept entries for consumption from operators to pay the duties and taxes on such merchandise, and the operator will thereby be treated as the owner or purchaser of the merchandise for entry acceptance purposes. However, the actual owner or purchaser may, at its option, file entry for such merchandise and thereby relieve the operator of the responsibility to pay duties and taxes on the merchandise. If merchandise is removed from a zone without Customs permit, but returned to the zone before the duties and taxes are paid thereon, the Port Director may waive a demand to comply with the agreement to pay the duties and taxes.

12.11 Issuance of Claims of Liquidated Damages - Not every default found by Customs results in a claim for liquidated damages. Customs officers will not issue such claims without a consideration as to whether (a) Customs has suffered actual or potential damages; (b) compliance with the laws and regulations can be achieved without liquidated damages; (c) liquidated damages can and will bring about compliance; and (d) the operator has cooperated with Customs in disclosing defaults and promptly corrected them.

Many minor defaults will be handled by Customs through oral or written warnings. (See Section 13.2 FTZM). If Customs decides to issue a claim, it will be issued on Customs Form 5955A, Notice of Penalty or Liquidated Damages Incurred and Demand for Payment.

(a) Liquidated Damage Claims - Note: 19 CFR Parts 171 and 172 of the Customs Regulations include petition processing in seizures and unsecured penalty cases under 19 CFR Part 171 and liquidated damages and secured penalty petition processing under 19 CFR Part 172. General procedures for these claims are set forth in 19 CFR Part 172, and Customs Fines, Penalties and Forfeitures Handbook, HB 4400-01. When there is a failure to meet the conditions of a bond

posted with Customs, or when a violation occurs which results in an assessment of a penalty secured by a Customs bond, the bond principal will be notified in writing of any liability for liquidated damages or penalty incurred, and a demand will be made for payment. Sureties on such bond will also be notified in writing of any such liability at the same time. (19 CFR 172.1(a)). If the principal fails to pay or make arrangements to pay the liquidated damages, or fails to timely file a petition for relief, Customs will make a demand for payment on the surety. (19 CFR 172.4).

(b) Petitions for Relief – A petition for relief must be filed with the Fines, Penalties and Forfeiture Officer within 60 days from the date of mailing to the bond principal the notice of claim for liquidated damages or penalty secured by a bond. (19 CFR 172.3(b)(2)). The surety has 60 days from the date of the demand upon it, to file a petition for relief. (19 CFR 172.4). If the statute of limitations will run in less than 180 days from the date of liquidated damages or penalty notice, a shorter time period for the filing of a petition for relief may be specified. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice. (19 CFR 172.3(e)). The petition need not be in any particular form, but shall set forth the facts relied on by the petitioner to justify cancellation of the claim for liquidated damages without any payment or upon payment of a lesser amount than stated in the notice of liquidated damages. The petition must set forth the date and place of the violation, and the facts and circumstances relied on by the petitioner to justify the cancellation, remission or mitigation of the claim for liquidated damages. (19 CFR 172.2(c)). The petition must be signed by an authorized person as specified in 19 CFR 172.2(b).

(c) Where Filed - In accordance with the appropriate delegation of authority, the petition shall be filed with the appropriate Fines, Penalties, and Forfeiture Officer. That Fines, Penalties, and Forfeiture Officer will either act upon, or refer the petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters. (19 CFR 172.1 and 172.12).

(d) Supplemental Petitions for Relief - If the petitioner is not satisfied with the decision of the Fines, Penalty, and Forfeiture Officer (FPFO), a supplemental petition may be filed under the guidelines of 19 CFR Part 172, Subpart E.

12.12 Waiver or Cancellation of Claim Without Payment - The Fines, Penalty, and Forfeiture Officer may, consistent with delegated authority, either waive issuance of a claim for liquidated damages, or if such a claim has already been issued, may cancel the claim without payment. (19 CFR 172.11 (a)).

(a) Mitigation or Cancellation - The Fines, Penalties, and Forfeiture Officer is always empowered to cancel any case without payment of the mitigated or cancellation amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur. (19 CFR 172.11 (b)). Otherwise the Fines, Penalties, and Forfeiture Officer is empowered to mitigate or cancel any claim in accordance with appropriate delegations of authority. (19 CFR 172.11 (a)).

(b) Mandatory Cancellation - The Fines, Penalty and Forfeiture Officer shall waive or cancel any claim for liquidated damages if it is determined that the claimed default did not actually occur. (19 CFR 172.11(b)). The Fines, Penalty and Forfeiture Officer shall also waive or cancel liquidated damages under the Foreign-Trade Zone Operator's bond if:

(1) the default occurred before the date the Foreign-Trade Zone Operator's bond went into effect;

(2) the default occurred solely because of an error by Customs; or

(3) a merchandise default involves domestic status merchandise for which no Customs permit for admission is required. (See TD 94-38).

(c) Discretionary Cancellation for Merchandise Default - The Fines, Penalty and Forfeiture Officer may waive the imposition of a claim for liquidated damages for defaults in the Foreign-Trade Zone Operator's bond involving merchandise, or if a claim has already been made, may cancel the claim without payment, upon showing of proper evidence that:

(1) the default was reported by the zone operator or by the user, or the operator or user has a demonstrated history of reporting defaults (both defaults involving merchandise and those not involving merchandise) to Customs; and,

(2) the default does not involve restricted merchandise; and,

(3) there was no negligent, deliberate, or fraudulent act or omission by the operator in connection with the default.

(d) Discretionary Waiver for Minor Losses - In the case of any shortage which does not meet the 1 percent and \$100 criteria as provided in 19 CFR 146.53(a)(3), a claim for liquidated damages may be waived or canceled by the Fines, Penalties, and Forfeiture Officer upon the showing of proper evidence that:

(1) the shortage was recorded in the operator's inventory control and recordkeeping system (19 CFR 146.21 and 146.23); and,

(2) the shortage does not involve restricted merchandise; and,

(3) there was no negligent, deliberate, or fraudulent act or omission by the operator, or its officers, employees, or agents, in connection with the default.

(e) Discretionary Cancellation for Non-merchandise Default - The Fines, Penalty and Forfeiture Officer may waive the imposition of a claim for liquidated damages for defaults not involving merchandise or if a claim has already been made, may cancel the claim without payment, upon the showing of proper evidence that:

(1) The regulatory provision is subject to interpretation and the default was inconsequential or did not affect Customs ability to accomplish the underlying objective of the provision.

Examples:

An aisle was narrow or partially or temporarily blocked but the Inspector was not materially delayed or impeded in conducting a compliance review (formerly spot check). (19 CFR 146.4(f)).

Security was deficient in some Customs security specifications but was compensated for by other security features, and overall security was adequate. (19 CFR 146.4(e)).

If there is no room for interpretation in the regulation, a claim for liquidated damages will be issued. A regulatory provision requiring action by a particular time or date, or on a particular Customs form, is considered to leave no room for interpretation.

(2) The operator could not comply solely because of circumstances outside the control of the operator or user.

Example:

The bonded carrier did not timely furnish in bond documentation required to be submitted by an operator within 2 business days under direct delivery procedures. (19 CFR 146.40(a)(5)).

(3) The default was voluntarily disclosed by the operator or user, or the operator or user has a demonstrated history of voluntarily disclosing defaults to Customs; and the operator or user has a demonstrated history of promptly correcting defaults; and the default was the result of a clerical error or other inadvertence.

(f) Discretionary Cancellation (Entry Bond) - The Fines, Penalty, and Forfeiture Officer may waive the imposition of a claim for liquidated damages for defaults against the importation and entry bond of the zone user, or, if a claim has already been made, may cancel the claim without payment, upon the showing of proper evidence that the default resulted from a clerical error or other non-negligent, inadvertent mistake and that any duties and taxes due on the merchandise have been paid.

(g) Effect of Discretionary Waiver or Cancellation - A decision by a Fines, Penalty, and Forfeiture Officer not to issue a claim for liquidated damages does not mean that the default did not exist, nor that it does not need correction. The Fines, Penalty and Forfeiture Officer shall bring the default to the attention of the zone operator through a warning notice instead of a notice of claim of liquidated damages. If there is an apparent misunderstanding of regulatory requirements, the Fines, Penalty and Forfeiture Officer will hold a meeting with the operator to explain the requirements. If the default is not promptly corrected or if the same default is repeated, a claim for liquidated damages shall be issued. If the Fines, Penalty and Forfeiture Officer issues such a claim because the operator or user has failed to take corrective action, the operator or user faces a substantial burden in justifying relief from the damages on the grounds of clerical error or other inadvertence.

12.13 Prior Disclosure – If a violator comes forward and discloses a violation to Customs prior to discovery of the violation by Customs, the claim for liquidated damages may be canceled upon payment of an amount equal to any duties, fees, taxes and charges due, plus \$50.

12.14 Cancellation upon Payment of Smaller Amount (Foreign-Trade Zone Operator's bond) - If the Port Director or other reviewer does not believe a discretionary waiver or cancellation is warranted in the case of a default in the Foreign-Trade Zone Operator's bond, the petition will be treated according to the guidelines in this Section

(a) Defaults Involving Merchandise - Petitions for relief from liquidated damages for defaults involving merchandise will be processed according to the following guidelines:

(1) If the breach resulted from a clerical error or mistake (a non-negligent, inadvertent error), and the situation does not qualify for a waiver or cancellation, the obligation may be canceled upon payment of:

(i) 1 percent of the value of merchandise wholly in domestic status for which a Customs permit is required, not to exceed \$500 per claim; or

(ii) 10 percent of the value of restricted merchandise, with no maximum amount per claim; or

(iii) 3 percent of the value of other merchandise involved in the default, not to exceed \$1,000 per claim.

(2) If the breach was the result of negligence (an act which is more than a clerical error or mistake but not committed deliberately with the knowledge it would constitute a default in the bond), the obligation may be canceled upon payment of:

(i) not less than 2 percent nor more than 5 percent of the value of domestic status merchandise for which a Customs permit is required, not to exceed \$1,500 per claim; or

(ii) not less than 40 percent nor more than 100 percent of the value of merchandise in the case of restricted merchandise; or

(iii) not less than 20 percent nor more than 35 percent of the value in the case of other merchandise.

The sum to be collected shall be determined by the presence or absence of aggravating or extenuating factors, such as the following not all-inclusive factors:

(i) Aggravating factors:

1. principal's failure or refusal to cooperate with Customs;
2. large number of violations in relation to number of zone admissions;
3. principal's long experience in handling zone transactions;
4. principal's carelessness or willful disregard toward its responsibility, including defaults which did not involve merchandise;
5. merchandise released without permit has not been returned to the zone or Customs custody.

(ii) Extenuating factors

1. contributory error by Customs or by a party independent of the operator;

2. small number of violations in relation to total number of zone transactions;
3. remedial action taken by principal;
4. principal's lack of experience in handling zone transactions;
5. principal's cooperation with Customs;
6. return of merchandise to zone or Customs custody.

(3) If the breach resulted from an act that was intentional (an act which was done deliberately with the knowledge that it would breach the bond), there will be no relief from the damages.

(b) Defaults Not Involving Merchandise - Petitions for relief from liquidated damages for defaults that do not involve merchandise will be processed according to the following guidelines:

(1) If the default resulted from a clerical error and the situation does not qualify for a waiver or cancellation, the obligation may be canceled upon payment of \$50 per default.

(2) If the default resulted from negligence, the obligation may be canceled upon the payment of not less than \$100 nor more than \$250 per default. The sum to be collected will be determined by the presence or absence of the not all-inclusive aggravating and extenuating factors. (See Section 12.14(a)(2) FTZM).

(3) If the default resulted from an act that was intentional, there will be no relief from liquidated damages.

12.15 Cancellation upon Payment of Smaller Amount (Entry Bond) - If the Port Director or other reviewer does not believe a waiver or cancellation without payment is warranted under the importation and entry bond, the petition will be treated according to the guidelines in this Section

(a) Defaults Involving Merchandise - Petitions for relief from liquidated damages for defaults involving merchandise will be processed according to the following guidelines:

(1) If the default was the result of negligence by the principal (an act which is more than a clerical error but not committed with knowledge that it would constitute a default in the bond), the obligation may be canceled upon

payment of the duties that would have been due on the merchandise involved in the default, plus an amount between \$100 and \$500 depending on the presence of aggravating and extenuating factors such as the following not all-inclusive factors:

(i) Aggravating Factors:

1. violator refuses to cooperate with Customs or acts to impede Customs action on the case;
2. violator experienced in handling zone shipments of the type in question;
3. large number of violations in relation to total number of the same type of zone shipments handled by the violator, i.e., a frequent violator; and
4. default involves restricted merchandise.

(ii) Mitigating Factors:

1. violator inexperienced in handling zone shipments of the type in question;
2. small number of violations in relation to the total number of the same type of zone shipments handled by the violator, i.e., violations are infrequent;
3. violator demonstrates remedial action to prevent future violations has been taken;
4. evidence of contributory Customs error; and
5. circumstances intervened that were beyond the principal's control. NOTE: Human failure by the principal or any agent of the principal will not be considered as a circumstance beyond the principal's control.

If the principal voluntarily files a duty-paid entry for the merchandise or returns the merchandise to Customs custody before the issuance of the claim, the claim may be canceled upon payment of between \$100 and \$500 depending on the presence of aggravating or extenuating factors.

(2) If the default resulted from an act that was intentional (an act which was done deliberately with the knowledge it would breach the bond), there will be no relief from the damages.

(b) Defaults Not Involving Merchandise - Petitions for relief for defaults not involving merchandise will be treated according to the following guidelines:

(1) If the default resulted from negligence, the obligation may be canceled upon payment of not less than \$100 but not more than \$500 per default. The sum to be collected will be determined by the presence of aggravating and extenuating factors. (See section 12.15(a)(1) FTZM).

(2) If the default resulted from an act that was intentional (an act which was done deliberately with the knowledge it would breach the bond), there will be no relief from liquidated damages.

12.16 Offers in Compromise – An offer in compromise (OIC) is made by the violator to settle a claim at less than the amount demanded by the government. The offer may be made at any point prior to initiation of a case or during the petition and collection processes. An offer is not valid unless monies are tendered. Subject to the recommendation of the Chief Counsel, the Fines, Penalties, and Forfeitures Officer may accept Offers in Compromise except in the case of a show cause letter being issued by a designated Headquarters officer. All such actions shall be in accordance with 19 CFR 172 Subpart D.

12.17 Suspension of Activation for Nonpayment of Claim - The Port Director may take action to suspend for cause the activated status of a zone under 19 CFR 146.82 and see Section 13.8-13.11 FTZM, if the operator has refused or neglected to pay a claim for liquidated damages upon proper order of Customs. This is in addition to any action that may be taken by a court pursuant to a suit initiated by the U.S. Attorney to enforce collection of liquidated damages.

CHAPTER 13

FOREIGN-TRADE ZONE ENFORCEMENT ACTIONS

13.1 General - There are ample means at Customs disposal to insure compliance with the laws and regulations it is responsible for administering. Customs will work with the trade through the informed compliance process to ensure that all laws and regulations dealing with foreign-trade zones are complied with prior to pursuing the enforced compliance approach. Enforcement measures range from simple warning notices to criminal sanctions with prison sentences. At the same time, Customs recognizes that foreign-trade zones provide an important service to the importing community and are deemed to operate to serve the convenience of commerce. Customs supervision and sanctions should therefore be fair and not unduly burdensome to zone grantees, operators, and users in the lawful exercise of their trade, as well as effective in gaining compliance with the laws and regulations. Actions taken by Port Directors to correct violations of the laws and regulations should be commensurate with the seriousness of the violation. A heavier sanction should not be applied if a lighter one will achieve the purpose of gaining compliance. The enforcement actions in this Part are listed, generally, in increasing order of severity so as to deal with increasingly serious violations.

13.2 Warning Notices - It is Customs policy that when there is reason to believe minor non-merchandise defaults can and will be promptly corrected upon simple notification of the operator, the Port Director may issue an oral or written warning notice or hold an explanatory meeting with the operator. Records shall be maintained by Customs of such notices and meetings, and they shall be followed up to see that the operator has corrected the default. (See section 3.5 FTZM). If the operator continues to be in noncompliance, one of the other actions in this Part shall be taken.

13.3 Assessment of Liquidated Damages - If a warning notice is not appropriate and a breach of the conditions of the FTZ operator's bond has occurred, Customs Form 5955A, Notice of Penalty or Liquidated Damages Incurred and Demand for Payment, will usually be issued as described in Part 12 FTZM. However, if the Port Director has reason to believe the operator is unable or unwilling to comply with the laws and regulations, other applicable provisions of this Part shall be followed in addition to the issuance of Customs Form 5955A. (19 CFR 146.81(a)).

13.4 Fines - In the case of a violation of the FTZA or any regulation under the FTZA by the grantee or by any officer, agent, or employee thereof, the person responsible for or permitting any such violation, shall be subject to a fine of not more than \$1,000. Each day during which a violation continues shall constitute a separate offense. (19 USC 81s, 19 CFR 146.81(a)). Liquidated damages, where applicable, will be imposed in addition to the fine. (19 CFR 146.81(a)). Fines assessed by the Port Director under this section shall be reviewed by the Director, Office of Regulations and Rulings,

International Trade Compliance Division, Customs Headquarters, to determine whether further action against the grantee or operator, such as suspension of activation of the zone or recommendation for revocation of the zone grant, is warranted. (19 CFR 146.81(b)). In addition, the Board has authority to impose fines for violations of the FTZA. (15 CFR 400.11(a)(10)).

(a) Notice of Fine - Notice of such a fine will be issued on Customs Form 5955A. The fine is subject to relief under the provisions of 19 CFR Part 171 and the Customs Fines, Penalties, and Forfeitures Handbook, HB 4400-01. A copy of each such notice shall be forwarded to Director, Office of Rulings and Regulations, International Trade Compliance Division, Customs Headquarters, for review per 19 CFR 146.81(b).

(b) When Fine Assessed - The fine will ordinarily be assessed in situations where the violator is not the principal on a Customs bond, the violation does not result in damages to the Government, or where, for some other reason, liquidated damages for the violation would be inappropriate.

Examples:

(1) The violation was committed by a grantee which is not the zone operator.

(2) The violation was committed by an officer or employee of the grantee or operator, acting alone.

(3) The violation was a retail trade violation (19 CFR 146.14 and see section 11.6(b) FTZM) and there was no apparent damage to the Government.

However, the Port Director may, at his or her discretion, assess liquidated damages against the zone operator in addition to the fine, as specified in 19 CFR 146.81

13.5 Revocation of Blanket Permit - If a blanket permit for admission (19 CFR 146.32(d)), blanket permit to manipulate or manufacture (19 CFR 146.52), or any other kind of blanket permit, including approval of direct delivery procedures under 19 CFR 146.39(d), is not deemed effective in protecting the revenue or enforcing any U.S. law or regulation, the Port Director may revoke the permit and demand instead that the interested party present individual applications for permits.

13.6 Physical Supervision - If the Port Director has reason to believe there is an unacceptable risk that merchandise will be removed from a zone without proper permit, or that special security is demanded in connection with a Customs investigation, the zone, or a facility within the zone, may be locked with a Customs lock and physical

supervision conducted by Customs of all admissions, transfers, manipulations, destruction, manufacturing, processing or other transactions requiring a permit in a zone. Because of Customs staffing limits, physical supervision is generally regarded as a temporary measure. Such supervision shall be terminated upon reestablishment of proper control by the operator; when the presence of other factors indicates that the need for special security has ended; or upon suspension or revocation as specified in 19 CFR 146.82 and Sections 13.8 through 13.11 FTZM.

13.7 New Bond Requirement - If a zone violation(s) or potential violation(s) is deemed a threat to the revenue or proper law enforcement, the Port Director may require an increased bond amount, as provided in 19 CFR 113.13(c) or (d). If an operator does not furnish a new bond within 10 days of written demand by the Port Director, no more goods will be received in the zone in zone status and those therein will be duty paid or removed at the expense of the operator. (19 CFR 146.7(d) and see section 4.9 FTZM). Alternatively, the Port Director may allow a 30-day period to remedy the deficiency, as provided in 19 CFR 113.13(c). There is no provision in the CR for an administrative appeal against the demand under these provisions for a new bond.

13.8 Suspension Procedure - The Port Director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, process, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board, the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. (19 CFR 146.82(a)).

(a) Grounds for Suspension - An action to suspend will be taken in accordance with the procedure in 19 CFR 146.82(b) if:

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

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

(3) the operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed an act that would constitute a felony, or would constitute a misdemeanor involving theft, smuggling or a theft related crime;

(4) the operator fails to furnish a current list of names, addresses, or other information as required by 19 CFR 146.7;

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

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

(7) the inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations. (19 CFR 146.82(a)).

The grounds for suspension are limited to those specified in 19 CFR 146.82(a). If there is any other reason for which suspension is sought by Customs, action for cause may be taken only indirectly. For example, the operator could be instructed in writing to discontinue a practice which interferes with proper Customs administration of a law or regulation. If the practice continues, grounds may exist for suspension because of the operator's refusal or neglect to obey a proper order of a Customs officer.

(b) Show Cause Notice to Operator - The Port Director may, at any time, serve notice in writing upon an operator to show cause why its right to continue operation of a zone should not be suspended or why an individual user or individual activity should not be suspended, under the procedure provided for in 19 CFR 146.82(b). The notice shall advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the Port Director shall consider the allegations and any response made by the operator and issue a decision unless the operator requests a hearing in the matter. (19 CFR 146.82(b)(1)). The notice to show cause why the suspension should not be carried out shall contain:

(1) the specific grounds for suspension;

(2) the specific facts which serve as the basis for the grounds; and

(3) the specific period of suspension.

(c) Notice to Grantee - If the grantee of the zone is not the operator, a copy of the notice to show cause shall be served upon the grantee. The grantee, as a party in interest, may join the operator in any proceedings under this Section (19 CFR 146.82(b)(4)). A copy of the notice need not be sent to a zone user, and there is no authority for a zone user to join the operator in any suspension proceedings. (TD 86-16, 51 FR 5040).

(d) Hearing - If the operator requests a hearing, it shall be held before a hearing officer designated by the Commissioner of Customs within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, shall be presented. The right of cross-examination shall be available to both parties. A stenographic record of the proceeding shall be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the Assistant Commissioner, Office of Field Operations, together with a recommendation for final action. (19 CFR 146.82(b)(2)).

(e) Decision After Hearing - Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit in writing to the Assistant Commissioner, Office of Field Operations, any additional views or arguments. The Assistant Commissioner or designee shall then render a written decision stating his reasons therefor. The decision shall be served on the operator (and the grantee, if applicable) and shall be considered the final Customs administrative action in the case. (19 USC 146.82(b)(3)).

(f) Placing Suspension in Effect - The suspension shall go into effect when the Port Director issues a decision in the matter, unless the operator requests a hearing. If the operator requests a hearing, the suspension shall be placed in effect when the Assistant Commissioner, Office of Field Operations, issues a decision, unless suspension is stayed by a court order.

(g) Extension of Suspension by Board - Suspensions shall be for a specified period of time up to 90 days. Any suspension beyond 90 days, or any revocation of activation, may be carried out only upon order of the Foreign-Trade Zones Board. The 90-day limit is based on a presumption that continued operation of the foreign-trade zone serves the convenience of commerce, and that only the Board can affirm a conclusion that a longer suspension, or revocation of activation, is in the public interest.

If the Port Director believes the grounds for the suspension cannot or will not be corrected within 90 days from the beginning of the suspension, he or she should seek an extension by sending a written request to the Executive Secretary, Foreign-Trade Zones Board, to exclude the affected goods or operation from the zone under the authority of Section 810(c), Title 19 for a specified period of time recommended by the Port Director. This request may be made without any further administrative hearing, but shall be sent only through the Assistant Commissioner at Customs Headquarters, Office of Field Operations. Such a request should be made as soon as the Port Director is aware of the need for an extension, to allow the Board order to be issued upon the expiration of the initial suspension without any break.

13.9 Suspension of Privilege - As specified in 19 CFR 146.82(a), the Port Director may suspend any FTZ privileges. Such a suspension may cover all or part of the merchandise in a zone, or all or part of the transactions for which a privilege was granted. It may be limited to one or a few zone users, or to particular activities, or kinds of merchandise.

(a) Notice to Show Cause - The notice to show cause why the suspension should not be carried out will contain, in addition to the information cited in 19 CFR 146.82(a) and Section 13.8(b) FTZM, specific information concerning which privileges are to be suspended. The specific privileges to be suspended should be (1) relevant to the grounds for suspension, and (2) of a type whose suspension would bring about compliance. For example, if the season is finished for seasonal goods to be admitted to a zone, it would be more appropriate to suspend privileges to transfer merchandise than suspend to privilege to admit merchandise. (19 CFR 146.82(b)(1)).

(b) Effect of Suspension of Privilege - When privileges are suspended, there is no requirement that the merchandise in the zone be transferred to Customs territory or to another zone. After termination of the suspension, privileges may be granted upon application in proper form. The privilege will be restored without an additional qualification requirement of the operator.

13.10 Suspension of Activation - The Port Director may suspend the activation of a foreign-trade zone on any of the grounds specified in 19 CFR 146.82(a). Suspensions are generally applicable to grounds directly attributed to the operator, or grounds which are applicable to more than one or a few users, activities, or kinds of merchandise. The show-cause notice shall contain a clear statement that the notice is for suspension of activated status. The suspension shall be for a specified period of time up to 90 days.

(a) Effect of Suspension of Activated Status - When activation has been suspended, the merchandise must be either duty paid or removed from the zone without expense to the Government, as specified in 19 CFR 146.7(c) and 113.73(c)(1) and Section 13.13 FTZM. Upon termination of the suspension, activation of the zone will be restored without application by the operator.

13.11 Revocation of Activated Status or Privilege - If a Port Director has reason to believe that the grounds for suspension under 19 CFR 146.82(a) cannot or will not be corrected within at least six months after a suspension has been put into effect, or when less severe sanctions have been or would be ineffective in obtaining compliance by the operator or permittee with the laws and regulations, he or she may seek revocation of privileges or of activation by sending a written request to the Executive Secretary, Foreign-Trade Zones Board, to exclude permanently or indefinitely the affected goods or operation(s) from the zone. This request shall be made in the same manner as a request to extend a suspension under Section 13.8(g) FTZM. When activation has been revoked, the merchandise must be either duty paid or removed from the zone without expense to the Government, as specified in 19 CFR 146.7(c), 19 CFR 113.73(c)(1) and Section 13.13 FTZM.

(a) Restoration of Approval - If activation is suspended or revoked it may be restored to the zone only upon Board order and be reactivated by reapplication under 19 CFR 146.6. Generally, Customs will not recommend approval of a Board order to reinstate activated status or permits if (1) the order would be issued less than a year after revocation, (2) any charges due under the Foreign-Trade Zone Operator's bond have not yet been paid, or (3) application is made under another company or corporate name involving principals of the operator whose activated status or privilege was revoked, and the Port Director has reason to believe that the grounds for suspension or revocation still exist.

13.12 Revocation of Grant - In the event of willful violations of any of the provisions of the FTZA by the grantee, the Board may revoke the grant after four months' notice to the grantee and affording it an opportunity to be heard. The testimony taken before the Board shall be reduced to writing and filed in the records of the Board together with the decision reached thereon. (19 USC 81r(a)).

(a) Recommendation of Port Director for Revocation - The Port Director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the FTZA. If the Port Director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request internal advice under the provisions of 19 CFR Part 177 from the Director, Office of Regulations and Rulings, International Trade Compliance Division, Customs Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, fine, or suspension for cause. (19 CFR 146.83(a)).

This is the most serious civil enforcement action that may be taken for foreign-trade zone violations. If a Port Director believes such a recommendation is advisable, it shall be made without any further Customs administrative proceedings, since the necessary administrative actions will be carried out by the Board. However, such a recommendation shall be made to the Board through the Office of Field Operations, Assistant Commissioner, Customs Headquarters.

(b) Procedure and Decision - The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of Section 81r, Title 19, and 15 CFR 400.28(c). If a zone grant is revoked, any and all zone status merchandise (except domestic status merchandise for which no permit is required under 19 CFR 146.43(b)) in any activated area of that zone shall be either duty paid or removed therefrom without expense to the Government, as specified in 19 CFR 146.7(c), 19 CFR 113.73(a)(1) and Section 13.13 FTZM.

13.13 Removal of Merchandise - When approval of activated status has been suspended under 19 CFR 146.82(b) and Section 13.8 FTZM, or the zone grant is revoked under Section 13.12 FTZM, the Port Director shall require all goods in that area in zone status (other than domestic status for which no permit is required) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, or transferred to Customs territory, if the Port Director considers it advisable to protect the revenue or administer any Federal law or regulation. (19 CFR 146.7(c)).

(a) Procedure - Activated status is suspended or, zone grant is revoked when the final administrative action for suspension or revocation has been completed. Port Directors shall notify all users having merchandise in the zone of the action, and advise them that they shall transfer their merchandise to Customs territory or to another zone within 30 days after notification. If the merchandise is not so transferred within that time, the

Port Director shall order it to be transferred to a location as specified by the Port Director. (19 CFR 146.7(c)). Transfer at the order of the Port Director shall be at the risk and expense of the operator, as specified in 19 CFR 113.73(c)(1). The operator shall remain responsible for the merchandise until the cartman, carrier, or other responsible party signs for the merchandise acknowledging its receipt for removal from the zone. (See Sections 9.16(e) and 10.6(c) FTZM).

13.14 Responsibility of Operator After Removal - The liability of the operator under its bond is not cancelled by reason of zone grant revocation or suspension of zone status. The operator remains liable for payment of liquidated damages assessed under the bond, reimbursement of costs incurred by the Government in connection with the suspension or revocation, and other responsibilities under the bond, as applicable.

13.15 Penalties for Fraud, Gross Negligence, or Negligence - Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence--

(A) may enter, introduce, or attempt to enter or introduce, any merchandise into the commerce of the United States by means of--

(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or

(ii) any omissions which is material, or

(B) may aid or abet any other person to violate subparagraph (A). (19 USC 1592(a)).

The maximum penalties for such violations range from the domestic value of the merchandise to 20 percent of the dutiable value, depending on whether fraud, gross negligence, or negligence is involved. (19 USC 1592(c)). These are civil penalties. Section 1592 is a civil penalty statute and thus penalties do not require a criminal conviction. The criminal provision that covers similar fraud is 18 USC 542, a felony statute. Customs procedures for handling these civil penalties are found in 19 CFR Part 162. Procedures for petitioning for relief from the penalties are found in Appendix B to 19 CFR Part 171.

(a) Application to Zones - Section 1592, Title 19, is a Customs law, which is not applicable to merchandise in foreign-trade zone status, according to 19 USC 81c(a). However, it is applicable to merchandise and articles in a zone which do not have zone status, such as prohibited articles, constructively transferred merchandise, and other merchandise and articles described in Sections 2.6 and 5.2 FTZM. Furthermore, in respect to merchandise and articles in zone status, Section 1592 is applicable to

transactions, practices, documentation, acts, and omissions which occur or occurred in the zone, even while the merchandise was in zone status, if it is later transferred to Customs territory. Section 1592 penalties connected with a zone would usually involve a zone user, rather than an operator, unless the operator is also the importer or has aided or abetted a Section 1592 violation by an importer or other party.

(b) Procedural Protections - Persons accused of violations of Section 1592 have some important procedural safeguards to assure fairness in administration of penalties by Customs:

(1) Customs must provide a pre-penalty notice to the person concerned, and time for a response, as prescribed in Sections 1592(b)(1) and 19 CFR 162.77 and 162.78;

(2) After considering any presentations made in response to the pre-penalty notice, Customs must determine whether any violation has occurred and promptly notify the person concerned, in writing, of its final determination as provided in Sections 1592(b)(2) and 19 CFR 162.79, and Appendix B to 19 CFR Part 171.

(3) Lower penalties are assessed when the person concerned has disclosed the circumstances of a violation before, or without knowledge of, a formal investigation of the violation, as provided for in Sections 1592(c)(4) 19 CFR 162.74, and Appendix B to 19 CFR Part 171.

(4) Limitations are placed on seizure the of merchandise involved in the violation, as prescribed in Sections 1592(c)(6) and 19 CFR 162.75; and,

(5) Customs must meet certain proof requirements in any action to recover monetary penalties before the Court of International Trade, as prescribed in Section 1592(e).

(c) Payment of Duties - Notwithstanding the assessment or non-assessment of a monetary penalty, Customs shall demand payment of any loss of duties, taxes and fees resulting from a Section 1592(b) violation, even if the entry covering the merchandise has already been liquidated. (See Section 1592(d), 19 CFR 162.79(b) and 19 CFR 162.80).

13.16 Criminal Violation - Criminal violations are those for which an individual, including an officer or agent of a violating corporation, may be criminally fined and/or imprisoned. In light of the constitutional safeguards against improper prosecutions and convictions, criminal violations are usually investigated by trained Customs special agents, and sometimes in conjunction with special

investigators of other Federal agencies. The principal criminal violations of relevance to foreign-trade zone operators and users are shown below:

Authority	Nature of violation	Penalty
18 USC 111	Assaulting, resisting, or impeding officers in performance of their duties	Fine under Title 18 USC (\$250,000 or less) or not more than 3 years prison (if with deadly weapon, not more than 10 years) or both
18 USC 201	Bribery of public official	Whichever is greater, fine under Title 18 USC (\$250,000 or less) or not more than 3 times amount of bribe, or not more than 15 years prison, or both; and disqualified from any office of honor, trust, or profit with U.S.
18 USC 371	Conspiracy to commit offense or fraud against the United States	Fine under Title 18 USC (\$250,000) or less or not more than 5 years prison or both. If the underlying offense is a misdemeanor, punishment not to exceed offense maximum.
18 USC 1341	Mail fraud	Fine under Title 18 USC (\$250,000 or less), not more than 5 years prison, or both. If violation affects a financial institution, not more than \$1,000,000, not more than 30 yrs. in prison, or both.
18 USC 1343	Wire, radio, or television fraud	Fine under Title 18 USC (\$250,000 or less), not more than 5 years prison, or both. If violation affects a financial institution, not more than \$1,000,000 fine, not more than 30 yrs. prison, or both.

The following criminal violations are contained in Customs law. These laws apply to merchandise in a zone which is not in zone status, and cover acts and omissions that occur in a zone involving merchandise which was either introduced, or attempted to be introduced, into Customs territory. These laws do

not apply to zone status merchandise which has never been introduced, or attempted to be introduced into Customs territory.

Authority	Nature of Violation	Penalty
18 USC 541	Entry of falsely classified goods	Fine under Title 18 USC (\$250,000 or less), not more than 2 years prison, or both.
18 USC 542	Entry of goods by false statement	Fine under Title 18 USC (\$250,000 or less), not more than 2 years prison, or both.
18 USC 544	Relanding of goods without payment of duty	Fine under Title 18 USC (\$250,000 or less), not more than 2 years prison, or both; plus forfeiture of goods or its value.
18 USC 545	Smuggling, including through use of false documents	Fine under Title 18 USC (\$250,000 or less), not more than 5 years prison or both; plus forfeiture of goods or its value.
18 USC 549	Removal from Customs custody or tampering with Customs seal without permission	Fine under Title 18 USC (\$250,000 or less), not more than 2 years prison or both.
18 USC 550	False claim or refund of duties or duty exemption upon exportation of goods	Fine under Title 18 USC (\$250,000 or less), not more than 2 years prison, or both; plus forfeiture of goods or its value.
18 USC 551	Concealing or destroying invoices or other papers	Fine under 18 USC (\$250,000 or less), not more than 2 years prison, or both.
19 USC 1304	Improper alterations of country of origin marking	Fine under Title 18 USC not more than \$100,000 fine for the first conviction for violation and fine not more than \$250,000 for second or subsequent conviction for violation, not more than 1 year prison, or both.

OTHER RELEVANT CRIMINAL PROVISIONS

18 USC 496	Forgery, counterfeiting, or falsely altering entry or withdrawal documents	Fine under Title 18 USC (\$250,000 or less), not more than 3 years prison, or both.
18 USC 659	Theft in international or interstate commerce	Fine under Title 18 USC (\$250,000 or less), not more than 10 years prison, or both, if theft value is \$1000 or more. If less than \$1000, imprisoned up to 1 yr., and fined, or both.
18 USC 1001	Falsifying, concealing, or covering up material within jurisdiction of U.S. Government by any trick, scheme, or device	Fine under 18 USC (\$250,000 or less), not more than 5 years prison, or both.
18 USC 1341	Mail fraud	Fine under 18 USC (\$250,000 or less). Not more than 5 years prison, or both. If violation affects a financial institution, not more than \$1,000,000, not more than 30 yrs. In prison, or both.

Statutes administered by agencies other than Customs may be applicable for violations involving particular kinds of merchandise, such as arms and munitions, endangered plants and animals, toxic substances, and other prohibited or controlled articles or substances.

13.17 Search, Arrest, and Seizure - The supervision authority of 19 USC 81d and 81o(b) and 19 CFR 146.3 is sufficient to conduct compliance reviews (formerly spot checks) and audits by Customs officers. However, in regard to more serious law enforcement violations, zone operators and users may come into contact with Customs Special Agents, Contraband Enforcement Teams, Detector Dog Teams, and other Customs enforcement officers conducting searches or investigations. To properly enforce the laws and regulations, Customs officers are given considerable authority to conduct searches, arrest suspected violators, and seize merchandise and articles.

(a) Search Authority - The principal authority for Customs searches in zones is through the authority of the Board and the Secretary of the Treasury to issue regulations to carry out the FTZA and to protect the revenue. (19 USC 81o(b)). Under that authority, the Port Director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered

necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce. (19 CFR 146.10). Also, Customs officers representing the Board are authorized to inspect and examine at such times as the Board may deem advisable the premises, operations, or accounts of the grantee. (15 CFR 400.11(a)(6)).

Finally, in the case of any merchandise which has been constructively transferred to Customs territory, or is otherwise not in zone status, but is in Customs custody, Customs officers may stop, search, and examine any vehicle or person on which they suspect there is merchandise which is subject to duty or was introduced into the United States in any manner contrary to law. (19 USC 482).

(b) Arrest Authority - Section 81c(a), Title 19, exempts certain merchandise in zones from the Customs laws, but does not exempt persons from the Customs laws. A Customs officer may be authorized to make an arrest without a warrant for any offense against the United States committed in the officer's presence, or for any felony against the United States committed outside the officer's presence if the officer has reasonable grounds to believe the person to be arrested has committed a felony. (19 USC 1589a(3)). Also, incident to a border search (noting Section 13.17(a) FTZM above), Customs officers are authorized to arrest any person who is liable to arrest, by virtue of any law respecting revenue, without, as well as within their respective port, and to use all necessary force to make the arrest. (19 USC 1581(f)).

(c) Seizure Authority - Merchandise whose importation is prohibited may be seized by Customs officers in a foreign-trade zone. (CSD 82-16). Merchandise may be seized by any Customs officer who has reasonable cause to believe that any law or regulation enforced by Customs has been violated, by reason of which the merchandise has become subject to seizure or forfeiture. The officer must provide a receipt for the seizure to the person from whom the merchandise was seized. (19 CFR 162.21(a)). Customs procedures for handling seizures are set forth in 19 USC 1602 through 1616 and 19 CFR Part 162. The most frequent authorities for seizures that may be encountered by zone operators and users, aside from those mentioned in Sections 13.15 and 13.16 FTZM, are shown below:

Authority	Nature of Seizure
19 USC 1305	Pornographic, immoral, treasonous material and lottery tickets
19 USC 1526	Merchandise imported without consent of trademark holder, or with counterfeit trademark

19 USC 1527	Importation of wild mammals, birds, or parts of same in violation of foreign laws
19 USC 1594	Conveyance with prohibited merchandise, or seized for payment of penalty for violation in which conveyance or owner or operator thereof was involved
19 USC 1595a(a)	Any conveyance or other property used to effectuate an importation contrary to law
19 USC 1595a(c)	Merchandise introduced into the U.S. contrary to law.
19 CFR 162.45 and 162.45a and cited statutes of Title 21 USC	Narcotics and other controlled substances

Glossary of Foreign-Trade Zone Terminology

Activation

Approval by the grantee and U.S. Customs Service Port Director permitting operations to begin which allow the admission and handling of merchandise in zone status.

Admission

The physical arrival of goods into a zone in a specified zone status with the appropriate approvals of the zone grantee and the U.S. Customs Service. The word “admission” is used instead of “entry” to avoid confusion with Customs entry processes under Parts 141-144 of the Customs Regulations.

Alteration

- a) A change in the boundaries of an activated zone or subzone.
- b) Activation of a separate site of an already activated zone or subzone with the same operator at the same port.
- c) The relocation of an already activated site with the same operator.

Compliance Assessment

Is a mechanism by which a team evaluates a company to ensure its Customs transactions are in compliance with the laws and regulations. The objective of a compliance assessment is to assess the compliance level in specific trade areas; to determine if the importer had documented Customs related internal controls; and, to evaluate the risk to Customs of the importer’s noncompliance.

Customs Territory

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

Deactivation

Voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. (Discontinuance of the activated status of only part of a zone is an alteration.)

Direct Delivery

A procedure for delivery of merchandise to a zone without prior application and approval on Customs Form 214; designed for low-risk, repetitive shipments whose ordering and timing are under the control of the operator. Approval to utilize direct delivery must be obtained from the Port Director.

Domestic Status (D)

Status of zone merchandise grown, produced or manufactured in the U.S. on which all internal revenue taxes have been paid or the status of zone merchandise previously imported on which all applicable duties and internal revenue taxes have been paid.

Drawback

Drawback means the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 USC 1313(d).

Enforced Evaluation Team

Is a group which evaluates the discrepancy or possible violation of a company to determine if it is an isolated instance of noncompliance or part of a larger pattern or history of violations. The EET considers input from the discovering officer, the Account Manager/Port Account Team, Compliance Assessment Team Leader, as well as the significance/materiality of the violation. Based upon the nature, extent and impact of the discrepancy/possible violation, the EET selects the appropriate response to the problem.

Entry

Notification to Customs of the arrival of imported goods in the Customs territory of the U.S. Merchandise withdrawn from a zone for consumption in the U.S. is entered when it is removed from the zone. Goods brought into a zone are admitted.

Foreign-First (FOFI)

An accounting method based on the assumption that foreign-status merchandise is deposited first. Permission to use FOFI must be obtained from Customs and is granted on a case-by-case basis.

General-Purpose Zone

A general-purpose zone is established for multiple activities by multiple users. Storage, distribution, testing, repackaging and repair are some of the possible activities in a GPZ. Processing or manufacturing in a GPZ requires the permission of the Foreign-Trade Zones Board.

Grantee

A corporation to which the privilege of establishing, operating and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board. Grantee corporations must be either public corporations or private corporations organized for the purpose of establishing a zone project. Examples of public entities that might receive an FTZ grant include: a political subdivision (including a municipality), a public agency, or a corporate municipal instrumentality of one or more states. Qualified private corporations must be chartered for this purpose under a law of the state in which the zone is located.

Harmonized Tariff Schedule of the United States (HTSUS)

Published by the U.S. International Trade Commission, the TSUS is used in the classification of imported merchandise for rates of duty and statistical purposes.

Inverted Tariff Structure

Where imported parts are dutiable at higher rates than the finished product into which they are incorporated.

Manipulation

As defined in Section 562 of the Tariff Act, processing wherein merchandise is packed, unpacked, repacked, cleaned, sorted, graded or otherwise changed in condition. The precise distinction between manipulation and manufacturing is subject to interpretation and enjoys a long history of case law.

Manufacturing

The U.S. Customs Service determines what constitutes manufacturing on a case-by-case basis, distinguishing it from other operations such as

manipulation, processing, production and blending. The FTZ Board has defined it as any process that results in a change in Customs classification of the merchandise, and therefore, requires prior clearance from the Board pursuant to the manufacturing conditions in specific foreign-trade zone grants.

Merchandise

FTZ merchandise includes goods, wares, and chattels of every description. Not included are prohibited merchandise, building material and supplies for use in the operation of a zone.

Nonprivileged Foreign Status (NPF)

Status of zone merchandise not previously cleared by Customs which is appraised in the condition of the merchandise at the time it enters the Customs territory upon exiting the zone. NPF status may be changed upon approval from Customs, provided the merchandise is still in the same condition as when admitted to the zone. While in the zone, NPF status merchandise can be manipulated or manufactured into another commercial item with a different tariff classification. NPF status allows zone users to pay duty at the rate of the finished product produced in the zone.

Operator

A corporation, partnership or person that operates a zone or subzone under the terms of an agreement with the grantee. A grantee may act as its own operator.

Operator's Bond

A bond submitted to Customs, on Customs Form 301, to assure compliance with the Customs Regulations as set forth at 19 CFR 113.73.

Port of Entry

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

Privileged Foreign Status (PF)

Zone status whereby merchandise is classified and appraised, with duties and taxes determined, at the time the status is elected. Once chosen, the privileged foreign status cannot be changed.

Processing

Any zone activity (other than manufacturing) requiring a change in condition of merchandise which results in a change in the Customs classification of an article or in its eligibility for entry for consumption.

Risk

The degree of exposure to the chance of noncompliance which would result in the loss or injury to the trade, industry or the public.

Subzone

A special-purpose zone established as part of a zone project for a limited purpose that cannot be accommodated within an existing general-purpose zone. Subzones must be sponsored by the grantee of a general-purpose zone.

User

A person or company using a zone for storage, handling or processing of merchandise. An operator may authorize a user to maintain its own inventory system and procedures manual. However, the operator remains responsible to Customs for inventory control unless the user posts its own operator's bond.

Weekly Entry Procedures

A customs procedure that permits selected qualified zones and subzones to file a weekly entry on Customs Form 3461 for the estimated removals of merchandise destined for domestic consumption during the following business week. Once the Port Director has approved the entry, the operator may ship the products all week up to the quantity estimated. Weekly entry may be approved for zone operations of a repetitive nature in order to allow for expedited removal of merchandise from the zone.

Zone Lot

A collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted into a zone by lot and lot number (ZLN).

Zone Restricted Status

Status of zone merchandise transferred to a zone for the sole purpose of exportation or destruction. Zone restricted merchandise cannot be changed or brought into the Customs Territory without the specific permission of the Foreign-Trade Zones Board on a case-by-case review.

Zone Status

The status of merchandise admitted to a zone, i.e. domestic (D), non-privileged (NPF), privileged foreign (PF) or zone restricted (ZR).